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The Alaska BAR RAG

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Gordon Jackson
New ALSC Head

Gordon Jackson has been appointed Executive Director of Alaska Legal Services, effective June 25, 1979. Jackson replaces **James Grand Jean,** who recently resigned.

Born in Kake, Alaska, the 33 year old Jackson is the first Alaska Native Director of the non-profit corporation. Committed to providing quality legal services for the poor and disadvantaged throughout the state, Jackson intends to immediately implement a planning process to develop legal service priorities. Toward this end, Jackson plans to meet with various statewide groups, including members of the Alaska Bar Association, to receive input on the fundamental policy issue of how best to utilize the resources of Alaska Legal Services. When asked if the current budget of $1.3 million would

Gordon Jackson

permit Legal Services to pursue test cases while at the same time provide basic legal services to all those eligible under the Agency guidelines, Jackson responded that he thought it would be possible to pursue both goals, but this initial opinion could certainly change over time.

Currently, Alaska Legal Services has five outreach centers with field offices in Anchorage, Fairbanks, Juneau, Sitka, Barrow, Ketchikan, Nome, Bethel, Kotzebue and Dillingham. The Agency's current caseload totals 5,821, with an attorney-paralegal staff of 27 members. Alaska Natives represent 77 percent of the total caseload. The Anchorage office, with a seven member professional staff, handles slightly under 25 percent of the total caseload, or 1,346 cases. Bethel, the next busiest office, has a caseload of 954 cases and a four member professional staff. The Juneau field office, with a professional staff of two, has a caseload of 131, the lowest number of cases currently being handled by a Legal Service field office. The average number of cases per licensed attorney is 208.

Region 9 of the National Legal Services Corporation has recently recommended that Alaska Legal Services Corporation eliminate most of its field offices and concentrate operations in

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New Offices for the Bar

The new Alaska Bar Association offices provide more space in the same building at a lower rate. The high rate of office vacancy with the new location of the Federal Court House and some tough negotiation made the attractive new suite of offices possible.

Suite #105 in the Australaska Building, is the location of the new Bar offices. The suite was formerly the site of the Attorney General office for the Civil Division.

The suite allows a much more efficient organization of the Bar offices. Before the move, the Bar Counsel's office was at one end of the hall on the second floor of the Australaska office, was at the other end. The new location puts both offices in the same suite allowing for better interoffice communication.

The entrance to the new suite leads to a reception area complete with a bulletin board for announcements and places for job seekers to advertise. The reception area opens into the central secretarial staff and file room. Clustered around this large spacious room are a combination Bar President and *Bar Rag* office, the Bar Counsel's office, the Bar Disciplinary investigator's office, the Bookkeeper's office, the Executive Director's office, and a modest conference room.

These new offices vastly improve the dispositions of the Bar staff and significantly lower the miles of foot traffic.

New Committee Formed

On May 19, 1979, the President of the Alaska Bar Association appointed an Ad Hoc Committee to survey current practices of law in Alaska with respect to advertising, use of firm names, compliance with the Alaska Bar Rules and the Code of Professional Responsibility, and those current practices' effect on the Board of Governor's and Supreme Court's powers to discipline the practice of law in Alaska. This Committee consists of **Robert Baker, John Bradbury, Keith Brown, David Bundy, Daniel Gerety, Robert Mahoney, Lester Miller, James Powell, Richard Thaler** and **Eric Wohlforth. Frederick H. Boness** has since been appointed to the Committee.

The Committee will receive written comments from members of the Bar and any other interested persons concerning the above matters. The Committee has established a deadline date of September 30, 1979, for receipt of such comments. The Chairman desires to make its recommendations, if any, to the Board of Governors by October 15, 1979. Written comments may be submitted on or before July 30, 1979 to **Dan Gerety,** Chairman, Ad Hoc Committee, 1007 West Third Avenue, Anchorage, Alaska 99501.

Bar Logo Contest

Since every other entity in the state not to mention the country has its seal or other official emblem, it has been determined that the Alaska Bar should have its own distinctive logo.

As a result, the Board is sponsoring a contest in which members of the Association can vie for an award of dinner for two, not to exceed $75.00 at their favorite restaurant. Deadline for entries is August 31, 1979 and should be submitted to the offices of the Alaska Bar, 360 "K" Street, Anchorage, Alaska 99501.

On a more serious note, it is intended that the logo will be used as part of the institutional advertising soon to be incorporated statewide, as well as on Bar Association Stationary and printed materials.

ABA President Speaks to Anchorage Bar Luncheon

Full Text of Address

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OUR FUTURE ETHICAL STANDARDS
Remarks Delivered
By
S. Shepherd Tate
Memphis, Tennessee
President
American Bar Association
To the
Anchorage Bar Association
Anchorage, Alaska
July 9, 1979

Let me begin by saying that this is going to be a short speech. I shortened it after hearing the story about a school boy who wrote an essay about Socrates.

The essay went something like this: "Socrates lived a long time ago. Socrates had many friends. Socrates gave long talks. Socrates was poisoned by his friends."

Since I am among friends today and do not wish to suffer the fate of Socrates, I will keep my remarks brief.

It has been said that the legal profession is a social institution shaped by, and in turn shaping, society.

The truth of this statement is clearly revealed in the development of our profession's ethical standards. Today, I would like to discuss with you the topic, "Our Future Ethical Standards."

A century ago, America's lawyers were deeply concerned about the profession's lack of consistent standards for ethical conduct. This concern was one of the contributing factors that led to the founding of the American Bar Association—and consequently, after much study and debate, to the adoption of the ABA's Canons of Professional Ethics in 1908. These 32 Canons provided the profession with its first set of principles governing the conduct of lawyers.

The Canons served a valuable function in establishing the principle that lawyers had a duty to be ethical in their professional work. In retrospect, however, the Canons represented but an early stage in the development of professional standards for lawyers.

In this century, the forces of urbanization, war, economic depression and social ferment began to transform our national life and change the role of the legal profession in American society.

And, as Justice Harlan Fiske

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Inside

New Anchorage District Attorney

Larry Weeks

Larry Weeks, now is his fourth week as Anchorage's District Attorney, comes to his new position after four years as District Attorney in Juneau. Prior to that he was an Assistant Attorney General in Anchorage for two years, where he mainly worked in areas of child support enforcement, human rights and O.S.H.A. violations.

Weeks believes he was offered the position as head of the Anchorage office because he travelled extensively, trying cases, during his tenure as Juneau's District Attorney, both in Southeastern Alaska and throughout other parts of the state. In Juneau he was in charge of an attorney's staff of 3-4, which is considerably smaller than the attorney's staff of 16-17 he now has in Anchorage, however, Weeks is seemingly undaunted by the task of assuming such increased responsibility.

Weeks is presently not proposing any major organizational changes in the Anchorage District Attorney's Office. He is of the opinion that the office runs far better than is commonly assumed, and he credits his predecessor, **Joe Balfe**, with doing a very capable and low-key job of keeping the office going.

However, there are certain systems he studied in Juneau which he would like to introduce into the Anchorage office and which mainly concern the reorganization of case assignments into a more cohesive framework. In this regard, he has been discussing a team approach to prosecution with his staff, possibly through specialization in types of offenses.

At present, experienced attorneys do intake work and another attorney will take a case through all subsequent steps including trial. Unfortunately, the peculiar imperatives of the court calendar, particularly those of Superior Court, intrude and require frequent substitutions of attorneys which Weeks believes is regretable. A team approach, as envisioned by Weeks, would involve more attorney interaction, so that when an attorney was required to step in as a substitute, he or she would have already acquired some familiarity with the particular case.

In addition, teams composed of both more and less experienced attorneys would function as training units with the ultimate aim of channeling newer attorneys into felony work with some supervision and assistance.

This approach accords with Week's desire to break down the felony/misdemeanor dichotomy. Hopefully, better training, experience and office morale would result. Weeks does not foresee expansion in the Anchorage District Attorney's Office absent more funding from the legislature.

Personally, Weeks hopes to function as an attorney as well as an administrator, however, he allows that it will take a few months to become fully familiar with the office and its particular problems. He would like to do both felony and misdemeanor trial work. In the past three weeks, he reports approximately a dozen trips to court, a markedly lower figure when compared to his Juneau experience.

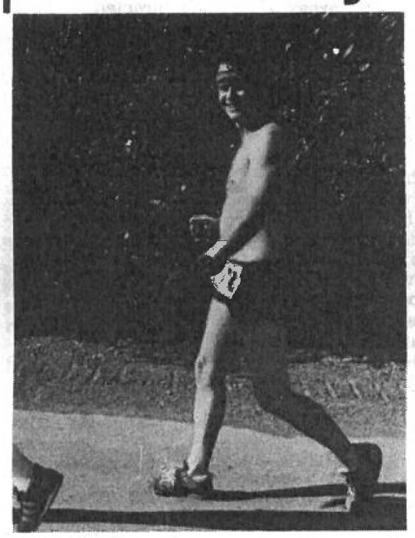
Weeks adopts the idea of a professional prosecutor who practices in accordance with national standards. He would prefer attorneys employed by the state as Assistant District Attorneys to stay with the office and not use it as a stepping stone to private practice. At the moment, he feels longevity in the Anchorage office is good.

