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Anchorage to Host 1980 Bar Convention

Resolution Packed Annual Meeting

Fortunately, members of the Alaska Bar Association strung-out by the enervating sunset review process in Juneau, and hung-up over the internal financial difficulties and philosophical differences within the association can look to its annual meeting next month as a time when they can try to get their collective heads together. Certainly, nobody ever more urgently needed three days of intensive introspection than the bar.

Although no one views this as a "drying out" period, the many important and varied issues facing the association requires that its members gather together at the wall. Regardless of each member's individual thoughts concerning sunset, the association's court suit with the legislature over the confidentiality of bar records, board meetings outside the state, or the need for a dues increase (to name a few of the major concerns), each of those issues deserves deliberation, debate and a denouement. However, and despite whatever form the eventual resolution of these professional matters takes, most members will continue to practice law (or its state-defined equivalent). In recognition of this fact, the board has therefore also planned a two-day CLE seminar regarding new trends in each of the 10 substantive law areas. The presentations are an hour long, with time allowed for discussion and questions and will also include a review of recent Supreme Court decisions with specific attention to insurance matters.

Dynamite Program

Finally, of course, numerous R & R events have been scheduled. An impressive series of luncheon speakers have accepted invitations to address the bar. Chief Justice Rabinowitz will speak on the "State of the Court"; Senator Arliss Sturgulewski will discuss the sunset review process from her perspective as well as the legislature's perception of the legal community in Alaska; and American Bar Association President-Elect Wm. Reece Smith will address a number of professional matters of real local interest (specialization, advertising, pre-paid legal services and the Kutak Commission report) from his national perspective on these profession-wide issues. The bar's annual dinner/dance will feature various presentations, a bit of the past, colorful history of the bar from the Historians Committee, some pre-dance entertainment by the "Statutory Grapes" (who do not own Legal Pizza), and then the dance itself with dance music to suit all tastes.

Various other recreations are scheduled, including a Friday Dinner-in-the-Homes program for bar members visiting Anchorage. This event, organized and sponsored by the Anchorage Bar Association, will match Anchorage attorneys and their families with visiting attorneys and their families for dinners in private homes.



Sixteen Seek Three Positions on Appellate Court

Ten attorneys and six Superior Court Judges have applied for positions on the new three-member Intermediate Court of Appeals. The applicants will be interviewed by the Alaska Judicial Council on June 19, 1980. Prior to that, members of the Alaska Bar will have an opportunity to respond to a poll by the Judicial Council on the subject of the candidates qualifications for the office. As a result of agreements reached between the Alaska Bar Association and the Judicial Council, the poll will use the double envelope security system, tabulation of votes will be by judicial district, and the results will be made public prior to the council's recommendations being forwarded to the Governor for his selection. The Judicial Council's recommendations must be acted upon by the Governor within 45 days.

Applicants for the new appellate judgeships are: Alexander Bryner, U.S. Attorney-Anchorage; Susan Burke, Assistant AG-Juneau; Robert Coats, Assistant AG-Fairbanks; Superior Court Judge James Hanson-Kenai; Daniel Hickey, Chief Prosecutor-Juneau; Thomas Keever, attorney-Fairbanks; Superior Court Judge Roy Madsen-Kodiak; Charles Merriner, Assistant DA-Anchorage; Peter Michalski, Assistant AG-Anchorage; Presiding Superior Court Judge Ralph Moody-Anchorage; Robert Opland, attorney-Anchorage; A. Lee Peterson, attorney-Anchorage; Superior Court Judge Thomas E. Schulz-Ketchikan; Superior Court Judge James Singleton-Anchorage; D. Ralph Stemp, attorney-Anchorage; and Superior Court Judge Warren Taylor-Fairbanks.

For a closer look at the candidates and their qualifications see Judicial Sweepstakes Scratch Sheet on pages 8 and 9.

Five Attorneys Face Run-off for BOG Position—Hunt, Bryson Lead Pack

Karen Hunt, running for a second term on the Board of Governors, won a decisive victory in the first run of the balloting with a total of 247 votes to her next closest competitor, Jerry Wades' 166 votes. Vince Vitale placed third with 139 votes in the election for

the two Anchorage seats on the Board of Governors. Hunt, Wade and Vitale face a run-off election for these two posts. In the statewide contest Bill Bryson received a total of 239 votes. He too faces a run-off election against Ken Jensen who placed second in the statewide contest with a total of 200 votes.

In the Alaska Legal Services' Board of Governors race, Max Gruenberg, an attorney in private practice in Anchorage who presently serves as Chairman of the Board of the Alaska Legal Services Corporation, won the first round of his re-election bid with 219 votes. Second place finisher, Connie Cipe of Anchorage received 141 votes. Gruenberg and Cipe face a run-off election.

Donna Willard was selected as delegate to the American Bar Association in a race which netted her 327 votes to Ken Jacobus' 288 votes.

Further, Peter Partnow and other attorney runners have planned and organized a "fun run." Sponsored by the Alaska Bar Association, and entitled the "Last Annual Mixed Road Race," all attorneys, their spouses and children who are interested in participating in the team, 10-mile run should look for further information from the bar office. The run will not be limited to bar members, but will be advertised city-wide and, coming after the Nordstrom Women's Race and the Mayor's Race should draw a large crowd of crazed runners.

Programs and registration information will be mailed on or about May 9th.

Remember—the Annual Meeting is June 12-14, 1980. Please make plans now to attend this informative and very important meeting. All members were previously sent registration cards from the Anchorage Sheraton Hotel, but reservations can be made directly with the Sheraton. Once again, clear your calendars and plan to attend. Your Association sincerely needs both your interest and support in this, a transition year for the Alaska Bar Association.

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Scholarships Awarded

The Alaska Bar Association announces the award of five \$1,000 scholarships for the study of law. The Chief Justice George Boney memorial scholarship has been awarded to William Lee Estelle, a lifetime Alaskan from Palmer who is in his senior year at the University of Alaska, Anchorage. He has been accepted for law study at Duke University and the University of Washington. The John Manders memorial scholarship has been awarded to Joel DeVore, Anchorage, an 18-year resident of Alaska who is enrolled at the University of Oregon, School of Law. The three remaining scholarships have been awarded to Thomas Wagner, former school teacher in Nulato, Minto, Hughes and Aleknagik who is presently studying law at the University of Wisconsin Law School; Lance Nelson, a 12-year resident of Fairbanks and a December 1979 graduate of Brigham Young University who has been accepted for law study at the University of Puget Sound and Barbara Craver, a librarian with the University of Alaska, Juneau who has been accepted for law study at Willamette University and Lewis and Clark Law School.

The successful recipients were selected on the basis of their Alaskan residency, their present intent to practice law in Alaska upon graduation from law school, their admission to an accredited law school, their need and merit. With an eye toward encouraging Alaskans statewide to consider law as a profession, this year's awards attempted to promote geographic diversity as well.

In the first year of what is expected to be an annual scholarship program, the ABA Committee on Legal Educational Opportunities raised money for the program through the earnings from the Boney memorial scholarship fund, a contribution from the John Manders Foundation, contributions from individual lawyers and contributions from the Ketchikan, Juneau and Tanana Valley bar associations.

The scholarship awards will be presented to the successful candidates during the final banquet of the Alaska Bar Association's annual convention on June 14th.

Resolutions Received So Far

Number 1

Be it resolved that the Board of Governors of the Alaska Bar Association shall hold no Board Meetings out of the State of Alaska.

Number 2

Be it resolved that Article IV, Section 1 of the bylaws of the Alaska Bar Association shall be amended to read as follows:

a) The annual membership fee for active members is two hundred fifty (\$250.00) of which \$10.00 is allocated to the Client Security Fund.

b) The annual membership fee for judicial members is two hundred and ten dollars (\$210.00) of which \$10.00 is allocated to the Client Security Fund.

c) The annual membership fee for an inactive member is seventy-five dollars (\$75.00).

Number 3

Be it resolved that, should state funds become unavailable to the association, Article IV, Section 1 (a) of the bylaws of the Alaska Bar Association shall be amended to read as follows:

The annual membership fee for active members is three hundred and ten dollars (\$310.00) of which \$10.00 is allocated to the Client Security Fund.

Number 4

Be it resolved that Article IV, Section 1 of the bylaws of the Alaska Bar Association shall be amended by adding new Sections (g) and (h) which shall read as follows:

g) If in any one year the association experiences unprojected expenses, such as unexpected litigation, or a cost of living increase of over 10 percent, the Board of Governors may authorize a one-time special assessment for that year; provided, the assessment shall be no more than \$20.00; provided further that the assessment shall not be against persons admitted to practice in that year; and provided further that such assessment shall not be cited as justification for a dues increase.

h) A special assessment shall include time limits for payment and shall be subject to the same enforcement proceedings as the collection of annual dues.

Federal Court Orders in the Matter of Transcript Rates

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

In the Matter of Transcript Rates Established in the District of Alaska

ORDER

IT APPEARING that the Judicial Conference of the United States, at its meeting on March 5-7, 1980, established new ceilings per page for transcript rates and that, under 28 U.S.C. Section 753(f), actual rates in the District of Alaska are established by the court,

IT IS THEREFORE ORDERED that the following rates per page are now established as the transcript rates in the District of Alaska

	Original	First Copy to Each Party	Each Add'l Copy to the Same Party
ORDINARY TRANSCRIPT	\$2.00	\$.50	\$.25
EXPEDITED TRANSCRIPT	\$2.50	\$.50	\$.25
DAILY TRANSCRIPT	\$3.00	\$.50	\$.25
HOURLY TRANSCRIPT	\$3.50	\$.50	\$.25

An ordinary transcript is defined as a transcript to be delivered within thirty (30) calendar days after receipt of an order.

An expedited transcript is defined as a transcript to be delivered within seven (7) calendar days after receipt of an order.

A daily transcript is defined as a transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually be a court day.

An hourly transcript is defined as a transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.

The foregoing established transcript rates are hereby certified to the Director of the Administrative Office of the United States Courts and are effective from and after the date of this order.

DATED this 19th day of March, 1980, at Anchorage, Alaska.

JAMES A. VON DER HEYDT, Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

In re Amendment to General Rule 30

ORDER

IT IS ORDERED:

THAT General Rule 30 of this court be amended to add the following: Full duties to hear and determine all administrative appeals from the U.S. Department of Health, Education and Welfare are hereby delegated and referred to the United States Magistrates at Anchorage and Fairbanks, Alaska.

DATED at Anchorage, Alaska, this third day of March, 1980.

JAMES A. VON DER HEYDT, Chief Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

In the Matter of an Amendment of the General, Admiralty, Bankruptcy and Criminal Rules of the United States District Court for the District of Alaska

ORDER

IT IS ORDERED that the order of March 3, 1980 amending Rule 30 of this Court by adding the following:

Full duties to hear and determine all administrative appeals from the U.S. Department of Health, Education and Welfare are hereby delegated and referred to the United States Magistrates at Anchorage and Fairbanks, Alaska. is hereby set aside and vacated.

DATED this 21st day of March, 1980, at Anchorage, Alaska.

JAMES A. VON DER HEYDT, Chief Judge

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The Lay of the Land Re: Sunset

by Randall P. Burns

Editor's note: Mr. Bays Shoaf, formerly of the North Carolina Bar Association, has sent the Alaska Bar Association a summary of some recently completed research regarding sunset review of bar associations. Part of the following is based on his research, entitled "Application of Sunset Laws to State Bars."

A true sunset law is one that provides for periodic review and possible automatic termination of an agency. A date is established for termination and unless there is positive legislation continuing the agency, in present or altered form, the agency goes out of existence.

Only integrated bars created wholly or in part by legislation can be subject to sunset laws. Twelve (12) states have both integrated bars and

sunset laws: Alabama, Alaska, Louisiana, New Mexico, North Carolina, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia and Vermont. Sunset laws now specifically apply to some state bar functions in six (6) of those states (see chart below). In addition, the non-integrated state of Maine has applied its sunset provisions to the board of law examiners. Alabama (integrated) and Indiana (non-integrated) have review statutes, but they are not true sunset laws in that they do not provide for automatic termination. The sunset laws in each of the states impose very similar duties as regards what the bar association or court "agencies" must provide to the legislature concerning sunset review. Generally, the laws require each entity to demonstrate the public's interest and need in its continued existence, to describe its powers, duties and functions; to provide a financial statement; and to describe those functions that in its own view need change or modification.

