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The Alaska BAR RAG

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Alaska Attorney Elected to ABA Board of Governors

CHICAGO, August 6—Attorney **Richard O. Gantz**, a managing partner in the firm of Hughes, Thorsness, Gantz, Powell and Brundin in Anchorage, Alaska, has been elected to the American Bar Association's Board of Governors. He will represent the Thirteenth District, which includes Alaska, Idaho, Montana, Oregon and Washington.

The 23-member board meets six times a year to direct association activities and set policy consistent with policies of the ABA House of Delegates. The 380 members of the House convene twice a year. The ABA has 255,000 members and is the largest voluntary professional organization in the world.

Gantz has been Alaska's delegate to the ABA House of Delegates from *August 1977 until this August.* He also is a member of the ABA Section of Public Utility Law and the Section of Urban, State and Local Government Law.

Gantz was an attorney in private practice in Akron, Ohio from 1949 to 1954. From 1954 to 1958, he was assistant director of law for the City of Akron, Ohio. When he arrived in Anchorage in 1959, he served as city attorney until he joined the firm he now is associated with in 1963.

He is a member of the Anchorage Bar Association, the Alaska Bar Association, the American College of Trial Lawyers and the International Society of Barristers. In 1975, he was a member of the Charter Commision for the Municipality of Anchorage. He is licensed to practice in Ohio and Alaska.

Gantz attended Otterbein College in Westerville, Ohio, and Kent State University in Kent, Ohio. He received his bachelor of science in business administration and juris doctor degrees from Ohio State University in Columbus, Ohio. He was editor-in-chief of the Ohio State "Law Journal." In 1949, he was elected to the Order of the Coif, an honorary legal fraternity, was president of the Student Bar Association and was named "Outstanding Law Graduate of Ohio State University."

Gantz and his wife, Joan, have one son, Gary W., who is a partner in the Anchorage firm with his father.

INSIDE

Roger Cremo

James Fitzgerald

The Boys of Summer: Recollections of the Over The Hill Gang

by Kathleen Harrington and Judith Bazeley

"Take me out to the ball game, take me out to the crowd. Buy me some peanuts and cracker jack, I don't care if I ever come back."

"Baseball madness that's what it was" joked a well-respected senior member of the Anchorage Bar. Perhaps. But not to the members of the Legal Eagles, a distinguished group of Alaskan lawyers and judges whose love of the game brought them together for several seasons circa 1965. Although admittedly their ball playing was not on a par with the Brooklyn Dodgers, Anchorage's "boys of summer" played competitively in pick-up games against the semi-pro teams of the Anchorage Baseball League on a regular basis.

Legal Eagles

The Legal Eagles were an unofficial Bar Association team coached and managed by Judge **Occhipinti** who was later instrumental in starting up the Glacier Pilots along with former Eagles teammates, **Roger Cremo, Tom Curran,** and **Jim Merbs.** Occhipinti coached and brainstormed, but didn't play because, by his own admission, his playing talents were somewhat less than the other players.

The crowning moment of the team's glory came when **Satchell Paige,** bedecked in a Woolrich shirt, pitched for the Legal Eagles one glorious Anchorage summer evening. Below, members of the Legal Eagles reminisce about their ball playing days.

"We weren't any old rag. tag team...we had uniforms...we were pretty uptown stuff," reminisced center fielder **Charlie Tulin** contradicting Occhipinti who recalled that if various members had old baseball uniforms from their school days they wore them, otherwise they mixed and matched old clothes to simulate uniforms.

Games were usually played at Mulcahy Stadium on the Tenth and A diamond and spectators were limited to relatives according to shortstop and occasional second baseman **Warren Matthews** who said, "We were awed by the fact they turned the lights on for the Satchell Paige game and the stands were packed." Merbs remembers that one perennial watcher was **Gene Wiles** who always turned up, and even turned up when no games were scheduled.

The Legal Eagles were not in the city league like the All Stars their opponents for the Satchell Paige game. They played the firemen, the police and a title company team. Cremo remembers playing the FBI and Merbs distinctly recalls playing the prisoners at the prison farm. Games were played two or three times a week for several seasons.

Over-The-Hill

There are differing accounts of the team's demise. One member recalls that the players were getting over the hill for hardball citing an occasion when **Joe Josephson** on first base stretched for a wide throw, pulled a muscle and had to be carried off the field, and others reason that the most avid members became preoccupied with the Glacier Pilots toward the end of the 60's. Whatever the reason, all members interviewed commented extensively on each other as players.