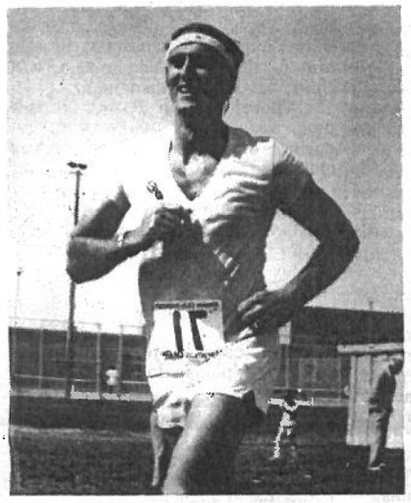
Weeks perceives Anchorage to have some very fine judges, and he has found the public defenders with whom he has dealt to be more able than anticipated, particularly as trial attorneys. This, he feels, is in part a reflection of that agency's head, **Brian Shortell**. He believes it is important for the attorneys in his office to communicate with private attorneys other than those with whom they deal routinely, and notes that he misses the much smaller and more cohesive Bar in Juneau. In Anchorage he hopes in time to become acquainted with as many members of the Bar as possible.

Changes in Trial Scheduling Announced

James Arnold, Third Judicial District Trial Court Administrator recently announced the following changes in trial scheduling for the Third Judicial District. Beginning September 1, 1979, all trials will begin at 9:00 o'clock am.m; run to 12:00 o'clock noon; resume at 1:30 o'clock p.m., and continue until 4:00 o'clock p.m. All motions will be scheduled at 4:00 o'clock p.m. Oral argument will only be permitted in dispositive motions except where authorized by the court. Arnold indicated that for the most part he expects the judges will be limiting oral argument on dispositive motions. Arnold stated that he hoped that these and other changes contemplated in the near future will increase civil time productivity in the courts from thirty to fifty percent.

Lawyers Run June Marathon





Photographs by Justin Ripley

Midnight Sun Baseball Madness

by James H. Cannon

The Fairbanks Goldpanners improved their season record to 5 and 2 by beating the North Carolina Tarheels in an 8 to 2 rout at the 73rd Annual Midnight Sun Baseball Game. The Midnight Sun game is probably the oldest continuing tradition in the interior and marks three days of general solstice madness. The game started at 10:45 and went on past midnight without the use of any artificial lighting. Fortunately, good weather prevailed so it was possible to find the ball without too much difficulty. It should be noted that when the weather is bad, it gets dark enough out that that fielders would have to have the senses of a fruit bat to "see" the ball. The pregame program consisted of Bluegrass music and a display of the alleged miracle curative powers of an elixer being pushed by Dr. Ogsted's Traveling Medicine Show. The FDA was apparently not in attendance, but given the amount of bull they gave a certain mouthwash about stopping colds, they would probably have had an absolute fit if they ever caught Ogsted's act.

The Goldpanners jumped out to an early 5 run lead at the bottom of the first inning by scoring on 4 or 5 errors by the hapless Tarheels. At their first at bat, the Goldpanners were able to bat completely around the line-up while the Tarheels' pitcher probably thought that with the fielders jumping the ball at almost every opportunity, it was going to be a long evening. He deserves credit for hanging in there and keeping the game closer than the score might appear for several more innings. The pitching may have been the best part of the game. Two more runs were scored in the fifth, and one was scored in the seventh by the Goldpanners, making it look like a shutout up until the final moments of the game. With two out in the top of the ninth inning, the Tarheels managed to score two runs but the North Carolina team was unable to dig itself out of the hole created by an error ridden first inning.

40 Attorneys Participate in Anchorage Mayors Marathon

The Bar Association was well represented among persons participating in the annual Mayor's Marathon this June 21. In weather that was pleasant for spectators but painfully warm for runners, almost 400 persons set out on the 26 mile course. The number included at least 30 lawyers, some of whom are pictured here. For several, the run was worth a trip from Fairbanks. For others, it was a repeat performance of previous years' races.

Editorial

Everybody Loses

The Legislature has refused to adequately fund conflict appointments in Criminal cases. The first solution to this problem by the Supreme Court was to cut back on the percentage of individual fees it would authorize for payment. The small number of attorneys on the Third Judicial District Conflicts List for Criminal Cases probably became noticably smaller after learning that their compensation already below the break-even point was to become less for all fees due or to become due through June 30th, 1979. The next solution was a radical one for Anchorage and other Third Judicial District Attorneys in private practice. Namely, Judge **Moody's** Order published in last month's *Bar Rag*, placing every lawyer in the yellow pages on a list of persons required to serve as appointed attorneys in criminal cases in order of their positions on the list. The competence of the lawyers was not addressed by the order. Only attorneys in private practice are required to give their time to this representation. Any time spent over the $1,500 limit in misdemeanor cases and the $2,500 limit in felony cases comes out of the private attorney's wallet.

What results can we expect from this order?

First, the attorneys on the list who have no criminal trial experience, and are therefore incompetent to protect their client's rights and insure them a fair trial guaranteed under the United States and Alaska Constitutions, will probably say so in court on the record and in private to their clients. They will not be relieved by the court, in all likelihood. Instead, they will be advised to associate with other counsel, experienced in handling criminal cases. Counsel experienced in criminal cases may not be able to afford to offer this help unless they are paid more than the court allows for these cases. The money to pay them presumeably would come out of the appointees pocket. If the appointee can't or won't associate—he or she would be well advised to spend the money the court allows on increased malpractice premiums. Over the years, incompetent counsel will become knowledgeable and competent at their clients' and the courts' expense. It will take longer to try cases with incompetent lawyers. Prosecutors will get more convictions and more pleas; but they will have to enlarge staff to handle the new additional appellate caseload resulting from petitions and appeals from persons convicted who claim correctly that they were denied due process. Perhaps we will have the new Intermediate Appellate Court appointed just to handle these appeals.

The worst prophecy concerns the peop e facing criminal trials who have no money and are unfortunate enough to be declared conflict cases ineligible for public defender representation.

They're the ones who have to spend the time.

There must be another answer to this problem. One is a separate conflicts office. It would make sense and save money. The Board of Governors has invited attorneys and local bar associations to work with them to solve this crisis. Maybe with some thought and effort from the organized bar an alternative plan will be found. Ultimately, it would appear that the present one will create more problems than it solves.

Letters

Donna C. Willard, Esq.
President
Board of Governors
Alaska Bar Association

Re: Ombudsman Complaints
A79-0641 and
A79-0642

Dear Ms. Willard:

Please take notice that the Office of the Ombudsman has received the following complaints:

A79-0641: that the Alaska Bar Association has not adequately investigated or resolved grievances filed by citizens against attorneys subject to the Bar Association's grievance and disciplinary procedures and that the employment contract for the Bar Counsel is excessive in salary and vacation.

A79-0642: that members of the Board of Governors have expended excessive amounts of Bar Association funds for travel and associated expenses outside the State of Alaska for activities not directly benefitting the Alaska Bar Association or its membership; that the expenditure of Bar Association funds for the guest speaker at the 1979 Hawaiian Conference was improper.

The Office of the Ombudsman has commenced this investigation pursuant to AS 24.55.110. The Office of the Ombudsman has jurisdiction over administrative acts of the Alaska Bar Association pursuant to AS 24. 55.100 and AS 08.08.010.

Our investigators plan to examine the financial records of the Association on July 30, 1979, beginning at 8:00 a.m., at the Bar Association offices. If this time is inconvenient we will be glad to reschedule the inspection.

Pursuant to AS 24.55.160 we also request copies of the following documents:

1) Minutes of the Board of Governor's meetings for the last two fiscal years;

2) A copy of the employment contract for the Alaska Bar Counsel; and

3) A copy of statistical reports concerning the number and disposition of all grievances filed with the Bar Association in the last two years.

We would appreciate receiving the above information prior to July 30, 1979.

Thank you very much for your consideration in this matter.

Sincerely,
Frank Flavin
Ombudsman

Frank Flavin
Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

Dear Frank:

As you are aware, the Board of Governors is in receipt of your letter dated July 16, 1979, settinf forth two complaints directed at the Board and staff of the Alaska Bar Association.

I found our meeting with you, on July 18, 1979, to be very informative and have relayed to the Board the information that you provided.

After due consideration, the Board wishes me to inform you that all members of this Association are entitled to inspect all books and records not catalogued as confidential. Therefore, we will be pleased to provide you, in the near future, for review at the Bar office, the following records:

1. The Minutes of the meetings of the Board of Governors, together with the Annual Meeting Minutes, for the past two years, after exercise of Executive Session materials;

2. Statistical reports concerning the number and disposition of all grievances filed with the Bar Association for the past two years;

3. The financial records of the Association with respect to the 1979 Hawaii Mid-Winter CLE meeting and Board of Governors' travel and per diem expenses for 1979; and

4. Upon request I will furnish, from my personal files, the brochures and other data concerning the various programs in connection with the American Bar, Western States, and Bar Leadership meetings.

There is no employment contract, in writing, with Bar Counsel. However, I can inform you that, on May 19, 1979, the Board unanimously approved a one year contract, retaining Mr. Garrison at an annual salary of $45,000.00 and providing for thirty-five days of paid vacation. This constituted an additional twenty days of vacation over his 1978 contract, in lieu of any salary increase.

Furthermore, Mr. Garrison's right to take his vacation was restricted to times when no bar examination was in progress and when no heavy case load on admissions or discipline was pending.

Of further benefit to you may be the fact that Mr. Garrison has been admitted to the practice of law since 1966 and that, prior to being retained by the Bar Association in 1977, he was an Assistant District Attorney in this state for some five years.