Alabama, which went through

sunset review in 1978, and survived, believes the process to have substantially improved its relationship with the legislature. Similar to Alaska's position, the North Carolina State Bar has refused to turn over attorney grievance records to the North Carolina Sunset Commission, and has presented the question to the Supreme Court "for guidance." Florida is currently going through sunset hearings. According to Stan Spring of the Florida bar, the review committee's report is due out any day. Inasmuch as the Florida legislature is due out at the end of May, things are heating up. One of the anticipated recommendations of the committee is to propose an amendment to a 1957 constitutional provision that gives Florida Supreme Court exclusive jurisdiction over the legal profession, substituting—of course—the legislature.

ciary Committee unveiled a "working draft" of a committee substitute for HB 984 which it originally introduced on March 31st. The draft substitute, according to committee members and counsel Margaret Berck, is not intended to be responsive to the public testimony it received in early April, but generally was expected, at this point in time, only to contain those items the committee originally desired to see included in the bill and which Dick Bradley (of Legislative Affairs) had changed when he drafted it for formal enrollment. Major among the items returned to the bill is the provision subjecting the bar to APA procedures. The bill still leaves the bar as a voluntary agency of the state, and has yet to put back ABA law school accreditation for admission. The working draft has further "refined" the definition of the practice of law. President-elect Bart Rozell reports that mark-up sessions will be held during the next two weeks.

Alaska Sunset Update
On April 28, 1980, the House Judi-

What Other States are Doing Under Sunset Legislation

STATE	AGENCIES AFFECTED	TERMINATE DATE	TYPE OF LAW	EVALUATION ENTITY
ALABAMA	1) Board of Commissioners of Alabama State Bar. 2) Board of Bar Examiners.	October 1, 1978; every four (4) years thereafter Went through 1978 sunset review "relatively" unscathed.	Quasi-sunset (i.e., mandatory review but agencies terminate only upon action of both houses of legislature).	Select joint legislative committee review agencies; review includes public hearings. Makes recommendation to full legislature.
ALASKA	Board of Governors of the Alaska Bar Association.	July 1, 1980; every four (4) years thereafter	True-sunset (i.e., automatic termination without legislation to continue).	A committee of reference of each house of the legislature; review includes association and public testimony; Legislative Audit Division issues a report; a report with a summary of the findings and recommendations is then issued by each committee.
INDIANA	1) Clerk of Supreme and Appellate Courts 2) Reporter of Supreme and Appellate Courts 3) Supreme Court 4) Court of Appeals	June 30, 1982; every ten (10) years thereafter	Quasi-sunset. The four agencies are not abolished and do not terminate, but are subject to evaluation and possible restructuring.	A joint standing evaluation committee reviews the four agencies', reports recommendations of the governor, legislative audits, and reports its findings and recommendations to the legislative council.
MAINE	1) Board of Examiners	June 30, 1983	True sunset	The Joint Standing Committee on Performance Audits evaluates the board's report and conducts its own analysis; submits report and recommendation to legislature.
NORTH CAROLINA	1) North Carolina State Bar 2) Board of Law Examiners	July 1, 1979 (has been extended).	True sunset	The Governmental Evaluation Commission conducts a performance evaluation and submits reports to the General Assembly, along with its recommendations. Public testimony is taken re: the report issued by the commission.
OREGON	1) Oregon State Bar	1981; generally every eight (8) years	True sunset	Joint interim committee reviews the bar's report, holds public hearings. Recommendations are submitted to the Legislative Assembly not later than 18 months prior to termination date of the bar.
TENNESSEE	1) Board of Law Examiners	June 30, 1985; every six (6) years	True sunset	Joint subcommittees of both houses form an "evaluation committee" which holds public hearings and receives public testimony, as well as from the board. Recommendations are then sent to the legislature.

Civil Rule 81

In response to comments by the Supreme Court, the Board of Governors now proposes amendments to Civil Rule 81 as follows:

(a) Who May Practice.

(1) Members of the Alaska Bar Association. Subject to the provisions of paragraph (2) of this subdivision, [ONLY] no attorneys [WHO ARE] other than active members of the Alaska Bar Association who reside within this state or who continuously maintain within this state an office in which the practice of law is conducted shall be entitled to practice in the courts of this state.

(2) Other Attorneys—Courts. A member in good standing of the bar of a court of the United States, or of the highest court of any state or any territory or insular possession of the United States, who is not a member of the Alaska Bar Association, or an active member of the Alaska Bar Association who does not meet the requirements of paragraph (1) above, who is not otherwise disqualified from engaging in the

practice of law in this state, may be permitted, upon motion, to appear and participate in a particular action or proceeding in a court of this state. The motion, and notice of hearing, if any, shall be served on the executive director [SECRETARY] of the Alaska Bar Association, the State Department of Revenue and, unless the court directs otherwise by an order pursuant to Rule 5(c) of these Rules, on each of the parties to the action or proceeding. With his motion, the applicant must file with the court the following:

[a] The name, address and telephone number of a member of the Alaska Bar Association with whom the applicant will be associated, who maintains an office in the judicial district where the action or proceeding is pending and who is authorized to practice in the courts of this state.

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

[c] A certificate of the presiding judge or clerk of the court where he has been admitted to practice, executed not earlier than 60 days prior to the filing of the motion, showing that he has been so admitted in such court, that he

is in good standing therein and that his professional character appears to be good.

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

The remaining sections of Civil Rule 81 remain as currently written.

Proposed Amendment Rule 14

Proposed Amendment to Rule 14, Alaska Bar Rules.

Rule 14(a)(7), Alaska Bar Rules, is amended to read as follows:

(7) In his discretion, prosecute complaints and appeals, in the prosecution of which he shall act in a separate, adversary capacity, and not as counsel for the board, so that he shall have the power to advocate discipline other than that recommended or ordered by a Hearing Committee or by the board, as the case may be.

Anchorage Bar Association Luncheons

Tuesday, May 6th—Walt Baldwin will speak on the Anchorage Bar Association Insurance program.

May 12th—Julius Brecht, Director of Banking and Security Division will speak on financial institutions and security law.

May 19th—Mike Walti, Executive Director, Center for Parents and Children will speak on what the center can do to assist attorneys.

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Sunset Review: What's Best for Lawyers & The Public?

Guest Editorial

by Karen Hunt

The House Judiciary Committee is currently formulating its proposed legislation after taking public testimony on the Bar Association.

The Committee members are wrestling with the central issue of public concern about delivery of legal services and committee concern about the accountability of the BA.

Accountability

This writer's personal viewpoint is that the BA should continue to function under the present system where it is a creature of the legislature because of the Integrated Bar Act and at the same time is regulated by the Supreme Court through admissions and discipline rules adopted by the court. The present system needs to be strengthened, however, by either amendments to the Bar Act or to the court rules (or both) to require more accountability to the public in the areas of admissions and discipline. Such accountability can be achieved by (1) giving quarterly disciplinary reports to the court and to the chairman of the House Judiciary Committee; (2) giving biannual admissions reports to the same entities following each bar exam; and (3) giving the annual audit of Association funds to both entities. Consideration should also be given to giving an over-all annual report on the status of the Association not only to the court and the chairmen of House Judiciary, but to the membership as well. Some of these reports are now given to the court. Given that the Association does receive state funds for discipline, a requirement by the legislature that the BA be accountable for such monies does not appear to be an unreasonable request.

Accountability, however, is only one side of the concern which both the public and the profession have about sunset review. An independent legal profession must be maintained both for the sake of the profession and for the best interests of the public.

Best Interests of the Public

As presently structured, the BA is not totally controlled by either the court or the legislature—and that is exactly where the profession should be—suspended between both branches of government, but accountable to both. The reasons are simple, but go directly to the heart of the issue of delivery of competent legal services to the public.

If the legal profession were solely under the control of the court, the independence of the profession to criticize the court and to work actively to change procedures, judicial attitudes, etc. could be severely curtailed. A recent example of lawyers' independence working for the best interests of the public is the bar response and objection to mandatory appointment of all private attorneys to represent conflict criminal defendants regardless of competency considerations. Another example in Anchorage is the trial bar's head-on collision with the Supreme Court Calendaring Committee on procedures to try to solve the backlog and trailing problems. Although the threat of court-appointed-licensing-and-disciplinary-boards interference with lawyer's independence seems remote because of present court personalities, nonetheless, the chilling effect of potential interference must not be ignored.

Politicization a Threat

On the other hand, politicizing the legal profession by putting licensing and discipline under an executive branch appointed board which is sub-

ject to political influences of the ruling majority is likewise a threat to the public interest. The filing of unpopular lawsuits on behalf of minorities or minority viewpoints must never be discouraged by permitting political pressure to be applied to the lawyer representing such clients or viewpoints. A *Molly Hooch* case must be permitted without fear of political reprisals on the lawyers that file and prosecute the case. An injunction which stops pipeline construction for three years must never result in licensing problems or disciplinary threats against the attorney handling the case.

Potential for Abuse

In discussion with some lawyers, the above concerns have been dismissed on grounds that it can never happen in Alaska. The question is not whether it will happen, but instead the question is whether the potential is created because of the structure of the legal profession in this state. The public interest is best served by avoiding the potential rather than by depending on the goodwill of those in power.

The independence of the BA is established; the accountability of it is open for scrutiny. The true interest of the public and the profession will be served best by demands for accountability; and not by insistence upon dependency and control.

Letters to the Editor

Dear Editor:

The second interview question posed to the Board of Governor's candidates in the March *Bar Rag* needs clarification. This question states:

"2. In light of the ombudsman's recent criticism and the possibility that the integrated bar may soon become a victim of Sunset Legislation; how do you assess the job that the present Board of Governors has been doing and what new directions, programs or policies would you recommend?"

Our contact with the bar to date has been a recitation of complaints that we have the duty to investigate. There is a legal dispute between our office and the bar as to our jurisdiction to investigate these complaints.

Before the legislature I clearly indicated that I am in no position to judge how well or badly the association is conducting its affairs since we have not gained access to the information necessary to conclude these investigations.

Sincerely,
Frank Flavin
Ombudsman

Dear Harry:

I recently distributed a policy memorandum to the Clerk's Office employees that could have an impact on the bar. In an effort to keep the bar aware of this change I would appreciate it if you would publish the following in the next issue of the *Bar Rag*:

Effectively immediately, and to the extent possible, the Clerk's Office will screen new civil case filings to eliminate the improper filing of cases in two categories. First, pursuant to Rule 76, Rules of Civil Procedure, we will no longer accept new actions that are being filed on any outdated form (i.e. old small claims forms or any other outdated form that may have been issued by the Court at some time in the past). Second, pursuant to A.S. 22.20.040, all corporate plaintiffs must be represented by an attorney. If an individual attempts to file an action on behalf of a corporation without the required legal representation this filing must be rejected.

Every reasonable effort will be expended to identify as many of these categories of cases as possible at the time of filing to avoid the considerable waste of time and expense that will be required to send these matters back for refiling when they are identified at a later time. Your cooperation in this matter will be greatly appreciated.

If you have any questions regarding the information above please do not hesitate to call me.

Sincerely,
T. S. Moninski, II
Assistant Area Court Administrator

INSIDE/ OUTSIDE Observations & Comments by Karen L. Hunt

Proposed New Code of Ethics

The disclosure of the drafted Rules of Professional Conduct as disclosed during the ABA's mid-year convention in Chicago will be voted on by the House of Delegates in 1981. The proposed Rules have raised controversy. The most questioned provisions are those requiring radical changes in the nature of corporate and business disclosures in the relations between attorneys and their clients. The drafted rules require corporate counsel to blow the whistle on conduct by business officials they consider legally harmful to the corporation. If necessary, the lawyers would have an obligation to report such conduct directly to the Board of Directors or shareholders.

In other provisions, attorneys would be required under the new rules to disclose to the Court instances in which clients involved in civil matters knowingly committed perjury. This is an example of the proposed rules which alter judicial theories of confidentiality between the lawyer and the client. In Chicago, Robert Kutak, Chairman of the Special Commission to evaluate professional standards stated that the provisions altering the confidentiality rules are included "because we believe that the right of confidentiality, while very strong is not absolute, and that there can be cases where the rights of others have a priority."

Another controversial provision is one requiring mandatory *pro bono* which must be reported annually to the appropriate regulatory authority. This proposed rule was substituted for an earlier draft which would have required a mandatory 40-hour per year *pro bono* service for every lawyer in the country.

As noted in an earlier column, the Association of Trial Lawyers of America, allegedly deeply critical of the proposed new ABA Code, has set up its own commission. As a result of the ATLA Commission, some legal observers foresee a State-By-State battle between ATLA and the ABA over which set of rules will be adopted.

Pilot Program: Lawyer Referral Service

The ABA Board of Governors has approved \$78,987.00 to fund a 18-month pilot project by the Louisville Bar Association to test new methods of promoting Lawyer Referral Services and providing legal information to the public through them. The Louisville Bar will also provide project funding.

The pilot project developed in response to a growing public desire for legal information, will expand LRS advertising campaigns, implement information services such as TEL-LAW and the appointment of an LRS staff attorney to give callers immediate assistance in identifying whether they have a legal problem and, if possible, to help them solve it during their first call to the LRS.