With respect to the Minutes, which will take about two days to review for deletion of Executive Session material, they will be ready for your review on or before July 27, 1979, together with the Discipline reports.

In connection with both Discipline and Admissions matters, we are sure you realize that the Bar Association and the Board of Governors act only as agents of the Supreme Court of Alaska. Therefore, any further requests dealing with either areas should be directed to that entity.

I would request, with respect to the financial records, that your review await my return from the Ninth Circuit Judicial Conference when I shall finally have an opportunity to review and approve the audit, which, as I informed you, is currently being conducted by a Certified Public Accountant. That task should be completed no later than August 3. Also, I would perfer to be present during your examination and would appreciate it if you would coordinate with me.

As I mentioned earlier, the foregoing information is being provided to you in your capacity as a member of the Alaska Bar Association. The Board believes, however, that the Association does not fall within the jurisdiction of the Ombudsman. Not only has the Superior Court in **Horowitz v The Alaska Bar Association** determined that we are not a state agency but also, similar rulings have been made at the administrative level. Specifically, admission to the State Employee Retirement System and to the State Employee Credit Union have both been denied.

Therefore, the Board, at this time, respectfully declines to recognize any jurisdiction which you may feel you have in your offi cial capacity. Furthermore, nothing contained in this letter or any agreements which we might arrive at with you to provide materials constitutes a waiver of the Bar Association's right to assert the jurisdictional issue and any other defenses which it might have.

If I can be of any further assistance, please do not hesitate to call.

Sincerely yours,
ALASKA BAR ASSOCIATION
Donna C. Willard
President

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The President's Column

The Dissenters

It is virtually axiomatic that every culture, religion or civilization worthy of recognition has been created and therefore strengthened by courageous individuals who could rightfully be denominated dissenters. In fact, one does not have to look far for examples whether it be a Clarence Darrow, Chief Justice Marshall, or Emile Zola.

In contemplating history, and those dissenters who in many respects altered the world, one facet common to all emerges; each had the courage of his or her convictions and each stood forth and was counted.

It is a rather sad commentary, with respect to some members of this Association that they fail to meet the foregoing description. While undoubtedly each could be called a "dissenter," all lack the integrity necessary to stand up and be recognized. And that brings me, by a rather diversive route, to what I have to say.

Courtesy of the *Anchorage Daily News* on June 4, 1979, the Board of Governors, already meeting in Sitka, was informed that certain members of the Association, including "anonymous sources" had questions concerning the operation of the Association. Scattered among the inquiries were serious, unsubstantiated allegations which, almost without exception, had never been addressed to any member of the Board.

Those innuendos were whispered throughout the Annual Meeting in Sitka and were utilized to garner

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Random Potshots

by John Havelock

"The Changing Role of the Lawyer in American Society"

Too Many Lawyers?

Why is this nation beset with so many lawyers? America has more lawyers per capita than any other country in the world. Yet several other Western European countries boast a level of industrial advance the equal or greater than the United States. The industrial might of Japan gives no major role to its handful of lawyers.

The reason: the United States, in contrast to our homogeneous cousins, is the most pluralistic nation the world has ever seen. It is a country of interest groups, each of which proclaims first its independence "to do its own thing." Lawyers are a cost of that independence.

Alaska is not the only state that, at its own convenience, wants to go it alone. The North Slope Borough is ready to go it alone against the state and the country, but most municipalities have analogous aspirations, each held in check only by the realities of its own power.

Whether teamsters, small businessmen, homesteaders or teachers, as economic individuals or groups, we share an atomistic perception of the world which encourages us to curse every limitation on self-interest as "unnecessary."

Ancient Regime

Such freedom for individuals and groups to define their own rights and obligations has not always been so extensive. Pluralism on its current scale is only a couple of hundred years old.

The scope of a person's rights and obligations, under the preceding social assumption, was determined by a set of status relationships about which there was general consensus in the Western world. Rights and obligations were established by customary law, presumed to be absolutely fixed in nature, reinforced by the central authority of the church.

The organizing authority of Christian faith and organized religion in the Middle Ages is hard to recreate for the Western mind of the twentieth century. Not only did the Church exert direct authority over the kings and princes of the West but it instilled in all people a unified world view, an understanding of life present fixed by its relationship to life past and life after.

The structure of existing society was established, inescapable and a matter to be taken for granted in every social transaction. The Reformation loosened these assumptions but did not break them.

In such a world, the idea that people could "do their own thing" would be viewed as simple madness. Life was a pre-ordained structure of interlocking rights and obligations founded on custom organically interrelated to the fixed occupational titles of the times.

Moreover those times were fixed. The concept of change and progress which now underlies the nature of social transactions were alien.

Pluralism's Excesses

In our present world of extravagant pluralism we are as guilty of ignoring the requirements of community and the inter-dependence of man as the man of the Middle Ages was guilty of ignoring the dynamics of change and the potential of freedom.

Lawyer as Weaver

Our national culture requires constant mediation between interest groups. We are constantly reweaving a patchwork fabric of rights and obligations among aliens. Our legal profession are the weavers, restating in public and private law the nature of the rights and responsibilities which custom no longer defines. Litigation patches the holes which increasingly seem to be beyond negotiable resolution.

Perhaps we will evolve (if not return) to a simpler social structure. But at the same time, dozens of other forces are making for increased individualization with its attendant costs in conflict where rights collide, collisions which need the attendance of lawyers.

Escape From Freedom

The economy could consolidate along massive, non-competitive lines of corporate order or, as some would have it, we will abandon the complex technologies which demand such complete interdependence and return to tilling the soil by hand, baking our own bread.

But these or other changes, simplifying the structure of society, will require limitations or substantial sacrifices in individual freedom. Maybe we're ready for that. Freedom without community may be a charade. But for all that we curse him, the lawyer is the person that makes the present system of elaborated freedoms work in the reality of a complexly interdependent world.

The Trouble With Lawyers

The trouble with lawyers is not that there are so many of them but that they claim too broad a service monopoly, charge too dearly for it and think too highly of its value.

The "ethical" problem which is perceived by the public and many bar leaders to be the problem with lawyers is not. The contemporary social role of lawyers is ethically neutral. To be neutral in a time of moral crisis is to be immoral. The public sees this as a problem with lawyers. Bar association leaders who talk about "ethical" problems are referring to refinements in the rules of neutrality. That is not what the public sees as wrong.

Priest as Lawyer

Lawyers have not always been value free. The occupational predecessor of the lawyer, a couple of hundred years ago, was the priest. While the priest did not enjoy a monopoly on the resolution of disputes between men, he had the lion's share of the business. He did have a monopoly on disputes between man and God which were perceived by the average fellow as being much more important in those days.

If there was a tendency in ancient times, on the part of the priesthood, to pump up the importance of disputes between man and God which elevated the importance and size of the role which the priest accordingly played in society, so might it not be true now that lawyers tend to expand and fatten their roles on disputes between men?

Neither of these roles were parasitic. Even in the corporate society of the Middle Ages, disputes were an inherent aspect of the condition of man. The peaceful resolution of disputes called for skills of the highest order for the authority of mystique.

Justice or Expediency?

America is the most pluralistic society in recorded history. In a pluralistic society, the decline of central authority has required both more specialized, dispute settling skills and a "situational" value-free orientation of the practitioner. The lawyer's job is to realistically adjust differences, not to do "justice" in an abstract sense.

Conceptually, there is enormous merit in both the medieval and modern dispute management systems, considering the nature of the society served by each institution. Each profession and practice has developed a uniform, rigid, and demanding training. The contemporary legal profession looks a bit more like a medieval guild than a priesthood but it partakes of both. In either case there is a cost of service, heavily influenced by a monopoly position.

A Flawed Monopoly

The Reformation may have been due in part ot the claims of the priesthood to a monopoly not just on disputes but upon communication and transactions between man and God. Today, lawyers claim a broad monopoly on communicative transaction, which also do not directly involve disputes.

Entrance and departure from a status relationship such as marriage, the transfer of real estate, the transfer of property upon death and a great range of other transactions all require the intercessing and incantations of lawyers.

The Supreme Court of Alaska is now considering a rule defining the practice of law to protect and reaffirm this monopoly by preventing persons not lawyers from giving advice for compensation regarding "the effect" of any instrument or papers "creating, limiting, claiming, granting, terminating or otherwise securing legal rights; or giving counsel as to any person's legal rights or obligations." That covers a very broad territory in an increasingly legalized world.

The Guild Disintegrates

A very large volume of the transactions of our society, including minor disputes, are managed by persons who do not have the extensive, rigorous and expensive training that we give lawyers. More could be.

The process of hierarchical subdivision of dispute and transaction managment services is already underway through reorganizaiton of the bar and the rise of associated professions. There are many categories between the Wall Street lawyer who earns a quarter of a million dollars a year and the journeyman practitioner in Anchorage who is fighting to clear twenty-five thousand. These differences are increasingly reflected in the training and selection process as well as cost of service.

The Federal Trade Commission has been focusing in to good effect on some of the guild rules of lawyers which directly or indirectly support fee schedules for services. However, the scope of the official monopoly is still basically left to state laws.

Sunset or a New Sunrise?

The existence of the Alaska Bar Association as a state sponsored agency is up for "sunset review" in the next session of the legislature. The occasion could be used to good advantage for a general review of the role of the lawyer in Alaskan society by lawyer and layman alike.

This Potshot is based on articles previously published in the *Anchorage Daily News*.