FBA Aids in Firm Economics

The Florida Bar Association has allocated \$20,000 to hire a full-time staff consultant on the gimmick of office hurdles, including time keeping, billing, managing nonlawyer employees, and use of libraries and accounting and scheduling systems aimed particularly at the sole practitioners and small firms to assist in malpractice loss prevention. The service is designed to give advice on fine points of law office economics, including profitability, liquidity and budget control also.

In response to an inquiry as to interest in such a program, 800 attorneys responded. The bar then sent a questionnaire asking about the firm's administrative practices. Several law firms were chosen as test groups, with law office managers acting as volunteer consultants during the test session.

The program, designed to get underway by August, is expected to fund an additional \$74,000 in startup costs from program fees and from possible contributions from an insurance company which has shown interest in the risk-management potential of the program. The fee schedule for the services are predicted to be \$35 per hour for individual consultants and \$40 for half-day and \$50 for full day for law firms.

Disbarment

In December, 1979, the New Jersey Supreme Court ruled that attorneys who steal their clients' money have no business being in the legal profession. The Court ordered disbarment of a lawyer who had reportedly failed for nearly two years to return \$23,000 to a client from the sale of the client's house. The case apparently approaches a "per se" rule for lawyers who misappropriate client's funds.

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CLE Tour to China to Be Organized

by Ken Wallack

I read Judge Blair's account of his trip to China in the September, 1979 issue of the *Bar Rag* with great interest because as some of you might know my wife Tandy and I also visited China last summer.

Our trip was somewhat different than the Blairs', however. We had traveled to Hong Kong without any arrangements for a tour into China. After a number of inquiries with the China Travel Service and some private tour companies, we were able to join a group of American doctors and their wives who were scheduled for a medical tour of China. Apparently the DC 10 problems had prevented one couple from making the trip and we were able to take their place.

The physicians were from various parts of the United States including California, Louisiana, Michigan, Arkansas, Maryland, and Massachusetts. They included general practitioners, surgeons, an obstetrician, a dermatologist, and a psychiatrist. The psychiatrist also had a law degree and the group also included another lawyer who was from Louisiana.

Acupuncture

Our tour took us to Guangshou (Canton), Shanghai, Nanjing (Nanking), and Beijing (Peking). In addition to visiting the many tourist attractions we toured urban and rural medical facilities. We witnessed three operations in which only acupuncture anesthesia was used. It was a remarkable thing to watch an operation (in this case a thyroidectomy) while the patient was fully conscious and watching us. Then at the end of the 90-minute procedure, the patient sat up, waved at us, and then walked off the table. We also visited an acupuncture therapy clinic, and a clinic where toes were transplanted to replace thumbs and forefingers lost in industrial and traffic accidents.

Peking University

While in China I spoke with our guides and the China Travel Service about the possibility of arranging a legal tour for interested attorneys. I was told that such tours had been arranged in the past and that given enough lead time one could be arranged. In fact a special visit to Peking University was arranged so that Tandy and I and the other attorney from Louisiana could meet with a member of the law faculty. Professor Yang, through our interpreter, spoke of the new criminal code being enacted in China, the Chinese legal system, the work on the new civil code, and the proposed system of Economic Courts to resolve contractual disputes between state owned enterprises. He also spoke of the effects of the cultural revolution on China's legal system and Peking University, and his own experience in being sent to work on a wheat farm in Northern China.

Legal Tour

This fall I presented a proposal for organizing a legal tour to China to the CLE committee of the Bar Association. My proposal was then presented at the December meeting of the Board of Governors. The Board of Governors approved the proposal in principal for CLE credit, the amount and nature of which to be determined later. The proposed tour would take place during the summer of 1981. I would expect it to be approximately three weeks long including four to five days in Hong Kong. I would expect the China portion of the trip to include visits to Guangzhou, Shanghai, Sian, Hangzhou (Hangchow) or Nanjing, and Beijing. The tour would originate from and return to Anchorage.

ANCHORAGE

(With Apologies to Carl Sandburg)

Air Crossroads for the World,
Fast Food Chain Record Setter, Marker Up of Prices,
Player with Barges and Arctic Toy Train Handler,
Bland, sleeping, comatose,
City of the big Nothing:

They tell me you are boring and I believe them, for I have read your newspapers.
And they tell me you are wicked and I believe that too, for I have been to your churches and heard the sermons.
And they tell me you are unnecessary and my reply is: Can you imagine trying to cram this many people into Seward?
And having answered I turn once more to those who sneer at this my city, and I give them back their sneer and say to them:
Come, show me another city so passionless and dull, so proud to have survived without a single reason for being here.
Flinging yawns back across the inlet, rolling snores along the Chugach and out into the vast nothingness that eventually coalesces into Fairbanks;
Inert as the statue of Captain Cook blankly contemplating the not-so-distant shore no bridge will ever span,
Flabby,
Empty-handed,
Horizontal,
Drifting,
Snoozing, dreaming, waiting,
Waiting for tomorrows indistinguishable from today,
Waiting until someone with compassion pulls the plug.
Waiting and listening to a slow, rhythmic beat.
Under the wrist is the pulse that sounds from the inlet,
Sloshing back and forth, and back again,
Carrying the waste products of this, my city,
Sloshing!
Sloshing a lullaby to a dozing, never to waken giant. Empty-handed,
horizontal, comatose, proud to be Air Crossroads, Fast Food Chain Record Setter, Player with Barges and Arctic Toy Train Handler.

by Harry Branson

Potential legal aspects of the tour in Hong Kong would include meetings with a representative of our Alaska State Asian Office, representatives of American law firms in Hong Kong on the nature of their practices with an accent on American trade with Hong Kong and China, and speakers from the Hong Kong legal community on the barrister-solicitor system.

Chinese Legal System

Potential legal aspects of the tour in China would include viewing sessions of community or commune arbitration committees in resolving small civil disputes, sitting in on a people's court trial, a tour of a Chinese prison, meetings with law faculty, attorneys, and/or judges to discuss the Chinese legal system, and meetings with government officials as to Sino-American and particularly Sino-Alaskan trade.

I would expect the tour group would be limited to 30 people including wives and guests, but if the response is strong enough other groups of 25 to 30 could also be scheduled for other times during the summer.

A firm itinerary for the Hong Kong portion should be available well in advance. Other than a commitment on which cities in China would be visited and for how long, no specific itinerary will probably be available until the tour would actually arrive in that city. At least this was my experience on the medical tour. However we found that the guides and the China Travel Service did try to fulfill all requests and to take us wherever we wanted even if this required some last minute schedule shuffling.

Tour Costs

A rough estimate on the cost of such a tour is \$4,500.00-\$5,000.00 including airfare, hotels, tours and most meals. Hopefully this estimate will prove to be a high one. Having received the Board of Governor's approval for CLE credit for such a tour, I am now making my formal inquiries with the airlines, the China Travel Service, and with tour operators in Hong Kong. I hope to have more specific information in the relatively near future.

If anyone believes they might be interested in such a trip please fill out the form below and send it to me. Feel

free to suggest legal activities or additional cities you might be interested in.

It should be noted that there are certain restrictions on minors or handicapped persons entering China. If anyone has a handicap or thinks they might bring a person with a handicap or who will be under the age of 21, please advise me well in advance.

CLE Tour to China

I am interested in the CLE Tour to China.

Name _____

Mailing address _____

Firm _____

Names & relation _____

of others who _____

might accompany _____

you _____

Special Information _____

(handicaps, _____

minors, etc) _____

Suggestions for _____

legal activities _____

or additional cities _____

Mail to:

Kenneth L. Wallack
JOHNSON, CHRISTENSON &
ASSOCIATES
1007 West 3rd Ave., Suite 300
Anchorage, Alaska 99501

NITA of the North

Responding to the judiciary's call for the development of an adequately trained and professionally responsible civil and criminal trial bar, the Alaska Bar Association and the National Institute for Trial Advocacy are jointly sponsoring an intensive nine-day trial advocacy program for Alaska attorneys. It will be conducted at the Alyeska Resort in Girdwood, Alaska, from August 16 through August 24, 1980.

The NITA Method

The NITA teaching method is primarily based on the concept of learning by doing. During class sessions student-lawyers will perform as trial counsel in all the various phases of a trial, from *voir dire* to closing argument. Performances are critiqued by faculty immediately after they are given and most performances are videotaped for further in-depth review and critique. While the NITA course is primarily focused on teaching advocacy skills and courtroom presence, it is also an excellent learning tool in legal problem-solving, developing and carrying out a theory of the case, and basic questioning techniques which are essential even if you don't try cases regularly.

The first seven days of classroom sessions cover jury selection, basic and advanced direct and cross examination, exhibits and demonstrative evidence, impeachment, adverse examination, expert witnesses, opening statements, and closing arguments. The faculty will also give several lectures and demonstrations throughout the week. During the final two days, each participant will team up with one other to conduct a full civil or criminal jury trial. NITA juries are generally six in number and are composed of people drawn from the local community.

Faculty

The enrollment for NITA of the North will be limited to two sections of 24 student-lawyers. Faculty for each section consists of a team leader, trial judge, and three experienced trial attorneys. The faculty for this session will be one of the most outstanding ever assembled for a NITA program.

Heading one team will be Professor James W. Jeans. Professor Jeans teaches at the University of Missouri Law School and maintains a "lawyer's lawyer" trial practice. He is the author of *Trial Advocacy*, a West publication. The judge for the Jeans section will be the Honorable James M. Fitzgerald, United States District Court Judge in Anchorage. His faculty team will include William R. ("Billy Roy") Wilson, of Little Rock, Arkansas; Professor John Strait, University of Puget Sound Law School; and Professor James McElhane, Case Western Law School, Cleveland, Ohio. Many of you may know of Professor McElhane through his "Trial Notebook" series found in the ABA publication *Litigation*. He will be giving a series of lectures on select topics of evidence and advocacy throughout the session.

Heading the other team will be Barbara Caulfield, former Director of the Hastings Center for Trial and Appellate Advocacy, who was recently appointed academic dean at Hastings College of the Law in San Francisco. Joining her will be Howard Janssen, Assistant District Attorney in charge of the Berkeley, California office; Paul Bardacke of Sutin, Thayer & Brown, Albuquerque, New Mexico; and JoAnne Wolfson, a nationally renowned criminal defense lawyer from Chicago, Illinois. The Honorable Warren Wolfson, Judge of the Circuit Court in Cook County, Illinois, will serve as trial judge for the Caulfield section. The Wolfsons are a remarkable couple who alone are well worth the price of admission.

[continued on page 6]

NITA

(continued from page 5)
The Cost

The NITA experience requires a major commitment from its participants in time, energy and money. The case materials must be read and thoroughly digested before the session begins, for once it does begin, the pace closely proximates that of an actual trial. Besides being a lovely location with fine accommodations, the primary reason Alyeska was selected as our program site was simply to isolate participants from the day-to-day distractions of their practice. We will require that all participants stay in Girdwood throughout the program. If you intend to bring family along, do not plan on having much free time to share with them.

Tuition for the program will be \$700.00, with room and board (twin occupancy plus three meals per day) costing an additional \$300.00 per person. Roommate requests will be honored and single-room occupancy can be arranged for an additional price. A limited number of partial scholarships will be available for those applicants demonstrating special needs. Bus service to and from Anchorage will be provided for those who require it. If any of you or your friends own living accommodations in Girdwood and would like to contribute much-needed space for our faculty, support staff and scholarship participants, please notify me as soon as possible.

Applications will be sent to each bar member in the next state-wide mailing. To insure a place in the program, a \$300.00 deposit made out to the Alaska Bar Association must be enclosed along with your application. It is anticipated that enrollment will close no later than July 15, 1980, although a wait list will be established. Course materials and program scheduling will be mailed to all participants by

the end of July, at which time the balance for tuition and room and board will be due.

While the NITA program cannot magically (instantly) convert a beginning advocate into a courtroom superstar, it does instill confidence in the attorney's own ability to act as trial counsel and substantially increases the attorney's competence to carry on a trial. Graduates uniformly consider NITA to be their most rewarding and meaningful professional experience. It is well worth the cost.

Persons seeking further information about the program should write or call:
Frank D. Rothschild
Perkins, Coie, Stone, Olsen & Williams
420 L Street, Suite 301
Anchorage, Alaska 99501
(907) 279-8561

TVBA Minutes

April 4, 1980

Minutes of the
April 4, 1980 Meeting
of the Tanana Valley Bar Association

President Jon Link called the meeting to order at 12:20 p.m. President Donna Ward was the only guest. The minutes were mumbled and President Link introduced President Ward to give a president's report about the present situation as viewed by the present Board of Governors. President Donna presented the present perplexing panoply of pandemonium produced by the poll presented by the present Judicial Council; the puny and pusillanimous impression made by malpractice prevention insurance; improved printing of presentable envelopes; the prime powwow of legal publicans; who will be prevailed upon to prance to the statutory grape; the prime publication of the bar; and that preponderating pressing problem produced by Alaska's pewee parliament which is preparing to pre-empt our place in the sun (set)

plentitudes of palaver produced a paucity of prophylactic palliatives the present board preferred status quo preservation prestidigitous supremes press for preservation of integration. Pointlessness prevailing in the p.m. and the secretary being out of P's, the meeting ended.

King Arthur

April 11, 1980

Minutes of the
April 11, 1980 Meeting
of the Tanana Valley Bar Association

The meeting was called to order early by an austere and auspicious Jon Link. Two or three guests were announced as being seated on the far side of the room, but the persons announcing same spoke in a soft, feminine voice (note the sexist overtones) and the syllable so uttered were inundated by the cacophony stemming from the dice game and/or barroom brawl being conducted at the center table. Those guests shall wherefore, and forever more, remain anonymous.

Alliterative minutes were deemed "piss poor" by the president. The first committee report was given by Ron Smith, Chairman of Law Day for the year of our Lord one thousand nine hundred eighty and several years heretofore and hereafter. In a burst of organizational optimism, he passed out a brilliantly conceived (if insulating) contract whereby all members of Local 235 of Barristers and bartenders agree to attend the event in order to be regaled with the first-hand account of the loss of virginity of Charles Cole, Esq. during territorial days. Judge Blair pointed out that no date was specified in the elaborate contract, and this set the tenor for the rest of the meeting. Pat Aloia somehow took volunteers for our guides for a courthouse tour. Ralph Beistline suggested inmates be used, and the response was over-

whelming. Only three members of the bar have not volunteered to spend the afternoon and evening of Thursday, May first, showing second graders and new members of the bar where the law library is and how to find the lifesavers in Harry Davis' desk drawer.

The library report was punctuated with an instruction to our president that, had he been in the library, he would have realized that the system changed about five years ago. The treasurer reported an extortion attempt by the Alaska Bar Education Fund and several of his children. Only the children have been successful. Bob Grose-close moved and Ralph Beistline seconded that we give \$401 to the state bar in order to show the Anchorage bar their relative status. The motion was conceentially tabled in order to find out who would be taking advantage of the scholarship and whether there was any pride at all in the Anchorage bar that we might offend. The legislative report was actually brief for the first time in history. It covered Workmen's Compensation, sunset of the bar, and mental health for all concerned. There was a brief discussion of California Penal Code, Section 673.1, which requires permission by a social service agency before any punishment of a physical nature can be administered to any child.

It was moved by Dick Madson, seconded by Andy Kleinfeld, that we oppose the proposed bar rule requiring adults and massive document accumulation with respect to administration of attorney's trust accounts. The motion passed unanimously. The president ran from the room screaming "we're adjourned." It was so early that almost no one paid their lunch bill, and the fire doors were clogged with escaping unpaid customers.

By executive fiat,

King Arthur

(continued on page 11)

CPT

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AMERICAN FAMILY LAW TAX REPORT
presents. . .
BASIC FAMILY LAW TAX COURSE
For Lawyers and Mediators
Saturday, May 24, 1980

WESTWARD HILTON
Third and E Street
Anchorage Alaska
1:00 - 5:00 p.m.

This program examines tax aspects of divorce, emphasizing alimony, child support, property division, division of retirement benefits, deductibility of attorneys' fees. We have designed this program not only for family law attorneys and judges, but also for those mediating family law disputes touching on property and support issues. The parties to a divorce are often completely unaware of the tax aspects of these issues, and rely entirely on their mediators and counselors not only for consciousness raising but also for working solutions to family law tax problems, such as timing of the decree, whether joint returns should be filed, or the special family law problems of joint custody.

Seminar Leader: Stephen Adams, San Francisco, Editor & Publisher of American Family Law Tax Report and

California Family Law Report, and a full-time specialist in family law and appellate practice.

We have reserved a block of rooms at special rates of:
Single \$48.00 Double: \$58.00

Reservations must be made directly with the hotel prior to May 2, 1980.

Enrollment is limited. Registration fee: \$50.00 (including materials). Refund upon receipt of cancellation 48-hours in advance of program.

To register, please complete the form below. For further information contact AFLTR at (415) 421-1700.

Please register me for the:
BASIC FAMILY LAW TAX COURSE May 24, 1980
Westward Hilton
Anchorage, Alaska

MY CHECK FOR \$50.00 REGISTRATION FEE IS ATTACHED.

Make checks payable to AFLTR/CFLR, Inc. and send to:
AFLTR/CFLR BASIC FAMILY LAW TAX COURSE
Box 2377, San Francisco, CA 94126
(415) 421-1700

Name _____ Firm _____
Street _____ City _____
State _____ Zip _____ Telephone _____
Signature _____



Bar Faces Shortfall

by Pat Kennedy
Financial Crisis

The Bar Association is currently facing a financial crisis. The net loss last year (1979) was over \$39,000. This was a result of several factors: a drop in membership and therefore in expected income; inflation expanding overhead and transportation costs; the unexpected costs of litigation in the Ombudsman suit, the F.T.C. questionnaire defense preparation, and the legislative audit litigation; and some expanded personnel costs.

Inherent Problems

The graphs and charts printed with this article indicate some of the inherent problems in the Association's financial picture. Graph 1 shows that while income, including dues, keeps growing at a steady pace, expenses began outdistancing income in 1978 and continued into 1979 in a greater amount. Graph 2 shows the distribution of expenses for 1979. Note that discipline is second only to administration in cost. Graph 3 shows the income distribution for 1979. Dues supply half the income for the Association, with the discipline income from the court system equivalent to C.L.E. fees and convention (Hawaii and annual) income. Graph 4 shows what a dollar of membership dues must cover. Note that discipline per se costs more than the Board of Governors or general administration. Charts 5 and 6 show some of these figures specifically. Note the 37% in discipline costs since 1976 and the 37% in travel and per diem for the board since 1976. The discipline costs have risen because of added personnel; the board costs have risen because of the rise in air fare and the addition of both the Hawaii meeting and sending officers to such events as ABA and Western Regional conventions and workshops.

Double Bind

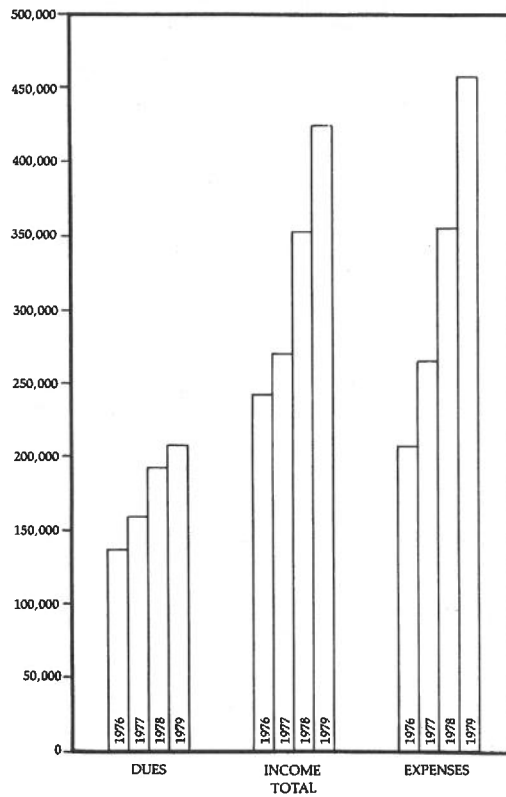
This year it is projected that the cash shortfall will be ever worse. We are caught in a double bind; projected income, such as new membership fees and income from the Hawaii C.L.E. is less than expected, while costs, somewhat because of inflation, are averaging more than expected.

Extra Funds for Discipline

The question is what to do about the expected loss. The board, at its last meeting, voted to make Lawyer Referral more self-sufficient, to abandon the *UCLA Law Review* (although that is up for reconsideration) and to ask the court system to more closely fund the full cost of discipline (a requested increase of between \$70,000 and \$90,000 depending on what is considered). The extra funds for discipline alone would relieve the financial problem. However, the chances of such an event happening, given the state of the legislature's feelings about the Association and the court system budget, are limited.

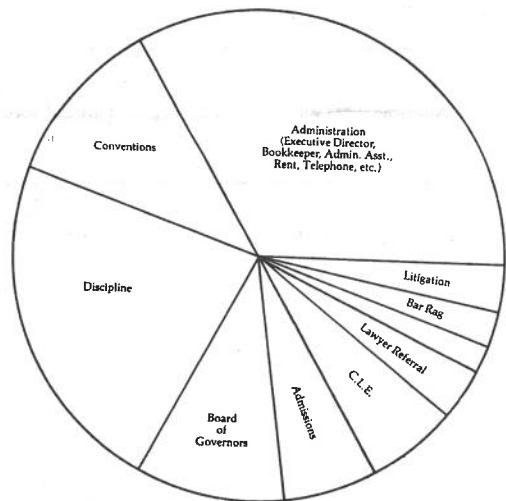
Raise Dues

The Association must then either raise dues or cut services, or both. There has not been a raise in dues since 1974. Several alternative proposals to raise dues will be presented at the annual meeting. In addition, a questionnaire will be sent in the near future to members asking which non-self-supporting services should be cut. If you have any questions about the current fiscal state of the Association in regard to this matter, please call Randall Burns at 272-7469 or Pat Kennedy at 276-3550.



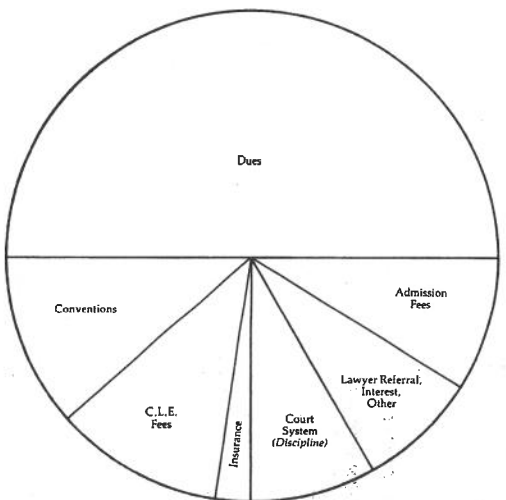
GRAPH NO. 1

Distribution of Expenses for 1979



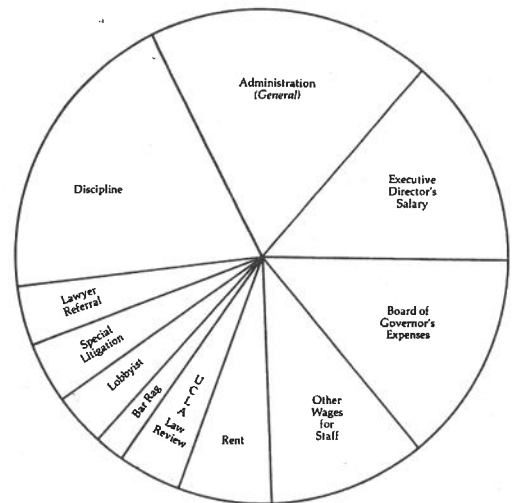
GRAPH NO. 2

Income Distribution for 1979



GRAPH NO. 3

Distribution of Membership Dollar*
*Excludes Portions of Services Not Paid from Dues



GRAPH NO. 4

Expenses

Date	Amount	% Increase - 1 Yr. (1978 to 1979)	% Increase - 1976 (1976 to 1979)
Administration			
1976	95,840	0	0
1977	106,505	11	11
1978	142,689	34	49
1979	161,992	13.5	69
Admissions			
1976	33,079	0	0
1977	32,164	-3	-3
1978	29,875	-7	-10
1979	32,610	9	-1
Discipline			
1976	22,660	0	0
1977	69,405	106.3	106.3
1978	74,351	7	228
1979	107,482	44.6	374
Board of Governors: Travel and Per Diem			
1976	8,608	0	0
1977	11,838	37.5	37.5
1978	30,980	161.7	260
1979	40,571	31	371

CHART NO. 5

Date	Total	% Increase: 1 Yr.	% Increase: 1976
Dues			
1976	143,993	0	0
1977	166,294	15.5	15.5
1978	191,266	15	32
1979	211,478	10.6	46.9
Income			
1976	240,635	0	0
1977	283,375	17.8	17.8
1978	351,367	24	46
1979	425,242	21	76.7
Expenses			
1976	211,590	0	0
1977	269,988	27.6	27.6
1978	372,487	38	76
1979	464,551	25	120
Surplus or [Loss]			
1976	29,045		
1977	13,387		
1978	[21,120]		
1979	[39,309]		
TOTAL			
	[17,997]		
Membership			
1976	1,031	0	0
1977	1,214	17.7	17.7
1978	1,362	12.2	32
1979	1,460	7.2	41.6