The Court Fight

1964-1970

by Russ Arnett

The fight between the Alaska Bar Association and the Alaska Supreme Court caused by...but I am getting ahead of myself.

The Alaska Bar Association was nine years old when the Court fight erupted, and the Supreme Court a youth of five. Attorney General George Hayes told the Anchorage Bar that there was pressure for the Alaska Bar to be placed within one of the three branches of government, and if we did not voluntarily embrace one branch of government we might not have a choice. The argument was made by others that because the Bar received no Legislative appropriation and was self-supporting there was no reason for the State to interfere with us. Really, the Court Fight should never had occurred because we settled the whole matter at that bar lunch. George was asked whether or not the question arose because the Alaska Bar Association was not on the chart. We agreed that it be placed on the chart, *but no lines.*

Apparently unaware that the matter had been disposed of, the State Senate adopted a resolution in 1963 requesting that the Alaska Supreme Court with the assistance of the Alaska Bar Association and the Judicial Council propose rules placing the Alaska Bar Association within the Judicial Branch and recommend the necessary legislation to the 1964 Legislature. Responding with gusto, in January, 1964, the Supreme Court forwarded to the Senate new rules for admission and discipline which were to become effective in June 1964. The Supreme Court recommended that the Integrated Bar Act be repealed and that a new association be created. The Supreme Court issued an order effective June 1964 abolishing the existing bar association and creating a new bar association.

The Board of Governors objected that the Supreme Court went far beyond the request of the Senate resolution. The Supreme Court interpreted a letter from a member of the Board of Governors as "an indirect refusal to serve as a board of the new association," and ordered removal of the Board of Governors. In quick succession followed orders transferring all assets, including bank accounts, books and records, to the new bar association and removing **Pete Kalamarides** as Executive Secretary and Admissions Director of the bar.

A writ of sequestration issued by the Supreme Court was served upon the bank where the association maintained an account. The bank, because of the unusual nature of the writ, refused to immediately honor it upon advice of counsel. The Trooper executing the writ then pulled a gun on the bank employee and the money was delivered up. This act had the effect of crystallizing bar opinion.

In the files of the Bar Association the Supreme Court found a completed grievance where the Board of Governors had exonerated **Neil McKay**. The Supreme Court disbarred him on the basis of the file and gave this as an example of the unsatisfactory way the Bar had been handling grievances. Later this was reduced to suspension with an order for restitution. In 1970 the Supreme Court, enlarged to five members, including one of the attorneys for the Bar in

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The President's Column

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signatures on several last minute resolutions.

Unfortunately, when the business meeting was held on June 9, the members of the Board, who had been subjected second hand and through hearsay to the gossip, were never confronted.

As a result, it was felt that the issues, whatever their merit, had been abandoned, and I was urged not to present a challenge which would both identify the critics and provide the Board with an opportunity for response.

In the abstract, that was undoubtedly sound advice because this Association has so many positive goals to accomplish on behalf of its members and the public. Indeed, if everything desired were to become reality, all 1,300 members would have to actively contribute.

Unfortunately, at this point in time, the most which can be said is that the advice given was well meant but unrealistic.

For whatever reason, the State Ombudsman has now been presented with two formal complaints each rehashing, (and in no way more informative) the back room allegations first aired in the *Anchorage Daily News* and thereafter reiterated and perpetuated in Sitka.

Any attorney reading the charges, set forth elsewhere in this edition, can readily imagine the frustration in attempting to respond. Quite apart from the fact that the cloak of anonymity has once more been employed, peruse carefully the charges.

"Excessive" in terms of what? "Improper" in terms of what? What grievances have not been adequately investigated or resolved? What meetings did not benefit the Association?

Sadly enough, these questions would not now have to be asked nor even answered, if the persons with the questions and the sub rosa criticism had come forward and simply asked for a response from any member of the Board. The ombudsman would not be involved. The situation, which continues to fester, and to drain energy and resources into negative avenues, would never have developed.

Mr. Flavin, as a member of the Alaska Bar Association, will of course receive a full response to his inquiries. Presumably, he will pass that information along to the anonymous critics. Hopefully, the matter will be terminated and the staff and Board of this Association will be able to turn their attention to positive programs of benefit to all.

Anchorage Bar Report

In order to increase its active membership, the Anchorage Bar Association has distributed a survey to its members to poll them on what directions they feel the Anchorage Bar Association should be taking in the future. It is requested that everyone who receives one of these surveys fill it out and return it to the Anchorage Bar Association so that we may determine your desires. In order for the association to function, we must know what the members want. With proper participation the Anchorage Bar Association can be truly representative and have a strong voice in representing the local lawyers.

Recently the Trial Court Administrator's office has instituted a new portion to the trial setting conference order. The new portion requires submission of affidavits summarizing testimony of all witnesses that counsel expects to call at trial. The opposing parties are giving 15 days to oppose or contest the affidavits in some way or the affidavit can be used in lieu of the witness being called to trial. The rule seems poorly drafted in that it does not specify whether the affidavit is that of the attorney or the witness. Further, the order does not specify what constitutes a contest of the affidavit. One wonders if conflicting affidavits are sufficient. The rule does not seem to be particularly well thought through and it is of great concern to the Anchorage Bar that such a rule was instituted without any consultation of the practicing bar in Anchorage. There is also a question as to the source of authority for promulgating the rule.

The Anchorage Bar Association has been in contact with the Alaska Supreme Court regarding the new maximum fee schedules and the resulting Third Judicial District order of mandatory appointments from the private attorneys in Anchorage. The list does not include attorney generals or attorneys who are privately employed by corporations. If mandatory appointments on the part of the bar are part of their professional responsibilities, then it would seem that all attorneys admitted in the State should be subject to such apointments and not just those engaged in "private practice" and picked up from the yellow pages of the telephone directory.

More importantly, however, there are serious questions as to the adequacy of the system to provide competent counsel to indigent defendants. Counsel who do not practice in the criminal courts may be so far out of touch as to be unable to adequately represent a criminal defendant in a felony case. The appointed attorney is given the opposition of securing someone else to represent the defendant but with the limitations on remuneration now imposed by the Supreme Court, this may well involve the appointed attorney actually paying money out of his own pocket to insure an adequate defense if he is personally incapable of handling the matter. The Anchorage Bar strongly recommends that consideration be given to the establishment of a second public defender agency to handle conflicts appointments or to enter into a contract with private firms to handle all such appointments.

In the upcoming meetings, we hope to have Chief Justice **Rabinowitz** address some of the problems facing our court system under the mandatory appointments. Also coming in about a month will be a presentation of plaques to those members of the bar who have been admitted for 25 years.

The regular meetings of the Anchorage Bar Association are held on Mondays at noon in the Westward Hilton. The luncheon price is $6.50.

Letters to the Advertisers

A Good Man
PO Box 3619
Anchorage, Alaska 99510

Dear Sir:

Certainly. I am usually in the market for a good man, after all, a hard man is good to find, I mean, a good man is hard to find.

I admit my adventures are not as well traveled as yours, however, while in the confines of our Alaska locale, I jump out of still flying airplanes, travel rushing rivers in frail canoes, make a living off pipeliners, manage legal offices (attorneys' usually describe me as being tough to work for), have my own real estate office for side ventures, and so far have avoided paying Uncle Sam any tax—quite legally—for the two years I've run my own business. However, the last time I carried my hired-out gun, I forgot and got picked up at Anchorage Airport, rather embarrassing.

If you visit Fairbanks, and we both calm down long enough, want to have coffee?

Please send pictures with your resume, waist up will do to start. Some personal references would be nice, but I usually prefer to form my own opinions on such subjects, personal preferences and all. Some advance notice of your intended visit would be appreciated. I'll polish my coat of armour—this sounds like it could be a rather strenuous meeting.

Thank you for your prompt reply.

Annie

P.S. All of the above is true for me. Can you say the same? During normal hours, try 452-1141.

The Court Fight

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the ensuing Federal Court action, decided "This court has the power on its own motion to correct mistakes, and resulting injustices, which have occurred concerning regulation of the legal profession. **Neil S. MacKay** is reinstated to the practice of law in Alaska."

During the bar fight the voters were to decide whether Justice **Arend** should be retained. Certain lawyers prepared large newspaper advertisements opposing his retention. One such advertisement, after discussing a Supreme Court decision in which one of the lawyers had been unsuccessful, advised the public that Justice **Arend** did not believe in free speech and therefore should not be on the Supreme Court. The public readily grasped this concept. Justice **Arend** thought it unjudicial to respond in public and consequently was defeated. He later showed no bitterness to the Bar. Critics of the Missouri Plan for judicial selection and retention need only look at this election to see that judges can indeed be defeated.

At least two statewide meetings of the Bar were held in Anchorage. At one it was asserted that "If you attempt to kill the king you had better succeed." Special assessments of the Bar were authorized. The Bar decided what we really needed was a good lawyer so we hired one from Long Beach. The Supreme Court, not to be outclassed, hired a lawyer from Baltimore. Suit was filed by the Bar in Federal Court. After two hearings before a three judge District Court the parties were induced to submit the disputes to a panel appointed by the American Bar Association, consisting of the chief justices of Washington and Oregon and **Al Schweppe** of Seattle. This panel decided in favor of the Bar. New rules drafted by the Bar were promulgated by the Supreme Court.

Requiescat in pace.