CHART NO. 6

Judicial Sweepstakes

CANDIDATES	AGE/YRS IN ALASKA	BAR ADMISSIONS & PROFESSIONAL AFFILIATIONS	CRIMINAL PROSECUTION EXPERIENCE	CRIMINAL DEFENSE EXPERIENCE
Alex Bryner	36/11	Alaska California American	2½ years	3½ years in Private Practice and as a Public Defender
Susan Burke	34/9	Alaska California	None	1½ years as a Public Defender
Robert Coats	37/12	Alaska TVBA	10% during 1½ years as Ass't AG	7 years as a Public Defender
James Hanson	45/18	Alaska North Dakota	None	During 1¾ years in Private Practice spent 30% on Criminal Defense Work
Daniel Hickey	33/9	Alaska	2 years Ass't DA Juneau; 5 years as Chief Prosecutor - (Administrator and Supervisor over 8 District Attorney's Offices)	None
Thomas Keever	40/10½	State Bar - Texas Alaska Bar American Bar American Trial Law Assn Alaska Academy Trial Lawyers	3 years	10 years as Private Practitioner
Judge Roy Madsen	57/44	Oregon Bar Alaska Bar American Judiciary Society National Assn Trial Lawyers	5 years Prosecutor 11 years City Attorney with 10% Criminal cases	35% Private Practice over a 15-year period devoted to Criminal Defense Work
Charles Merriner	37/10	Colorado Alaska Anchorage Bar	9 years Prosecutor	None
Peter Michalski	34/8	Minnesota Alaska American Bar Assn National District Attorneys' Assn	1973-77 Asst DA Presently heads Office of Special Prosecutions	None
Judge Ralph Moody	64/35	Alabama Alaska American Bar Assn	Attorney General City Attorney 5 years Asst U.S. Attorney	10 years
Robert Opland	52/41	Alaska	7 years	Very limited exposure while engaged in private practice
Lee Petersen	49/12	Alaska, New York and Utah Bars; American Bar Assn; Federal Bar Assn; American Trial Lawyers Assn; Anchorage Bar	3 years part-time. City Attorney (misdemeanors); 6½ years Asst. U.S. Attorney (felony)	20-25% of time during 13 years of private practice
Judge Thomas Schulz	43/29	American Bar Assn; National Council Juvenile and Family Court Judges; American Judges Assn; Alaska Bar; American Trial Lawyers Assn.	2½ years Ass't DA in Fairbanks and Juneau; City Prosecutor in Juneau	8½ years as Public Defender and Private Practitioner; 1st Public Defender in Juneau
Judge James Singleton	41/15	California (Inactive) Alaska American Bar Assn Phi Delta Phi	None	None
Ralph Stemp	35/9	Missouri Alaska	None	None
Judge Warren Taylor	54/54	Alaska TVBA	District Attorney in Fairbanks, 2 years	7 years. 50% of private practice criminal

Scratch Sheet

TRIAL EXPERIENCE AS ADVOCATE	APPELLATE EXPERIENCE AS ADVOCATE	JUDICIAL EXPERIENCE	OTHER QUALIFICATIONS
Tried Cases in State Courts and U.S. District Court as Defense Attorney and Prosecutor for 6 years. Minimal Civil Advocacy 2 years	Argued Appeals before Alaska Supreme Court, 9th Circuit Court of Appeals and U.S. Supreme Court 1½ years	District Court Judge State of Alaska 2½ years None	Law Clerk for Alaska Supreme Court 2 years. Attorney, Alaska Court System 1971-1975; Staff Counsel, Alaska Court System 1975-1979; Deputy Director of Services, Alaska Court System, 1977-1979
Criminal: 7 years as Asst Public Defender; 1½ years Asst AG 1¼ years in Private Practice - 70% Civil, 30% Criminal. A portion of this time spent in trial.	10% Public Defender Work Devoted to Appeals None	None	Law Clerk for Justice Rabinowitz 1¼ years. Served on Supreme Court Committee on Juvenile Rules. Served on Judicial Council Committee on Judicial Discipline and Removal.
1972-1973—2 to 3 trials as Asst AG; 1973-1975 Undetermined number of Court and Jury trials while Asst DA	10-12 Appeals before Supreme Court while Asst AG 1972-1973; Undetermined number of Appeals while Asst DA 1973-1975	None	Furnishes Legal Services to Criminal Justice Agencies including Dept Public Safety and Division of Corrections
10 years Civil/Criminal Trial Experience as Private Practitioner	Periodic Appellate Experience for 15 years	1 Month	
60% of General Practice from 1960-1975 devoted to Civil Trial Work; 35% devoted to Criminal Trial Practice	Less than 5% of Practice Devoted to Appeals	5 years Superior Court	
No Civil Trial Experience. All Trial Experience in Criminal Prosecution	40% Criminal Appellate Experience Including Argument Before U.S. Supreme Court	None	Editor, U. of Colorado Law Review Order of the Coif
1 year Civil Trial Experience in addition to Criminal Prosecutions	In Charge of ¼ of Criminal Appeal Briefs for the State; Filed 1st Consumer Protection Action in State v. Alaska Sleeping Bag Co. Wrote State Brief in U.S. Death Penalty Case	None	Primary focus of work in Office of Special Prosecutions and Appeals is Appellate
5 years prosecution; 10 years Civil and Criminal Trial Experience as an Advocate	Approximately 16 years of periodic Appellate experience in both Private and Public Practice of Law. Admitted to Practice before 9th Circuit Court of Appeals, U.S. Supreme Court.	18 years Superior Court. 10 years as Presiding Judge.	Attorney General State Senator Territorial Senator Senate Majority Leader Chairman, Judicial Qualification Commission Lt. Colonel, U.S. Army Chairman, Alaska Legislative Council
After 7 years as a Prosecutor - approximately 15 years Civil Trial experience in private practice.	Periodic Appellate Work in Private Practice	3½ years District Court Magistrate; Deputy U.S. Commissioner during Territorial days.	Practiced Law in Cordova; lived in Mary's Igloo, Teller, Kanakak, Dillingham, Fairbanks.
Over 100 trials - many preliminary hearings; Grand jury proceedings, suppression of evidence hearings; habeas corpus hearings	Alaska Supreme Court - over 25 briefs and hearings; Ninth Circuit Court of Appeals - 25; other courts - over 15	None	Practice for last two years mostly restricted to appellate work for other attorneys.
Trial Experience in Private Practice, primarily Criminal and Personal Injury Plaintiffs and Defense Work with some Domestic Relations. Total of 8½ years Criminal and 7 years Civil Trial Experience.	Periodic Appellate experience throughout practice as Attorney	9 years (2½ years District Court 7½ years Superior Court) Sat on several Supreme Court hearings.	Faculty Advisor National Trial Judges College, Reno, Nevada. Past President Judges Assn, Alaska. Career and long-time interest in criminal law. Chairman, Sentencing Guidelines Committee.
5 years Civil Trial Experience as an Advocate.	5 years Appellate Experience	10 years. Sat on Several Supreme Court Hearings.	Teaches at Trial Judges College, Nevada. Member of Committee on Minority Sentencing, Chairman, Advisory Committee, Criminal Justice System - University of Alaska, Anchorage.
Periodic exposure to Trial Work during 3 years Private Practice primarily devoted to Commercial, Contract and Aviation Law	Some Appellate Work during Private Practice	None	LLM University of Michigan Law Review, Washington U. Corporate Attorney 1974-77. Served on Alaska Bar Assn Grievance and Criminal Law Committees. Three years Asst AG in Juneau.
7 years General Practice; 20% Civil Trial Work in Private Practice	5% Appellate Work while in Private Practice.	15 years Superior Court; Sat in on a couple of Supreme Court cases.	Judicial Qualifications Commission, Supreme Court Policy Advisory Committee, Presiding Judge Fairbanks - 5 years, Faculty Advisor National Trial Judges College, Reno, Nevada, Presumptive Sentencing Committee.

Alaska Bar Association

Ethics Committee Opinion No. 79-4

Summary

The Ethics Committee has been asked 1) whether it is proper for the Alaska Legal Services Corporation (ALSC) Board of Directors to review client eligibility determinations for legal services clients, and 2) does a conflict of interest exist where a board member or his firm represents an opponent of an ALSC client in the same litigation.

It is our conclusion that the review of client eligibility information by the ALSC board is not prohibited by any ethical principle unless the information is protected by the attorney-client privilege. Whether the information is protected by the attorney-client privilege depends on the facts in each particular case. As a general proposition, absence of unusual factual circumstances, it would not appear that the attorney-client privilege ordinarily applies.

We also conclude that members of the ALSC Board of Directors and members of their firms can represent parties adverse to clients represented by ALSC staff lawyers provided requisite consideration is given to the conflict of interest provisions of the Model Code of Professional Responsibility to assure independent professional advice and judgment to each client.

Issue No. 1

The first issue presented for consideration is whether it is proper for the Alaska Legal Services Corporation Board of Directors to review client eligibility determinations for legal services clients.

Outside of the legal services context, eligibility for publicly funded programs is subject to internal review by the program administration and directors. This is true even in a program where eligibility depends upon income (or available assets) being below a certain threshold level. In most cases, the fact that an individual is represented by Alaska Legal Services is a matter of public knowledge and record. The fact of representation carries the implication that the client is eligible for such representation. In other words, the basic fact of eligibility is not ordinarily confidential.

There is nevertheless some authority for the proposition that specific information relating to client eligibility for representation by ALSC may be protected by the attorney-client privilege. The ALSC Board of Directors is made up of both lawyers and lay persons. The attorney-client relationship between a staff attorney and his client extends to other attorneys on the staff, but it does not extend to attorney or non-attorney members of the organization's governing body. See ABA Formal Opinion 324, ABA Informal Opinion 1208, and California Bar Association Opinion 358. In an Informal Opinion, the California Bar Association found that client financial data, including documents related to income and assets, may not be disclosed to the Board of Directors of a legal aid foundation by a staff attorney (Informal Opinion 358). That opinion is based in part on a California Supreme Court decision that financial eligibility information given by a client to a public defender agency is protected by the attorney-client privilege. *People v. Canfield*, 10 Cal.3d 699, 527 P.2d 633 (1974). It should be noted however, that in some districts the Alaska Court System, in determining eligibility for representation in criminal cases by the public defender, examines potential clients on the question of eligibility in open court. Under such a procedure all the factual details are made available not only to the court and to the agency that may provide legal services, but

also to any member of the general public who wishes to listen in. While we do not express approval for this procedure, its employment by the court system in Alaska would seem to indicate that there is no present authority for the proposition that eligibility information is inherently privileged.¹

Rule 503 of the Alaska Rules of Evidence provides that the lawyer-client privilege extends to communications "not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication." Communications protected by the privilege include not only those directly to the lawyer, but also those to the lawyer's representatives. The commentary to the rule provides that the definition of "client" extends to a person consulting a lawyer preliminarily with a view to retaining him, even though actual employment did not result. In other words, there is authority for the proposition that communications to ALSC staff, including nonlawyers, may be privileged whether or not the client is determined to be eligible for representation by legal services. Nevertheless, there are factors indicating that communications concerning eligibility are administrative or ministerial in nature and are not necessarily covered by the attorney-client privilege.

It does not appear that determinations of client eligibility by ALSC are necessarily, or even usually, made based on privileged attorney-client communication. ALSC intake procedures are regularly conducted by nonattorneys for the preliminary purpose of determining eligibility for legal representation. If the potential client is found to be ineligible, ALSC declines to take the case and in most cases the applicant never meets with an ALSC attorney to discuss the substance of the matter upon which he was seeking representation. The potential client is aware that eligibility must be shown before Alaska Legal Services can undertake representation. Moreover, it cannot be assumed that a potential client has any expectation that eligibility information is protected from review by the corporation, and the persons or boards within ALSC which it designates to make internal reviews of eligibility determinations.² The client may have an expectation that eligibility information will be kept confidential from the general public, but that is not a question here. The Board of Directors can review client eligibility information without disclosing that information publicly.

In some cases information having a bearing on client eligibility may be disclosed as part of a privileged communication between lawyer and client. In those cases, each of which must be considered on its facts, disclosure of the privileged information to the Board of Directors would be prohibited. The possibility of such an occurrence, however, does not mean that eligibility information generally is privileged from disclosure or review by the Board of Directors.

As a matter of public policy it is desirable for ALSC to be able to review how its client eligibility standards are applied by its staff. The particular en-

¹ The Alaska Supreme Court has cautioned that requiring a legal aid client to prove his eligibility in court may be undesirable, before the merits of his case are heard, because "this may involve a showing that several attorneys refused to handle the case because it was too weak." *Dimmick v. Watts*, 490 P.2d 483, 486 (1971). It should also be noted, however, that in *Dimmick* the Supreme Court also found that: "Eligibility determinations by Legal Services attorneys are reviewed by the Alaska Legal Service Corporation Board of Trustees." 490 P.2d at 487. The court also declined to decide the difficult question of who has standing to challenge the eligibility of a particular Legal Services client.

² As a matter of policy it would seem to be desirable to advise potential clients that the question of financial eligibility is subject to review and to explain review procedures to the client. The review procedures established by ALSC are not a subject for consideration here. It is assumed for purposes of this opinion that client eligibility may be reviewed by the Board of Directors, but the exact procedure and the persons or entities who should be involved are determined by ALSC according to its own policies and regulations.

ties to conduct the review should be established by ALSC and the National Legal Services Corporation according to their own policies and regulations. It is assumed for purposes of this opinion that ALSC has determined that its Board of Directors is an appropriate entity to review eligibility determinations, absent an ethical prohibition applicable to such a procedure. It should be noted that if client eligibility information is subject to the attorney-client privilege, its disclosure would be prohibited not only to the legal services Board of Directors, but also the executive director of Alaska Legal Services (who is not currently an attorney) and to the parent national corporation, the very person and entity ultimately charged with administering the operations of ALSC, including the application of prescribed eligibility standards for expenditure of federal (and state) funds. If it were determined that the attorney-client privilege precluded review of eligibility determinations by the Board of Directors, it would also appear to preclude review by virtually everyone except the very staff person whose action was supposed to be the subject for review.

In balancing the competing considerations, it appears that while client eligibility information should generally be kept confidential, its disclosure to the ALSC Board of Directors, so that it may review questions of client eligibility, constitutes a reasonable use of that information to insure compliance by ALSC with its own governing statutes, regulations and policies. It cannot be assumed that clients reasonably expect that the information they provide to ALSC to demonstrate eligibility for services cannot be reviewed by ALSC's own board in accordance with the corporation's established procedures. Any doubt about the client's expectations can be eliminated by advising the client that eligibility is subject to review. In situations where information relating to client eligibility is protected by the attorney-client privilege, disclosure of the particular information involved by a staff attorney to the Board of Directors, or anyone not a party to the direct attorney-client relationship, is prohibited. This prohibition, however, is strictly limited by the parameters of the privilege and does not extend to other eligibility information not protected by the privilege.

Issue No. 2

The question has also been asked whether a conflict of interest exists where a member of the ALSC board or his firm represents an opponent of an ALSC client in the same litigation.

There is conflicting authority on the propriety of legal services board members or their firm representing parties adverse to clients represented by legal services staff attorneys. Some authorities have concluded that such representation may be improper. E.g., *Estep v. Johnson*, 383 F.Supp. 1323 (D. Conn. 1974). See also New Jersey Bar Opinion 126, 91 N.J. 257 (1968); ABA Informal Opinions 1309 and 1395. Other authorities suggest that where the board restricts its activities to the formulation of broad policies and guidelines and refrains from involvement with individual cases, board members can appropriately represent such parties providing requisite consideration is given to conflict of interest provisions of the Code of Professional Responsibility. See, e.g., 44 Florida B.J. 407 (1970). ABA Formal Opinion 345 (July 12, 1979) considers the competing authorities and concurs with the latter conclusion. The principles set forth in that opinion are persuasive and should govern in Alaska.

ABA Formal Opinion 345 states: "The committee, upon due reflection, has concluded that these provisions [D.R. 5-101(a) and D.R. 5-105 relating to the exercise of independent judgment by an attorney] would not be violated necessarily by the representation by the board member or his firm of a client involved in litigation with a program client. The program staff lawyers are the lawyers for the client. Accordingly, the lawyer-board member

does not have a lawyer-client relationship with the program client so the problem is not one of a lawyer representing clients with conflicting interests....

"Having said all this, the committee does not concur that there is no problem in a board member's representation of a client adverse to a program client. Depending upon the nature of the case, the circumstances of the clients or otherwise, one counsel or the other may feel unexpectedly self-restrained from representation of the client in the fullest sense. From the client's side it should not be overlooked that clients in the poverty group, particularly, may tend to be submissive and to acquiesce in the representation—feeling that they have no choice, but at the same time feeling concerned that they may not be getting independent representation. The real possibility of an appearance of impropriety, even though no real actual impropriety may exist, is also troubling to the committee.

"Accordingly, it is important that the board and clients on both sides be made aware of the board member's role and the fact that he or a lawyer in his firm is representing a client opposing a program client. The clients and counsel on both sides must feel comfortable that in the particular circumstances neither client will be deprived of independent and uninhibited representation. Lawyers on both sides must be sensitive and alert to these possibilities and, if, in the course of the representation, it becomes apparent that independent representation is not being afforded on both sides or one or the other of the clients perceives that it is not afforded, no matter what the reality, then the lawyers should assist in change of counsel for one or both clients....

"Because of the extreme value of having active practitioners who are litigators themselves (or who have partners who are) serve as board members, the committee does not wish to raise artificial barriers to their participation on program boards by forcing them to choose between service on a board and representation of their clients. It should be noted that in some smaller communities it is impossible to secure qualified lawyer-members for boards who would not be involved from time to time representing clients opposing persons represented by program staff lawyers. Recognizing the need for qualified lawyer-board members, program staff lawyers should not seek unfairly to gain advantage for their clients by disqualification of the board member or his firm. To the extent that the program can make available to its clients competent volunteer legal counsel in these situations, program clients can be offered an alternative. On the other side, a board member should be sensitive to the possible problems posed by such relationships and should be quick to disqualify himself and his firm in proper cases.

"On balance, the committee concludes that the compelling need for resources, not the least of which is strong interest in legal services and participation on program boards by active practitioners, to provide legal services for the indigent outweighs the risk of any possible appearances of impropriety in those cases where adequate representation is provided by board members (or members of their firms) for one side and program staff attorneys for the other. The committee is confident that there will be no actual impropriety provided the strictures contained in this opinion are followed conscientiously."

As noted in the ABA opinion, in a state with a small population such as Alaska, the need to obtain qualified lawyer members for boards, particularly from smaller communities, indicates that on balance board members should not automatically be disqualified from representing parties adverse to clients of legal services. On the other hand, the propriety of undertaking or continuing such representation is not absolute. It should be obvious that a board member cannot consider client

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[continued from page 10]

Bar Opinion Summary

eligibility in a case where he represents an adverse party. It would also seem to be improper for the board to set the salaries of individual staff attorneys where a staff attorney may simultaneously be involved in litigation adverse to a board member. Other potential conflicts of interest must also be recognized, but the mere fact of representation of a party adverse to a client represented by ALSC does not disqualify an attorney from board membership.

Conclusion

The committee concludes that members of the ALSC Board of Directors may review the eligibility of ALSC clients provided that no disclosure is made to them of information protected by the attorney-client privilege. The committee also concludes that an ALSC board member or his firm may represent an opponent of an ALSC client in the same litigation provided that ethical considerations governing conflicts of interest and the need for a lawyer to exercise independent professional judgment are observed in particular cases.

ABA Formal Opinion 324 emphasizes that an attorney has a duty to exercise professional judgment solely on behalf of the client. E.C. 5-24 warns that:

"Various types of legal aid offices are administered by boards of directors composed of lawyers and laymen. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client he serves....The responsibility of

the lawyer to maintain his professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer."

Opinion 324 concludes that the functions of the Board of Directors of a legal aid organization should be limited to formulating broad goals and policies, including the establishment of guidelines delineating categories or kinds of clients and cases the staff attorneys may represent.

"Once the attorney has accepted a client or case of the nature and type sanctioned by board policy, the board must take special precautions not to interfere with its attorney's independent professional judgment in the handling of the matter." (Formal Opinion 324, p. 7).

ABA Formal Opinion 334 states that:

"There should be no interference with the lawyer/client relationship by the directors of a legal aid society after a case has been assigned to a staff lawyer and...the board should set broad guidelines respecting the categories or kinds of cases that may be undertaken, rather than act on a case by case, client by client basis." (Opinion 334, p. 5).

Nothing in these admonitions indicates that the legal services corporation, through its Board of Directors or by some other procedure, may not review the question of client eligibility in particular cases (again, assuming no privileged communications will be revealed). Such a review merely seeks to determine whether general eligibility standards previously established are properly being applied. In Formal Opinion 334, the American Bar Association found that the Board of

Directors at a legal aid office may require staff attorneys to disclose information that is reasonably required for a legitimate purpose, such as determining whether the board's policies are being carried out. The review process should not involve interference with decisions and judgments by staff attorneys on how a case is handled as opposed to the more basic question of the client's eligibility for representation by ALSC.

In some cases the question of compliance with eligibility guidelines may involve decisions based upon professional judgment and interpretation of eligibility guidelines rather than simple application of financial or other guidelines. In those cases it may be inappropriate for the ALSC Board of Directors to attempt to alter a decision by staff attorneys to undertake representation in a particular case. Nevertheless, this would not appear to preclude a review of how eligibility standards have been applied so that the board can assess whether its policies generally need clarification or revision, nor would it appear to preclude a determination by the board, where appropriate, that under any reasonable interpretation, its eligibility standards have not been complied with.

TVBA

[continued from page 6]

April 18, 1980

Minutes of the April 18, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order, and President Link recognized Clark Gruening and Steve Cowper as sort of guests, and introduced Julius Brecht, director of the State of Alaska, Department of Commerce and Economic Development, Division of Banking, Securities, Small Loans & Corporations.

The minutes were dull. There were no exciting announcements. President Link appointed a resolutions committee to consider any resolutions that the TVBA might want published in the Bar Rag for consideration at the June convention. The committee consisted of Chairman Dave Call, Jim DeWitt and Will Schendel.


Julius Brecht then took over and educated us on the department of State of Alaska with the longest name. He prefaced his remarks with praise for a brilliant and witty secretary and a question about the elephant's head being in one time zone or other and why Juneauites do or don't want to change their clocks. Apparently, we have federal banks, state banks, federal savings and loans, federal mutual savings banks, federal credit unions, finance companies and premium finance companies. The important thing we learned was that disintermediation was very prevalent and is now somewhat less so—probably due to a lack of funds to disintermediate. Also, HR 4986, also known as PL96221, is a big deal. Be sure to bring your money next week for the Law Day.

Meeting adjourned.

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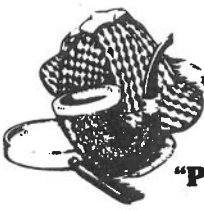
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History of Court System Facilities 1970-1980

As of January 1980, the Alaska Court System maintains court facilities in fifty-four (54) locations across the state. These facilities range in size and suitability from multimillion dollar court complexes, as in Anchorage, Fairbanks and Juneau, to facilities in rural locations consisting of a magistrate's living room, as in the villages of Hoonah, Tanana and Unalakleet.

At these locations the Court System uses approximately three hundred ninety-five thousand (395,000) net usable square feet of space. The specialized space needs range from courtrooms used for Supreme Court appellate hearings to computer installations requiring close-tolerance temperature and humidity controls to automobile facilities.

In 1970, the Court System operated out of 26 locations using approximately one hundred sixty-nine thousand (169,000) net usable square feet of space.

The buildings occupied by the Court System can be categorized as follows:

1. State-Owned Buildings procured by Alaska State Housing Authority (ASHA) bonding. Fourteen buildings (12 of which were built since 1970) are of this type and they provide space not only for the Court System but for other state agencies as well:

(Pre-1970)

- a. Old Anchorage Court Building: built 1964; cost \$2,500,000; 64,170 gross sq. ft.
- b. New Anchorage Court Building: built 1974; cost \$7,812,000; 157,861 gross sq. ft.
- c. Anchorage Parking Garage: built 1975; cost \$1,224,700; 68,370 gross sq. ft.

d. Delta Junction Combined Facility: remodeled in 1977 to provide 1,760 net usable sq. ft. of space to the Court System; 1977 valuation \$173,781.

(Pre-1970)

- e. Fairbanks Court and Office Building: built 1964; cost \$3,100,000; 75,790 gross sq. ft.
- f. Fort Yukon Combined Facility: built 1972; cost \$251,400; 3,472 gross sq. ft.
- g. Glennallen Combined Facility: built 1976; cost \$1,495,000; 12,040 gross sq. ft.
- h. Juneau Court and Office Building: built 1975; cost \$5,665,245; 77,000 gross sq. ft.
- i. Kenai Court and Office Building: built 1974; cost \$1,781,687; 26,232 gross sq. ft.
- j. Ketchikan Court and Office Building: built 1973; cost \$2,750,000; 74,590 gross sq. ft.

(Pre-1970)

- k. Kodiak Court and Office Building: built 1968, cost \$461,400; 13,440 gross sq. ft.
- l. Sitka Court and Office Building: built 1976; cost \$1,880,000; 25,954 gross sq. ft.
- m. Tok Combined Facility: built 1973; cost \$194,800; 3,528 gross sq. ft.
- n. Valdez Court and Office Building: built 1975; cost \$1,350,000; 16,065 gross sq. ft.