Seminar on Persuasion in Civil Litigation to be Presented

by Roger Holl
President,
Kenai Peninsula
Bar Association

On Friday, August 24, the Kenai Peninsula Bar Association will sponsor a one day seminar on Persuasion in Civil Litigation. The program will commence at 9:30 a.m. at the Kenai Court House in Kenai. The curriculum is designed to assist the practitioner in developing skills of persuasion in advocacy at all levels of civil litigation.

The seminar will be presented in three parts: Pertrial Persuasion, Persuasion Through Witnesses and Direct Persuasion. The morning session on Pretrial Persuasion will be presented by **Dicky Grigg**, who is a board certified personal injury trial lawyer from Texas and attorney **Henry L. Taylor** of Anchorage. Mr. **Grigg** will discuss techniques in client and witness interviews, investigation, pleadings and the trial notebook. Mr. **Taylor** will discuss settlement with new ideas for small and large cases, as well as the persuasive use of video tape brochures.

In the afternoon sessions, Anchorage Attorney **Wendell P. Kay** will discuss direct examinations of witnesses. **J. Patrick Hazel**, Associate Professor of Trial Advocacy at the University of Texas, will discuss cross examination of witnesses. Both of these presentations will include demonstrations.

Broadus A. Spivey will make a presentation on voire dire, opening statement and summation. Mr. **Spivey** is a board certified personal injury trial lawyer in the State of Texas, and is Director of the Texas Trial Lawyers' Association.

Wendell P. Kay will conclude the program with a discussion and demonstration of final argument.

There will be a $10.00 registration fee to defray costs.

The program is scheduled on a Friday in order to allow attending attorneys and their families enjoy the outdoor activities on the Kenai Peninsula for the weekend. On Saturday, August 25th, the Kenai Peninsula Bar Association will host a picnic at Captain Cook State PSark for attorneys, their families and guests. Those who do not wish to drive may utilize scheduled air service to the Kenai Airport. The Kenai Peninsula Bar Association is pleased to offer a quality program for the benefit of Alaska Bar Association Members. We appreciate the services of the well qualified bar members from Texas and Alaska who are assisting us in presenting this Continuing Legal Education Program. Those planning to attend are requrested to contact **Roger Holl** at 283-7167 to make reservations for the seminar.

Tax Committee Report:

Incorporation in Alaska: Some Tax Considerations

Part II

by William Van Doren

This is the second of a two part article dealing with incorporations in Alaska and intended for the general practitioner, not specializing in taxation. This article assumes that the client has an ongoing partnership or sole proprietorship which he wishes to incorporate.

General Considerations

Some of the advantages of incorporating an ongoing business are similar to incorporating a new business as discussed in the last article. Counsel are reminded of the different tax rates for corporations as was explained in the prior article and the possibility of accumulating corporate earnings at the lower tax rates for legitimate business purposes.

Other considerations such as getting earnings to the owners and the problems that can arise with respect thereto were mentioned in the previous article and counsel are reminded that the same considerations generally apply to incorporating on-going businesses. One of the factors that will greatly assist in proper planning of "mid-stream" or incorporating an ongoing business is that the business has a "track record." By reviewing the business history of the client, much more reliable projections of the likely tax impacts and advantages can be obtained, usually with the assistance of the client's accountant or tax advisor. Thus whether incorporating the business will save income taxes will be rather easier to determine than the projected savings (if any) in the new business.

Some of the advantages in incorporating an ongoing business that were not mentioned in the previous article because they were generally not applicable include pension plans, certain fringe benefits for employees and working (employee) owners such as health and welfare plans. The cost of such plans is usually deductible to the corporation but not income to the employee. Pension and disability plans are usually taxable to the recipient only when received and the amounts that can be set aside tax free are generally higher than those allowed for unincorporated businesses. The special problems and mechanics of pension plans and fringe benefits will be covered in later articles appearing in the *Bar Rag*. Counsel are reminded to also look at the timing of the incorporation and choosing the taxable year end, as briefly outlined in the previous article. The business history of the client will greatly facilitate such timing and year-end considerations.

As indicated in the previous article, corporate formalities must be followed as the government, but not the taxpayer, can treat the lack of formalities to the advantage of the government. The problem of debt vs. equity needs re-emphasis here also, as set forth in greater detail last month. The same considerations of care and attention to detail in electing sub-chapter S status of those businesses where incorporation might be needed but losses are occurring are also to be kept in mind.

Transferring Assets—Section 351

One of the requirements of Section 351, dealing with tax-free incorporations, is that the owners before incorporation have substantially the same ownership interest after incorporation. Assuming that a sole proprietor wishes to incorporate, he must have at least 80 percent of the voting strength of all issued stock immediately after the transfer of the assets to the business. Thus if two unrelated individuals decided to incorporate their respective businesses in a single new corporation, one having 78 percent of the assets, the other 22 percent of the assets (and stock being appropriately issued), the incorporation will not be tax free to either. If each formed a corporation and then quickly merged the two, that probably wouldn't work either. Of course, it must be remembered that the stock must be issued and failure to issue the stock has been used to deny tax free incorporation. In the case of a partnership, the owners can incorporate tax free and not necessarily in the same proportion as the partner's interests in the assets transferred.

When assets are transferred to a corporation, the stock is issued at a value normally the same as the value of the assets transferred. If the transferors obtain property or cash, in addition to the stock, gain (but not loss) may be recognized to the extent of the property or cash received. Often incumbered assets are transferred to the corporation as part of the business. With respect to depreciable property and subsequently encumbered property, where the listed tax basis is less than the amount of the encumberence assumed by the corporation, the difference is taxable to the transferors either as ordinary income or capital gain depending on the asset and the total of liabilities. Where depreciable property is transferred and the recognition rule applies, the gain recognized might well be ordinary income pursuant to the provisions of Section 1245.

Moreover, the IRS has taken the position that each asset must be treated separately. For example, if the taxpayers transfer a machine to their corporation with an adjusted basis of $20,000, a fair market value of $30,000, and a building with an adjusted basis of $70,000 and a fair market value of $20,000, receiving stock from the company worth $45,000 and $5,000 cash, the $50,000 loss on the building would not be recognized but the $10,000 gain on the machine would be recognized as ordinary income (assuming Section 1245 recapture rules would apply) but only to the extent of an anquot amount of cash received (here: $3,000).

The tax free exchange of assets for stock can also be destroyed when the IRS can detect a tax avoidance motive in transfering encumbered assets. The tax avoidance aspect is that which is personal to the transferor and is without business purpose. This does not mean that en-

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Tate

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Stone observed in 1934: "Before the bar can function at all as a guardian of the public interests committed to its care, there must be appraisal and comprehension of new conditions, and the changed relationship of the lawyer to his clients, to his professional brethren and to the public."

By 1964, it became clear that the original Canons no longer reflected the realities of a changing society and profession. Therefore the ABA, at the request of then President Lewis F. Powell, Jr., created a Special Committee on the Evaluation of Ethical Standards to undertake a "searching re-examination of the 1908 Canons." The committee was to recommend whatever changes were deemed necessary to make the profession's ethical guidelines more effective and more consistent with changes in the law and legal practice.

This special committee produced the ABA Code of Professional Responsibility, which was adopted by the House of Delegates in 1969. This model Code is, of course, only advisory to the state courts and agencies that regulate lawyer conduct.

The adoption of the model Code represented a major advance in providing guidance to the legal profession. As with the Canons, it was an impressive work for the times and conditions in which it was developed.

In retrospect, however, it becomes apparent that this effort too was a transitional one—more or less representative of an adolescent stage of growth in the profession's ethical standards.

As we approach the 1980's, it seems evident that tremendous changes have occurred in the profession and in our society—changes that simply were not contemplated by the drafters of the model Code. In the last decade alone, we have witnessed a virtual explosion of laws and regulations, coupled with an unprecedented expansion of legal rights and remedies available to individuals.

As the profession strives to redefine our role to meet the legal needs and demands of our modern American society, we are confronted with fundamental ethical questions that must be answered—perhaps in radically different ways.

For this reason, the ABA, at the request of then President Wm. B. Spann Jr., created the Commission on Evaluation of Professional Standards in 1977.

The Commission, which is chaired by Robert Kutak of Omaha and is composed of both laypersons and lawyers, was given two tasks. The first is to examine the Code of Professional Responsibility from both a substantive and procedural viewpoint to determine whether it is current with contemporary trends in legal practice. Second, the Commission was asked to develop recommendations for change if a determination was made that all or part of the Code was now out of step with the current needs of the profession and the public.

The Commission's aim, however, is not only to update the current model Code, but also to produce a document that will differ from past ethical standards in three significant respects.

First, the new Code of Ethics will be more enforceable, by making more explicit the sanctions that may be imposed against lawyers who violate it.

Second, the new Code will be more understandable, by making more explicit the spirit of, and rationale for, specific standards.

And third, it will be more adaptable to constant change, by utilizing a new format that will permit periodic updating of information relating to professional responsibility.

The Kutak Commission has been hard at work now for nearly two years.

Today, I would like to outline for you the current direction of the Commission's thinking on some of the tough issues which confront it. I should point out that Commission members will discuss their thinking on these and other ethics issues during the ABA Annual Meeting next month in Dallas. The Dallas meeting will also offer the Commission the first opportunity to solicit comments from Association members on the issues they are examining.

One of the most complex problems confronting the Kutak Commission is attorney-client confidentiality. The dilemma facing the Commission is whether the principles underlying attorney-client confidentiality, great as they are, may be outweighed, in some instances, by other, more compelling interests.