2. State-Owned Buildings procured by direct legislative appropriation:

- a. Kotzebue Court and Office Building: built 1973; cost \$328,000; 4,330 gross sq. ft.

*b. Presently the Kotzebue Court System Addition is near completion; cost \$298,000; 1,100 gross sq. ft. This remodeling project will provide for a much needed enlarged clerks' area, magistrate's office, judge's chambers and jury deliberation room.

c. Cold Bay Trailer Facility: built 1974; 1977 valuation \$18,957; 400 net usable sq. ft.

3. Modular Criminal Justice Facilities. During 1973-1975, the Court Sys-

tem in cooperation with the Law Enforcement Assistance Administration (LEAA) and the state's Criminal Justice Planning Agency (CJPA) oversaw the placement of 13 modular facilities in 13 communities throughout Alaska. These modular units have about 840 gross sq. ft. of area providing for a small hearing area, office space for a magistrate, office space for local police or State Troopers, and two small holding cells. The Court System occupies about 400 sq. ft. of space in each of these facilities. The average cost of each of these units was approximately \$34,000 including transportation and installation costs. Each community owns the facility and leases space to the Court System. Previously there had been no adequate space available for judicial functions in the following communities.

- a. Angoon; built 1975
 - b. Aniak; built 1974
 - c. Emmonak; built 1973
 - *d. Galena; built 1975. The Court System no longer leases the modular facility from the City of Galena. The Galena Police Department expanded to such an extent as to make it difficult for the magistrate to conduct judicial business in such close quarters. The Court System presently operates in a privately owned building built to the Court System's specifications. (See section 5)
 - e. Gambell; built 1975
 - f. Hooper Bay; built 1974
 - g. Kiana; built 1973
 - h. Mekoryuk; built 1975
 - i. Noorvik; built 1974
 - j. Point Hope; built 1974
 - k. St. Mary's; built 1973
 - l. Savoonga; built 1974
 - m. Selawik; built 1973
4. Municipality or Borough-Owned Buildings providing to the Court System available space on a lease basis. Most of these facilities provide minimal space needs for a magistrate court. A notable exception is the Bethel Court facility built by the City of Bethel to the Court System's specifications and provides for all Superior

Court functions and a permanent Superior Court Judge.

- a. Bethel Court Facility: built 1977; 4,437 net usable sq. ft.
- b. Craig Court Facility: In 1972 the Court System entered into an agreement with the State Troopers for the use of 100 sq. ft. in a trailer owned by the Department of Public Safety. In 1979 the Court System leased 144 sq. ft. of office space from the City of Craig. This office is adjacent to a large council chambers providing space for court proceedings on an as-needed basis.
- c. Healy Court Facility: In 1974 the Court System leased 336 sq. ft. of office and hearing room space from the Tri-Valley Volunteer Fire Department in Healy. This same lease continues.
- d. Kake Court Facility: In 1972 the Court System leased 288 sq. ft. of office space from a private owner. In 1974 the Court System began its present lease with the City of Kake for 150 sq. ft. of office space and an adjacent council chambers providing space for court proceedings on an as-needed basis.
- e. Mt. Village Court Facility: In 1976 the Court System leased 368 sq. ft. of office and hearing room space from the City of Mt. Village. This same lease continues.
- f. Naknek Court Facility: In 1970 the Court System leased 1,152 sq. ft. of office and court space from the Bristol Bay Borough. This lease continues.


(Pre-1970)

(Pre-1970)

[continued on page 13]

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Court System Facilities

(continued from page 12)

on an as-needed basis. This lease continues.

i. Tununak Court Facility: In 1977 the Court System leased 288 sq. ft. of space in the City of Tununak's Central Office Building. This lease continues.

j. Yakutat Court Facility: In 1976 the Court System leased 800 sq. ft. of office and courtroom space. This lease continues.

5. Privately-Owned Buildings built to Alaska Court System specifications and leased under negotiation and bidding procedures as defined by Alaska Statutes and the Purchasing Regulations of the Alaska Court System in cooperation with the Department of Administration.

a. In February of 1972, the Court System leased 324 sq. ft. of space from the City of Barrow. But because the City of Barrow needed the space the Court System had to seek new space within the year. In October 1973 the Court System leased approximately 1,200 sq. ft. from a private owner until 1978. Barrow Court Facility: In 1978 the Court System began leasing approximately 2,800 sq. ft. of space for a facility that would provide for full Superior Court functions. This same lease continues.

b. Dillingham Court Facility: In 1967 an ASHA Combined Facility was built in Dillingham for \$142,400; 2,380 gross sq. ft. The Court System occupied 821 sq. ft. of minimal office and courtroom space until November 1978 when the village corporation (Chogging Limited) built a building of 3,633 net usable sq. ft. This building provides for all the functions of the Superior Court.

c. Galena Court Facility: In December 1977 the Court System began leasing 1,067 sq. ft. of net usable space from a private owner. This space provides for a minimal Superior Court

facility: i.e., 12-person jury, courtroom jury deliberation room, judge's chambers, magistrate's chambers and clerks' area. This same lease continues. Before 1977, the Court System occupied space in a Modular Criminal Justice Facility. The expansion of the Galena Police Department required the Court System to seek other, more appropriate space.

d. Haines Court Facility: The Court System has maintained a lease with a private owner for 700 sq. ft. of court and office space in Haines.

e. Homer Court Facility: In December 1976 the Court System leased 2,743 sq. ft. of net usable space built to specifications and providing for all Superior Court functions. This same lease continues. Before 1976 the Court System operated with 1,599 sq. ft. of office space.

f. Palmer Court Facility: In February 1975 the Court System began leasing 4,817 sq. ft. of net usable space providing for all Superior Court functions. This same lease continues. Before 1974 the Court System leased approximately 900 sq. ft. from a private owner.

g. Petersburg Court Facility: In 1973 the Court System increased the leased space from 1,155 sq. ft. to 1,426 sq. ft. of net usable space for a courtroom and magistrate's office. This same lease continues.

6. U.S. Government Leases: (Pre-1970)

a. Nome Court Facility: Since before 1970 the Court System has been leasing 4,795 sq. ft. of space in the old Federal Courthouse, Post Office and Jail Building. This same lease continues and this facility provides for full Superior Court functions.

b. Cordova Court Facility: Since before 1970 the Court System has been leasing 1,150 sq. ft. of space in the U.S. Post Office Building in Cordova. This same lease continues and this facility provides for full District Court functions.

c. Wrangell Court Facility: Since before 1970 the Court System has been leasing 1,500 sq. ft. of space in the Main Post Office Building in Wrangell. This facility provides for full District Court functions and this same lease continues.

Editor's Note: We promised you this story in the February issue. We failed. But better late than never?

Voice Analysis

by Mike McHenry

The last few years have produced a range of developments in the field of voice stress analysis. This area has, through rapid growth and marketing, generated equipment and circumstances warranting mixed acceptance of this lie detection technique.

The equipment presently available can be rated from genuine scientific instrumentation to mere gadgetry. Examples of inferior and misleading devices are found in the pages of many in-flight airline publications. They include desk models and even a wristwatch which purport to reveal lies. These items are, in my view, worthless. Such "stress detectors" evaluate usually only sub-audible changes in voice amplitude, with the results displayed in varying banks of multi-colored lights or upon a dial. Instruction manuals suggest that when the lights change from green to red the truth probably isn't being told. In fact, there are many possible reasons for seeing red lights or a "10" on a dial. This was convincingly proven at the International Society of Stress Analysts' Annual Seminar in 1978, at Chicago.

Using the same type of components and circuitry contained in the popular "businessman's" voice analyzer which is advertised in airline magazines at a cost of \$1,500.00, an I.S.S.A. member went to the nearby Radio Shack store and assembled a similar device for approximately \$22.00 worth of parts. The high priced model and the copy were placed side by side before the audience. By employing forced changes in voice amplitude the two light panels changed simultaneously and equally. No lies were told, only manipulation of the voice was done. The demonstration proved convincing the scientific worthlessness, but applaudable marketing, that characterizes these inept devices. Because over 10,000 of them have reportedly been sold, these "voice analyzers" have had an impact on the overall credibility of lie detection by voice analysis. The manufacturer has been invited by the society to present his product for evaluation, but has declined.

Price Cutting
Shortly after voice stress analysis equipment became available, competing examiners were appearing everywhere. Undercutting prices was a routine practice. The manufacturer of one instrument offered a three-day training course while another told me less preparation was needed. At a trade exposition in Los Angeles, a salesman said that by reading their instruction booklet I would be qualified to administer lie detection exams. With unqualified examiners and their tests proliferating, the abuses and errors expanded. Countless numbers of honest persons were denied employment or fired because they failed a lie detector test. It took approximately five years for the complaints to reach various state legislatures, who responded by defining the qualifications of examiners, standards for approved instruments or a ban on voice analysis testing altogether. The legitimacy of the technique continues to recover from these excesses.

No voice analysis instrument is worthwhile if it does not prepare a permanent chart of responses. Without such a record, the moment of reply is lost. An examiner would have to later ask, "How many red lights were there?" Voice analyzers that do not evaluate and chart the micro-muscle tremor phenomena are also worthless.

Briefly, the micro-muscle tremor is a bodily activity ongoing in conscious humans. It is associated with active brain waves of eight to 16 cycles per second (Beta state). This "activity" in our muscles is not visible, but it is nature's way of keeping us prepared for the next "event." It slows when asleep and when under hypnosis. Since the voice box is a muscular structure, it too "vibrates" at the Beta rate when we speak. During a guilt reaction or other stressful circumstance, the body involuntarily causes the micro-muscle tremor's detectable presence to dissipate. Genuine voice analyzers such as a Mark II or Dektor PSE prepare permanent records of the changes in this phenomenon's presence upon our speech, plus charting other meaningful components in the voice. These changes are evaluated by an examiner who compares charted answers to relevant and irrelevant or control questions during a structured test. This forms the basis for determining the presence of a guilt reaction during a lie detection test.

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Voice

[continued from page 13]

Comparison Studies

Many studies have been completed to compare the reliability of the PSE/Mark II vs. the polygraph. In Florida, tape recordings were made during the administration of 1,048 polygraph tests. Analysis of the tapes resulted in just three examiner calls being different. Who is wrong? In Tennessee, tests were given to 100 criminal suspects with the Mark II voice analyzer. Using information from confessions, convictions or acquittals, the voice analysis calls were correct 100%.

The American Polygraph Association understandably disagrees with the reliability attributed to genuine voice stress analyzers. As part of its campaign to discredit the PSE it often cites the "Kubis Report." This study was commissioned by the U.S. Army to compare PSE and polygraph. APA proponents note the finding that PSE was accurate only 32%, less than random chance. However, they do not tell us that the same study found polygraph accurate only 55% of the time. The U.S. Army has not accepted or endorsed this study.

Lie detection testing by voice analysis, using high standard equipment, will be reliably indicative of truth or deception nine times out of 10. The reason for good charts is truthfulness. The presence of significant responses may or may not initially be a guilt reaction indicative of deception. A trained examiner will evaluate whether an accused person is reacting deceptively to his alleged deed or whether the suspect is reacting to fear that another, irrelevant, wrongdoing may be discovered during testing. For this reason, I have advised some clients not to submit to a polygraph examination administered by law enforcement authorities. The test subjects can't safely disclose their previous undetected wrongdoing to the police examiner. Without being able to "come clean" and not worry about past events, the examinee is mentally attempting to exercise deception. This mental effort on an outside issue will carry over to the relevant issue, causing chart problems which may cause the police examiner to believe a lie has been told, in spite of one's innocence.

Sometimes, persons have lived with an issue for so long that they are psychologically contaminated by its personal significance. They can't separate its impact from their personal conduct and end up with stressful answers. Thus, doctors and nurses may be poor subjects for questions about drugs. Also, police officers often are poor test subjects since they daily live to and uphold a stricter code of conduct. Only lengthy interviews before testing, detailed chart analysis and subsequently refined questioning can yield a fair opinion.

The Dektor PSE is able to evaluate narrative remarks, beyond a straight "yes or no" reply. This can give insight to answers recorded during depositions, statements or jury selection proceedings. The standards for identifying stress are more relaxed, but one fact is unchanged, the likely reason for good patterns is truthfulness.

Mike McHenry is an Anchorage-based private investigator and a member of the International Society of Stress Analysts. Other members of I.S.S.A. within Alaska are Leonard F. Schultz and Donald Miller.

LEO Annual Report

I am pleased to report that in its first year of existence, the LEO Committee has planned and implemented a scholarship program for the Alaska Bar Association. All of the procedural details such as preparing scholarship and financial applications, announcing the program through statewide newspapers, the Alaska Federation of Natives' annual convention, the nonprofit arms of the native regional corporations, the WICHE fund and statewide minority civic and political organizations have happened. The applications have been available for distribution statewide through the court system, the bar office and our committee members. We have raised almost \$6,000 from the earnings on the Boney scholarship fund, the John Manders Foundation, individual members of the bar and the generosity of the Ketchikan, Juneau and Tanana Valley bar associations.