For example, what is a lawyer's ethical duty when he knows that a client has committed perjury? Should he report the perjury and avoid a "fraud upon the court," or does he own a greater duty to preserve the secrets and confidences of his client?

The current model Code gives little guidance to the lawyer attempting to solve this dilemma. if a lawyer follows the directives of Canon 7, then he will not "knowingly use perjured testimony, participate in the creation or preservation" of false evidence or "assist his client in conduct" known to be fraudlent or il legal.

However, Canon 4 of the Code requires that a laywer "not knowingly reveal a confidence or secret of his client" nor "use a confidence or secret of his client to the disadvantage of the client." The directives of Canon 4 are based on the belief that both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets.

These contradictory positions—along with the fact that existing case law does not clarify the attorney's dilemma—demonstrate the need for a new rule which will balance the interests of protection for both the client and public.

A second attorney-client confidentiality question that will be clarified in the revised Code involves the ethical responsibilities of the corporate attorney.

Chief among the ethical questions facing attorneys who advise corporations are:

To whom is the corporate attorney responsible—the company's shareholders, management, directors, or to all of them?

Whom should the corporate attorney represent if the interests of a company's shareholders, management and directors are in conflict?

What happens if a corporate attorney accidentally discovers questionable, or potentially illegal, conduct within a corporation? Should the attorney remain silent, report the suspicions to the board, resign, or "blow the whistle" on the client?

The current Code gives little guidance to the corporate attorney faced with these questions. Canon 5 simply states: "A lawyer employed or retained by a corporation or similar entity owes his allegiance to that entity" and not to any individual.

The lack of clear guidance on these questions and an increasing number of Securities and Exchange Commission cases being brought against lawyers in these areas have made theirm resolution a top priority.

Another tough issue confronting the Kutak Commission is the need to formulate a rule which will more clearly state a lawyer's responsibility for the delivery of legal services.

Canon 2 of the current Code simply states: "A lawyer should assist the legal profession in fulfilling its duty to make legal counsel available."

Lawyers have traditionally assumed responsibility for providing legal assistance to the indigent and to persons who cannot afford the legal services they need. This responsibility has, in part, been carried out through the organized bar's support for the Legal Services Corporation and by individual lawyers participating in bar programs.

Aditionally, many lawyers have chosen to fulfill their responsibility by directly providing legal services to persons who cannot pay for them. These lawyers charge no fee or a reduced fee to persons of limited means.

Although organized efforts through the bar and individual efforts by many lawyers help to fulfill the profession's responsibility for pro bono service, the question arises, "Should the responsibility be borne by each lawyer individually?"

By this I mean, should each individual lawyer be required to discharge the pro bono responsibility by giving so many hours per year to such service, or by making financial contributions to programs that provide legal assistance to persons of limited means?

Let me comment that I personally do not favor a rule mandating pro bono work. But I was disappointed that a recent survey conducted for the *ABA Journal* indicated that only three out of five lawyers are contributing their services in the public interest area. The survey should have shown that every lawyer is engaged in pro bono work. It is clear that, unless lawyers voluntarily contribute their time and energies to the public interest, there will be increasing demands for mandatory pro bono.

These are just a few of the tough questions related to the delivery of legal services which the Kutak Commission is considering.

Another issue confronting the Kutak commission is the "revolving door" movement of lawyers between government agencies and private law firms. Such moves create a great potential for conflict of interest. And, even if the move itself is proper and does not create a conflict, there may be an appearance of impropriety that is of concern to the legal profession.

The current Code does not deal effectively with the revolving door issue, primarily because this was not perceived to be a problem when the model Code was drafted. It is the Commission's thinking that the "revolving door" issue must be clearly addressed in the new Code.

But this issue also presents many difficult questions.

If we do not want lawyers to move freely from one sector to another, will we not have to create a full-time civil service of lawyers who elect early in their careers to work only for the government?

But, total freedom of movement to and from government and private practice raises other questions:

For example, do lawyers take the confidences and secrets of the government with them to private employment, and will they use this information to the detriment of the government?

All of these are serious questions, which the Kutak Commission will be studying carefully.

The Commission plans to have a preliminary draft of its proposals by early next year. Before the new Code is completed, the Commission plans to examine every fundamental ethical issue that has arisen in the last 10 years. Obviously, the Commission's final product will have a profound impact on the way law is practiced in this country and on the way legal services are rendered.

In my unbiased opinion, the lawyers of the country are the greatest people, the greatest profession I know. But we must realize that no profession can be greater than its ethical standards.

As we strive to develop the highest and best ethical standards for our great profession, I believe we will earn the respect of the public—our clients. And, further, I believe that the prominence, influence and responsibility of lawyers in our society, though already great, will increase.

Thank you for your hospitality and for the privilege of speaking to you today.

Alaska Legal Services Board Meeting Set August 17-18

Pursuant to a motion adopted by the ALSC Board of Directors and a request from the Alaska Bar Association, we are giving notice of a special meeting of the Alaska Legal Services Board of Directors for August 17-18, 1979. The place of the meeting has not been set; please call the ALSC office for that information at 272-9431. The agenda will include consideration by the Board of plans to retire a budget deficit; consideration of a staff reorganization plan presented by the Executive Director; consideration of whether to submit a bid to handle public defender conflict cases; election of Board officers; and other matters. The public is invited.

Civil Rules Committee to Meet August 20

The **Civil Rules Committee** of the **Alaska Bar Association** will meet on August 20, 1979 at 4:00 p.m. in the library of Alaska Legal Services Corporation at 524 West Sixth Avenue, Anchorage, Alaska. The committee will consider a number of proposed Civil Rule changes submitted to it by the Alaska Supreme Court. Copies of the matters to be considered can be obtained by contacting **Don Clocksin**, the Chairman of the Civil Rules Committee at 272-9431. Members of the Bar Association and the public at large are invited.

Bar Rag Directors

Pursuant to Article XI of the By Laws of the Alaska Bar Association, **Donna Willard**, President, announced the appointment of the following persons to the Board of Directors of the Alaska *Bar Rag:*

Wendell P. Kay
R. Stanley Ditus
John E. Havelock
Edward A. Stahla
James R. Blair
William W. Garrison
Edmond W. Burke

The members serve for a one year term and are charged with supervising capital, fiscal integrity and selection of the Editor in Chief.

Coming Events

August 17, 18—Alaska Legal Services Board of Directors Meeting. Call ALSC office 272-9431 for place of meeting.
Sept. 6, 7, 8—Alaska Bar Association Board of Governors' Meeting in Anchorage, Alaska.
Sept. 8—Institute on the New Bankruptcy Act, Anchorage.
Sept. 21—Stress Workshop, Anchorage.
Sept. 28—Institute on the Alaska Lien Law, Anchorage.
Oct. 12—Institute on the Alaska Lien Law, Fairbanks.

Notice to Counsel

I have requested that the Superior Court clerks refuse to accept designations of record on appeal to the Supreme Court which designate the entire Superior Court file, or transcripts of all hearings, without specification. It appears to me that such designations are not in compliance with Appellate Rule 9(d), which states that all matters not essential to the decision by the Supreme Court of the specific points on appeal *shall* be omitted from the record.

The designation of more material for the appellate record than is actually necessary delays the appellate process, both because of the time required for the Clerk of the Superior Court to prepare and copy the record, and because of the additional time required for the Supreme Court and its staff to sift through the record to find the truly essential material. Large designations of record also increase the cost of the appellate process, both to the litigants and to the public treasury.

As you are well aware, Superior Court case files often contain a great deal of material which is highly unlikely to be necessary to the decision of points on appeal; for example, unused form orders submitted for the judge, notices of taking and postponing depositions, and the return of service of subpoenas. Counsel for the appellant is in a much better position than is the Clerk of the Superior Court to determine what material actually should be included in the record on appeal, because of his or her legal training and familiarity with the case.

If an appeal is transmitted to the Supreme Court with a designation of the entire Superior Court file, and without an indication that counsel and the Clerk of the Superior Court have begun to take steps to designate specific items for the record, we will refrain from docketing or otherwise processing the appeal until a more specific designation of record is submitted.

Thank you.

Robert D. Bacon
Clerk of the Supreme Court

Bankruptcy Reform Act Seminar Scheduled for September 8, 1979

The Continuing Legal Education Committee of the Alaska Bar Association has scheduled a seminar on the Bankruptcy Reform Act of 1978 to be held in Anchorage on Saturday, September 8, 1979. The seminar will be held at the Anchorage Westward Hilton in the Alaska Room and will run from 9:00 a.m. to 5:00 p.m. with late registration at 8:30 a.m.

This one day seminar will present an overview of the new law—including comparisons with the present Code—approximately one month prior to the effective date of October 1, 1979 of the new Act's major provisions. The new Act dramatically alters the substantive, procedural and administrative aspects of the rights and obligations of debtors and creditors.

The faculty for the seminar includes: **Lawrence P. King,** a professor of law at New York University School of Law, as well as a member of The National Bankruptcy Conference and Editor-in-Chief of the Treatise, COLLIER ON BANKRUPTCY; **Gerald K. Smith,** a partner in the Phoenix, Arizona law firm of Lewis & Roca, who is also a member of the National Bankruptcy Conference and a contributing editor to COLLIER ON BANKRUPTCY; **Dillion E. Jackson,** a partner in the Bellevue, Washington law firm of Keller, Jacobson, Hole, Jackson & Wentz, who has been a frequent speaker at state and national programs on consumer-debtor matters, most recently the Bankruptcy Reform Act seminars sponsored by the Practising Law Institute; and the Honorable **J. Douglas Williams, II,** Bankruptcy Judge for the District of Alaska who will act as a moderator.

This Bankruptcy Seminar is being co-sponsored with the Washington State Bar Association in order to reduce costs. Additional information regarding tuition for the seminar will be provided in the near future by the Alaska Bar Association.

Mandatory Appointments Lists

On Monday, July 16, 1979, the Board of Governors, by conference telephone call, considered Judge **Moody's** recent order appointing all Anchorage attorneys listed in the yellow pages of the telephone directory to a mandatory criminal appointment list.

Among the points discussed were the omission of active private practitioners not listed in that source, possible alternatives to Judge **Moody's** order and a system whereby attorneys from the public sector would be required to perform a similar service.

Concern was also voiced with respect to the right of the criminal defendant to competent counsel and the totally inadequate funding for out of pocket expenses.

As a result, the Board has placed the subject on its agenda for its Fairbanks meeting on September 8, 1979.

Prior to that time, the Board is representing that each local bar association discuss the issues and provide to the Board, prior to September 1, its views. Individuals are also encouraged to submit opinions.

With respect to the establishment of a civil appointments list comprised of attorneys employed in the public sector to handle representation of persons who have a right to counsel in such areas as that recently mandated in Flores vs. Flores, the local bars are encouraged to seek active participation of public attorneys in their discussions.

In the interim, members of the Board will meet with both the Governor and court officials to discuss the concerns which have been raised.

Judge **Carlson,** Acting Presiding Judge of the Superior Court in the Third Judicial District has already agreed to expand the Anchorage listing to include all private practitioners in active status including those out-of-state attorneys with local offices. Similar lists will be provided by the Bar Association to the presiding judges in the other district.

Fairbanks, which has had a mandatory criminal appointments system for several years, reports that its public attorneys are already on a civil appointments list.

Federal Election Law Seminar

WASHINGTON—July 6, 1979—Planning for the 1980 elections comes to the West Coast next month when the Federal Election Commission holds a one-day seminar on Federal election laws in Sacramento, California. The program, which includes three workshops, will be in the California State Capitol on Monday, August 19-21.

The campaign finance seminar will conicide with a two-day, August 19-21, Far West Regional Conference for Election Administration, also in Sacramento. The Conference, which includes nine workshops, is sponsored by the California Secretary of State, the California State Election Board and the Federal Election Commission's National Clearinghouse on Election Administration.

Federal Election Commission Chairman Robert O. Tiernan and Vice Chairman Max L. Friedersdorf will open the one-day campaign finance seminar. All sessions are open to the public at no charge.

The morning will be devoted to discussions of the Federal Election Campaign Act, the Commission, public financing of Presidential elections and the 1980 elections. Those attending will have the opportunity to meet and ask questions of the Commissioners and FEC staff specialists.

Three workshops will be conducted concurrently during the afternoon on campaign reporting requirements, politicial action committee and political party committee activities.

Further informaiton is available from the Federal Election Commission by calling toll free 800/-424-9530.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

IN THE MATTER OF AN AMENDMENT OF RULE 37(B) OF THE GENERAL, ADMIRALTY, BANKRUPTCY AND CRIMINAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA.

ORDER

IT IS HEREBY ORDERED that Rule 37(B) of the General, Admiralty, Bankruptcy and Criminal Rules of the United States District Court for the District of Alaska is amended whereby any amendments to the rules shall be posted and made available in the Clerk's Office.

DATED at Anchorage, Alaska this 19th day of 1979.

James A. von der Heydt
Chief Judge
James M. Fitzgerald
United States District Judge

Taxation Committee Annual Report for 1979

In late 1978, the Board of Governors of the Alaska Bar Association approved the formation of a Taxation Committee, and appointed the initial membership of the committee. Subsequently, on January 18, 1979, the Taxation Committee held its organizational meeting. The membership discussed the goals of the committee, and created the following subcommittees:

(1) **Legislative Subcommittee.** The four members of this committee (representing Anchorage, Fairbanks and Juneau) will attempt to keep a constant monitoring upon tax and tax-related legislation which is before the legislature. The Committee intends to review such legislation, and where appropriate, make recommendations to the legislature. In addition, we plan to recommend needed legislation in the tax area. We will work with the Taxation Committee of the CPA Society, and propose unified legislative recommendations, where possible. **George Goerig** and **Ralph Duerre** are Co-Chairman of this subcommittee, and the other members are **Franklin Fleeks** and **Steve Pearson.**

In April, the Taxation Committee met and discussed tax legislation pending before the legislature in Juneau. The committee's conclusions and recommendations were subsequently drafted and sent to the Chairman of the Senate and House Finance Committees.

(2) **New Tax Law Developments Subcommittee.** The purpose of this subcommittee is to monitor new developments in the area of state taxation. This subcommittee will bring such developments before the Taxation Committee for general discussion. In addition, this subcommittee will coordinate the preparation of monthly tax articles which will be published in the *Bar Rag*. The purpose of the articles is to provide practical, useful tax information to the members of the Bar. **William Van Doren** and **Bernard J. Dougherty** are Co-Chairmen of this subcommittee, and all of the members of the Taxation Committee will work upon the projects of this subcommittee.

(3) **Continuing Education and Public Education Subcommittee.** This subcommittee will coordinate, organize and assist the presentation of continuing education programs in the field of taxation. In addition, this subcommittee will provide organization and personnel for the presentation of programs to the public relating to taxation matters. **Peter Ginder** is the Chairman of this subcommittee, and **Stanley Reitman** and **David Shaftel** are also members.

In addition to the above subcommittees, **Stanley Reitman** has agreed to serve as liason between the Tax Committee and the CPA Society, and has agreed to be the Law Library Resources representative.

The membership of the Taxation Committee for 1979 is:

Peter Bartlett — **A. Fred Miller**
Bernard J. Dougherty (Vice Chairman) — **Steve Pearson**
Anthony D. Doyle — **Stanley H. Reitman**
Ralph Duerre — **David G. Shaftel** (Chairman)
Franklin D. Fleeks — **William Van Doren**
Peter Ginder — **Joseph A. Vittone**
George F. Goerig — **Thomas Yerbich**
Bill Lawrence

The Taxation Committee has monthly meetings on the second Friday of each month at the conference room of Cole, Hartig, Rhodes, Norman & Mahoney.

Respectfully submitted,
David G. Shaftel, Chairman

Family Law CLE Scheduled

The Association of Family Conciliation Courts along with the Los Angeles County Bar Family Law Section will conduct a two day program directed to issues of family law, December 7th and 8th, 1979 at the Biltmore Hotel, Los Angeles, Calif. Credit for ongoing legal education is available and advanced registration is suggested. Write directly to: **Hugh McIssac,** Los Angeles County Superior Court, Room 241, 111 N. Hill Street, Los Angeles, California 90012 for registration material or contact **Francis M. Stevens,** Custody Investigator of the Alaska Court System if you desire additional information. Phone: 274-8611.

Speakers on the program will include: **Steve Adams,** Editor of the California Family Law Review; Senator **Jerry Smith,** Chairman of the California Senate Judiciary Committee; **Jay Folberg,** Professor of Law at Lewis and Clark Law School; **Judith Wallerstein,** author; and, Professor **Bridgette Boderheimer** who will address the Uniform Joint Child Custody Act.

The program is set up in series of workshops which will include organization of the Family Law Department; the Art of Mediation, Settlement and Conciliation; the Art of Custody Evaluation; Pre-Marital Consent Evaluation; Marvinizing; and Criteria for Awarding Custody. **Jay Folberg** will address the issue of joint custody in a presentation on Saturday, December 8, 1979.

The following is a schedule of events for the program:

CO-SPONSORS:
Los Angeles County Superior Court
Los Angeles County Bar - Family Law Section
Association of Family Conciliation Courts
Biltmore Hotel

Friday, December 7, 1979

7:30 Board Meeting

9:00 Convene - Welcome Judge **Billy G. Mills,** Judge **Betty Barteau,** Indianapolis, President-Elect, Assoc. of Family Conciliation Courts, **Erwin M. Roeder,** President Family Law Family Law Section, Los Angeles County Bar

9:30 Morning Address, Family Law in the 1980's—**Steven Adams,** Editor of California Family Law Review

10:15 Coffee Break

10:30 Reactor Panel

12:00-1:30 Lunch

1. Speaker: Senator **Jerry Smith,** Chairman, California State Judiciary Committee, Family Law - 1980's, California style

1:30 Workshops - Participants select 2. "2 & 3" are all afternoon.

1. Family Law Department Organization - possible participants.
2. The Art of Mediation, Settlement & Conciliation
3. The Art of Custody Evaluation
4. Premarital Consent Evaluations
5. Marvinizing
6. Criteria for Awarding Custody

Saturday, December 8, 1979

9:15 Joint Custody, **Jay Folberg,** Professor of Law, Lewis and Clark Law School

10:00 Joint Custody Family

10:30 Break

10:45 Reactor Panel - Pro and Con

12:00 Lunch Speaker—**Judith Wallerstein,** Effects of Divorce and Children

1:30-2:15 Uniform Joint Child Custody Act—Prof. **Brigette Bodenheimer**

2:15-1:45 "Custody Roulette" - film

3:00-4:30 Reactor Panel

Jackson

[continued from page 1]

Anchorage, Fairbanks, Juneau and Kodiak. Circuit riding staff attorneys should travel to the outlying areas on a scheduled basis. Jackson personally disagrees with Region 9's recommendation and wants to continue the established outreach system in Alaska. According to Jackson, providing legal services as close to the people as possible has always been the philosophy and overall goal of Alaska Legal Services.