Forty-five Alaskans applied for the scholarships: 28 males and 17 females; 20 presently enrolled in law school and 25 first-year applicants; 16 from Anchorage, 10 from southcentral, nine from rural Alaska, five from southeast and five from Fairbanks. A subcommittee narrowed the field to 14 applicants on the basis of their Alaskan residency, their present intent to practice law in Alaska upon graduation from law school, their admission to an accredited law school, their demonstrated ability to do academic work and their need. With an eye toward encouraging Alaskans statewide to consider law as a profession, this year's awards attempted to promote geographic diversity as well.

We narrowed the field to five applicants who would each receive \$1,000.00, and we designated specific recipients for the Chief Justice George Boney and John Manders memorial scholarships. The successful applicants will be introduced to the ABA members during the final banquet of the annual convention in June.

The LEO Committee is definitely excited to see the fruits of our hard work because we started with nothing just a year ago. I do confess at some disappointment that less than 10 percent of the bar contributed to the fund by making a voluntary contribution when they returned their annual dues statement. Perhaps now that the bar sees that the program is viable we can expect greater support from the members next year.

The scholarship program was our major project this year but we did address some of the other responsibilities assigned to us. We continued to monitor the pass-fail rate of ethnic minorities taking the Alaska bar exam and we inquired into the California bar study of racial and cultural bias in its bar exam. This year Alaska bar applicants were asked to volunteer information about their ethnic background by sending a separate form directly to me. Only 30 percent of the applicants for the February 1980 exam returned this form to me. As a result, we are still forced to rely on street gossip to identify the minorities who are taking the bar. Based on our recommendation, I understand that the Board of Governors and the bar counsel are presently studying possible methods of securing this information without suggesting a bias on the part of the association.

Although the ABA received a generous amount of criticism from the legislature this year during the sunset review, our committee's written and oral testimony was well received. In fact, the House Judiciary Committee in its report on the ABA applauded our efforts to maintain information on minorities admitted to the bar and encouraged us to find an accurate method of doing so.

For the first time, we offered individual review and advice to unsuccessful candidates for the bar exam. Twenty-five percent of those who failed the July 1979 exam took advantage of our offer. Keeping in mind the small sample, we noted repeatedly a flaw in the written answers: an inability to express one's legal knowledge in written form in terms of organization, analysis of the facts and legal principles involved, and discussion of each issue separate from the other issues involved in the question. In short, the problem centers more on the lack of writing ability than on the lack of legal knowledge. I further understand that only one-third of the successful candidates pass the written exam. We suggested that this difficulty be initially addressed by requesting that the bar review courses place additional emphasis and time on writing and analyzing practice exams. As a second point, I understand the Board of Governors has accepted our recommendation and taken steps to inform unsuccessful candidates that they may purchase a copy of their own answers and that they may compare their answers with a sample of passing answers in the custody of the local magistrate, district court judge or Board of Governor member.

The LEO Committee also acted as a clearinghouse for other scholarships available for Alaskans. Approximately 25 Alaskans who applied for the APA scholarships were also invited to apply for the Joe Rudd Memorial scholarship and all ABA scholarship applicants received information about the John Manders' scholarships.

It has been a productive year for our Committee and a definite pleasure to work on projects that have such a happy ending as the scholarship program.

Sincerely,

Carolyn E. Jones, Chair
Legal Educational Opportunities
Committee

Folk Instructions

by Jim Bendell

LADIES AND GENTLEMEN OF THE JURY:

It now becomes the duty of the Court to instruct you as to the law in this case.

Unless and until reasonable doubt of his sanity appears, the law presumes that the defendant was sane at the time of the alleged criminal acts charged in the indictment.

But, whenever, from all the evidence in the case, you have a reasonable doubt as to the defendant's sanity at the time of the alleged criminal acts, then you shall return a verdict of not guilty by reason of insanity.

Of course, after doing so, you may wish to consider taking your daughters out of the jurisdiction.

Out of court statements of the defendant are to be viewed with caution.

The same goes for his in-court statements.

In the crime charged in this complaint, the doing of the act is punishable as a crime. The intent with which the act is committed is immaterial to guilt. That is, being acquitted means never having to say you're sorry.

During the course of this trial there may have been occasions where I've rolled my eyes, gasped, sighed, wheezed, and giggled. These acts should in no way be interpreted as expressing my views on any of the evidence presented and you should therefore disregard them.

(Wink)

The word "unlawfully" means contrary to law. Hence, to do an act unlawfully means to willfully do something which is contrary to law.

The word is... "unlawfully."

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind, other than the vulcan mind-meld. But you may infer the defendant's intent from the surrounding circumstances. This means that if you've always been a pretty good judge of character it's OK to rely on a 'hunch' you have.

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Welcome to Anchorage

Program Schedule

Wednesday, June 11

2:00 p.m.—Annual Meeting registration begins at the Sheraton Anchorage Hotel, second floor, Kuskokwim Room.

6:00 p.m.—Welcoming Cocktail Party at the Kuskokwim Room.

Thursday, June 12

8:00 a.m.—Registration continues at the Kuskokwim Room.

8:45 a.m.—Annual Meeting convened at the Kuskokwim Room. Opening remarks by Donna C. Willard, President, Alaska Bar Association.

9:00 a.m.—Professional Update Conference begins at the Kuskokwim Room. New Trends in Business and Commercial Law — 1) Summary of Recent Supreme Court Decisions by Kenneth P. Eggers, Esq.; 2) Summary of Recent Legislative Developments by Peggy A. Roston, Esq. and Helene A. Antel, Esq.; 3) Practical Developments Under the New Bankruptcy Law.

10:00 a.m.—New Trends in Taxation Law — 1) Introduction by David G. Shaffel, Esq.; 2) Recent Alaska Tax Legislation by Ralph E. Duerre, Esq.; 3) New Developments in Estate Planning by George E. Goerig, Jr., Esq.

11:00 a.m.—New Trends in Administrative Law — 1) Overview by Mary Hughes Patch, Esq.; 2) New Legislative Enactments by Andrew E. Hoge, Esq.; 3) New Case Law by Donn T. Wonnell, Esq.; 4) Activities of the ABA's Administrative Law Committee by David W. Marquee, Esq.

Noon—No Host Cocktails at Josephine's.

12:30 p.m.—Luncheon at Josephine's — "The State of the Judiciary" by Hon. Jay A. Rabinowitz, Chief Justice, Alaska Supreme Court.

2:00 p.m.—New Trends in Criminal Law — 1) Development of Empirically Based Sentencing Guidelines by Michael L. Rubinstein, Esq.; 2) Recent Supreme Court Decisions by William P. Bryson, Esq.; 3) New Drug Crime Legislation by Rhonda F. Butterfield, Esq.

3:00 p.m.—New Trends in Environmental Law — 1) Implementation of the Coastal Zone Management Act in Alaska by William H. Bonner, Esq.; 2) Impact of Corps of Engineers' Jurisdiction in the Coastal Zone by John A.

Reeder, Jr., Esq.; 3) Oil Spill Legislation: the aftermath of *Chevron v. Hammond* by William H. Bonner, Esq.; 4) Litigation Resulting from the Beaufort Sea Oil and Gas Lease Sale by Stephen C. Volker, Esq.

4:00 p.m.—Alaska Bar Association Committee Meetings at the Kuskokwim Room.

Friday, June 13

9:00 a.m.—Professional Update Conference resumes — Recent, Significant Supreme Court Decisions re: Insurance Law by Kenneth P. Jacobus, Esq.

10:00 a.m.—New Trends in Family Law — 1) Recent Trends and Unanswered Questions in Marital Property by Max F. Gruenberg, Jr., Esq.; 2) How to Work Effectively with the Court System's Guardian Ad Litem by Jeanne Ames Riley, Esq.; 3) Guardian Ad Litem, Attorneys, and the Power of the Court by John E. Reese, Esq.; 4) Increasing Recognition of the Rights of Non-parents in Custody Disputes by V. Bonnie Lembo, Esq.; 5) Indian Child Welfare Act and Alaska Law by Elizabeth P. Kennedy, Esq.

11:00 a.m.—New Trends in Natural Resources Law — 1) Federal Law Developments by Joseph M. Chomski, Esq. and Floyd Mathews; 2) Recent Alaska Legislation by Harris Saxon.

Noon—No Host Cocktails at Josephine's.

12:30 p.m.—Luncheon at Josephine's — 1) The Legislative Profession by Senator Arliss Sturgulewski, Alaska State Senate. Sponsored by the Anchorage Women Lawyers Association.

2:00 p.m.—New Trends in Tort Law — Current Developments by Bernard P. Kelly, Esq.

3:00 p.m.—New Trends in Real Estate Law — 1) Statutes and Effects of D-2 Legislation by Edward G. Burton, Esq.; 2) Developments in Title Company Practice by Michael W. Price, Esq.; 3) New Cases and Statutes by Francis J. Vosek, Jr., Esq.

4:00 p.m.—Professional Update Conference ends.

4:15 p.m.—Annual Meeting of the Alaska Bar Foundation at Room 311.

5:00 p.m.—Meeting of Committee Chairman at Room 311.

5:00 p.m.—The Last Annual Mixed Road Race. A "fun run" of 10 miles for teams of four sponsored by the Alaska Bar Association in cooperation with the Municipality of Anchorage's Parks & Recreation Department.

6:00 p.m.—"Dinners in the Home" for out-of-towners sponsored by the Anchorage Bar Association.

Saturday, June 14

9:00 a.m.—Annual Business Meeting of the Alaska Bar Association at the Grand Ballroom. The agenda for the Business Meeting will be provided at the door.

Noon—No Host Cocktails at the Grand Ballroom.

12:30 p.m.—Luncheon at the Grand Ballroom — Major Issues Before the Profession: A National Perspective by Wm. Reece Smith, Jr., President-elect, American Bar Association.

2:00 p.m.—Business Meeting resumes at the Grand Ballroom.

5:00 p.m.—Annual Meeting adjourns.

6:30 p.m.—Cocktail Reception at the Grand Ballroom.

7:30 p.m.—Alaska Bar Association Dinner/Dance at the Grand Ballroom — 1) Presentation by the Historians Committee; 2) Special Entertainment by "The Statutory Grapes"; 3) Dance Band: "The House Band." Music from 9:00 p.m. to 1:00 a.m.

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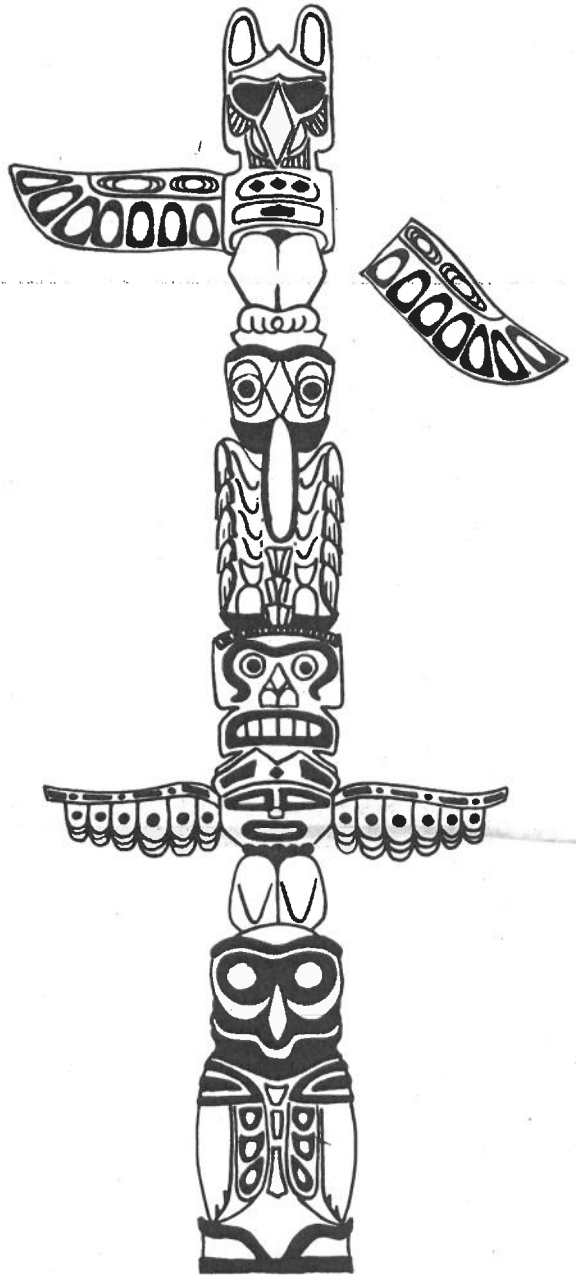
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