Jackson anticipates that a decision on Region 9's recommendation will be made by the Legal Services Board at their upcoming meeting in Anchorage on August 17 and 18, 1979. At that meeting, Jackson also expects to present to the Board his three year rebuilding program which he hopes will result in a more solid financial basis for the non-profit corporation. Eventually, Jackson anticipates the phasing out, or at least a decrease in his agency's dependency on VISTA volunteer staff attorneys. Jackson says that funding for VISTA attorneys is never secure and, additionally, causes a turn over problem at a higher than normal rate.

Although Legal Services is not taking any new non-emergency cases in its Anchorage office, Jackson anticipates that this problem will be resolved by late summer as the back load of cases is reduced.

Jackson is optimistic about the future of Alaska Legal Services and defines his major responsibilities in the areas of planning, fund raising, and creating and maintaining close contact with the Alaska Bar Association, the Alaska Federation of Natives, and the various statewide community action programs.

Prior to becoming Executive Director of Alaska Legal Services, Jackson, a graduate of the University of Alaska, served as Executive Director of SEACAP, Deputy Director of the State Rural Development Agency, Executive Vice President of the Alaska Federation of Natives, and Program Planner with the Alaska Native Foundation.

Tax

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cumbered assets generally transfered to a corporation, formed to incorporate a non-corporate business, are transferred with the intent to avoid taxes. Rather, it may be that the transferor has an asset of personal, rather than business use which is encumbered or a perosnal note assumed by the corporation. In such a situation, it can not be fairly said that the corporation assumed the indebtedness for any business purpose related to the incorporation and tax avoidance could be found. The result is that all assumptions of liabilities will be treated as gain to the transferor (not just the offending asset or note).

It has been this writer's experience that occasionally personal assets of the taxpayer are carried on the books of the corporation, for example, a boat, condominium or investment real estate. These assets can not easily be removed from the corporation without dividend treatment to the shareholders and have

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Tax

[continued from page 10]

created difficulties in mergers and sales. If the ongoing business shows such assets on its books they should be eliminated, especially if they are encumbered since their transfer to the corporation can create problems later on.

Investment Tax Credits

When assets have been purchased by an ongoing business and investment tax credit taken, certain rules must be followed when transferring assets to a new corporation. The property must be retained as investment property in the same trade or business. The transferor(s) must retain a "substantial interest" in the new corporation and "substantially all" of the assets of the unincorporated business must be transferred to the new corporation. Very often a client wishes to transfer all the business assets to a new corporation but not real estate used in that business (as opposed to investment real estate). The idea is to lease the real estate to the new corporation, thus bailing out profits without double taxation. The IRS has ruled in this situation that where real estate represented 30 percent of the pre-incorporation assets, "substantially all" of the assets of the business were not transferred and recapture of investment tax credit (on all the assets of course) occurs. Other problems have arisen when new financial backers join the new corporation, thus eliminating the element of a "substantial interest" being retained by the unincorporated owners after incorporation. There are some ways to avoid this problem beyond the scope of this article. Similar difficulties arise as to the tax free incorporation itself.

Collapsible Corporations

One of the danger areas in incorporation is the concept of a "collapsible" corporation. Section 341 and following is the Congressional attempt to deal with a perceived "loophole" whereby taxpayers (primarily real estate developers and movie syndications) would incorporate a specific project. Normally the income from the sale of real estate held for resale as "inventory" would have been taxed as ordinary income to the developer, the same was true of the movie producer. Enterprising taxpayers would first incorporate, develop the project and, prior to any sales, would sell the corporation's stock (capital gains) or liquidate the corporation under the capital gains provisions of the Code. Congress passed the referenced sections of the Code to prevent the conversion of ordinary income into capital gains. A collapsible corporation is one which is formed or availed of, principally for the manufacture, construction or production of property, and/or the purchase of property such as inventory, receivables or real estate used in a trade or business and/or the holding of stock in another "collapsible" corporation with a view toward a prospective sale or exchange of its stock before a substantial part of the income from the sale of the assets of said corporation is realized and the shareholders would derive gain attributable to such property. The later liquidation of such a corporation or its disposition will result in the gain being treated as ordinary income rather than capital gains. Receivables for services or ordinary income assets are also treated as "collapsible" corporate assets. Moreover, it isn't required that the corporation start the construction or production of the tainted assets, so long as it has engaged in such activities. The Supreme Court has held that even if the shareholders had engaged in certain activities (construction of apartment buildings) under circumstances where they individually could have sold the assets at capital gains, by forming a corporation falling within the statutory definition, they were taxed at ordinary income rates! There are certain exceptions to the application of the collapsible corporation rules and the two principle ones are that if the property has been held for three or more years, or a substantial amount thereof has been sold (30 percent according to the IRS), the disposition of the stock in such a corporation will not give rise to ordinary income (same result with respect to liquidation). Another exception is that if 30 percent of the gain in any sale can be traced to other than the manufactured, developed or produced property, then the rule will not apply. Thus care needs to be taken in determining what the corporation will be doing.

Personal Holding Company

Another problem area is the personal holding company. Roughly speaking, a personal holding company is a closely held corporation whose income is derived principally from passive investments. Closely held means that more than 50 percent of the stock is held by five or fewer persons. Spouses and lineal decendants for example are treated as one individual. If the stock ownership test is met during the last half of the year, then one must look to the type of income and exceptions, if any. The passive income referred under a personal service contract, and amounts received for use of corporate property (by a 25 percent or more shareholder). There are certain exceptions, for example in rental income and in mineral, oil and gas royalties, if the company is primarily engaged in such activities (50 percent of its income is so derived as adjusted under the rules) and has less than 10 percent of other personal holding company income (as adjusted), the tax will not be imposed. There are exceptions for movie productions as well. The personal holding company tax is 70 percent applied against all undistributed personal holding company income in addition to the regular corporate tax. Tax avoidance is not relevant, if the company fits the definition, it can be subject to the tax. The tax can be eliminated if the personal holding company distributes its personal holding company as dividends during the year. This may not always be possible from an economic standpoint. Sometimes the status as a personal holding company is not determined until a few years after the year in question. A "deficiency dividend" can be allowed to permit the company to pay out the undistributed personal holding company income attributable to the prior year and avoid the heavy tax. Penalties and interest may not be avoided.

Summary

The purpose of this article has been, in addition to pointing up some of the problem areas relating to midstream incorporations is to warn the general practitioner that traps await him in the tax area. Many factors come into play in addition to the normal benefits of incorporation, the need for careful planning, the dangers of transferring certain types of assets or incorporating certain businesses, and the mechanical pitfalls that await the unwary. While it is true that some businesses can be fairly safely incorporated, others require skills that are or may be beyond the scope of general practice. All that can be done here is to point out some of the more obvious problem areas. There are more.

BAR POLL RESULTS

REPORT FORM APPLICANTS	DISTRICT	Column 1 TOTAL VOTES	Column 2 NOT ACQ.	Column 2 % OF TTL. VOTES	Column 3 TTL RTG APP	Column 3 % OF TTL. VOTES	WELL QUAL	% OF COL 3	QUAL	% OF COL 3	NOT QUAL	% OF COL 3	TOTAL OF WELL QUAL. + QUAL PERCENTS
Albert Branson	TOTAL	651	247	37.9	404	62.1	120	29.7	171	42.3	113	28.0	72.0
Robert Bundy	TOTAL	651	393	60.3	258	39.6	83	32.2	116	45.0	59	22.9	77.2
Harlan Davis	TOTAL	651	344	52.8	307	47.1	48	15.6	111	36.2	148	48.2	51.8
LeRoy DeVeaux	TOTAL	651	379	58.2	272	41.8	43	15.8	115	42.3	114	41.9	58.1
Shelia Gallagher	TOTAL	651	306	47.0	345	53.0	70	20.3	131	38.0	144	41.7	58.3
Max Gruenberg	TOTAL	651	234	35.9	417	64.1	68	16.3	191	45.8	158	38.0	62.1
Karl Johnstone	TOTAL	651	311	47.8	340	52.2	97	28.5	136	40.0	107	31.5	68.5
Carolyn Jones	TOTAL	651	314	48.2	337	51.8	42	12.5	85	25.2	210	62.3	37.7
Judge Laurel Peterson	TOTAL	651	166	25.5	485	74.5	174	35.9	170	35.1	141	29.1	71.0
Arthur S. Robinson	TOTAL	651	453	69.6	198	30.4	36	18.2	45	22.7	117	59.1	40.9
Douglas Serdahely	TOTAL	651	377	57.9	274	42.1	101	36.9	102	37.2	71	25.9	74.1
Brian Shortell	1 TOTAL	651	245	37.6	406	624	65	40.7	155	38.2	86	21.2	78.9
Donald Stump	TOTAL	651	506	77.7	125	19.3	32	25.6	43	34.4	50	40.0	60.0

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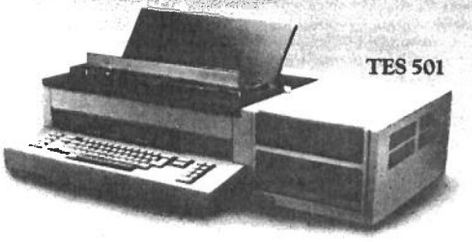

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