[continued on page 2]

IN MEMORY OF ROBERT LEE HARTIG

October 3, 1928 - August 24, 1980

On August 24, 1980, **Bob Hartig** died in an air crash at Hewitt Lake. The many Alaskans who were fortunate enough to be his friends will be sadly diminished by his absence, as are those who never knew him. Bob died as he had lived, leading the charge. When each of us must go, may it be as he did—at the apex of a brilliant career, loved and admired by all who knew him, quick and clean, in the midst of his beloved Alaska.

Judicial Candidates Announced

8 Names Submitted for High Court

The largest Alaska Judicial Sweepstakes in recent memory will be held in order to fill three Anchorage Superior Court seats, one Nome Superior Court position, and one opening on the Alaska Supreme Court created by the appointment of Justice **Boochever** to the 9th Circuit Court of Appeals.

Two of the Anchorage Court seats were created and funded recently by the Legislature. The third opening is the result of Judge **Singleton's** appointment to the new Intermediate Appellate Court. The appointee to the Nome position will replace Judge **Sanders** who recently announced his retirement.

The Race for the Top

Seven men and one woman have announced their intentions to seek appointment to the Alaska Supreme Court. These include three Judges, a member of the new Intermediate Appellate Court, a former Alaska Attorney General, and the first woman president of the Alaska Bar Association:

Anchorage Superior Court Judge **Victor Carlson;** Juneau Superior Court Judge **Allen Compton;** former Attorney General **John Havelock;** Fairbanks Attorney **Andrew Kleinfeld;** Assistant Attorney General **Arthur Peterson;** Juneau Attorney **William Ruddy;** Anchorage Superior Court Judge **James Singleton;** former Alaska Bar Assc. president **Donna Willard.**

The Anchorage Race

Ten men and three women are competing for the three Anchorage Superior Court openings. The names include three Assistant District Attorneys, one Anchorage District Court Judge, the Alaska Public Defender, an Assistant Attorney General, the chairperson of the Alaska Pipeline Commission, the president of the National Association of Women Lawyers, and several attorneys in private practice:

Anchorage District Court Judge **Glen Anderson;** Anchorage Assistant District Attorney **Stephen Branchflower;** Anchorage Attorney **William Donohue;** Anchorage Attorney **Sheila Gallagher;** Anchorage Attorney **Cheri Jacobus;** Assistant Attorney General **Carolyn Jones;** Kodiak District Attorney **William Mackey;** Anchorage Attorney **Daniel Moore;** Anchorage District Attorney **Eugene Murphy;** Kenai Attorney **Chuck Robinson;** Anchorage Attorney **Douglas Serdahely;** Public Defender **Brian Shortell;** Anchorage Attorney **James Wanamaker.**

The Long Trail to Nome

Popular Anchorage attorney **Charles Tunley** has announced his intention to challenge recently appointed Kotzebue Judge **Paul Jones** for the Nome Superior Court position.

Tunley believes that his background makes him particularly well suited to the Nome position and the Nome community. "My background is from a small rural area of Alaska...I

[continued on page 13]

Recollections of the Over-the-Hill Gang

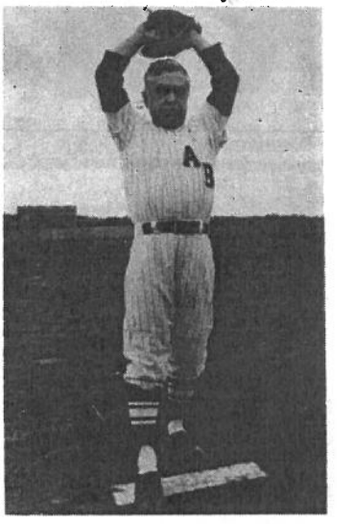
[continued from page 1]

Judge Fitzgerald was the catcher and all agree he was good. Pitchers were Joe Josephson, Roger Cremo, Tom Curran, Randy Clapp and occasionally Jim Merbs. "Cremo and Joe Josephson were our star pitchers," says Judge Occhipinti. "They were junk ballers," recalls Justice Matthews who felt Clapp and Curran were the team's best pitchers. Matthews generally played shortstop—"slow but effective," recalls Judge Occhipinti.

Moody at the Bat

Several agree that Judge Moody was a good batter and a strong first baseman. Moody, himself, has no recollection of the Satchell Paige game, and tactfully was unavailable for comment on his own and his teammates playing talents in general.

Second and third base were played variously by **Bob Libby**, "a good competent player" Joe Josephson, Warren Matthews and Jim Merbs who confirmed reports that he always played with a lighted cigar in his mouth even when batting. Merbs says there were liberal substitutions. "We wanted to give everybody a chance to play." Apparently other players who turned up occasionally were **Jack Roderick**, Judge **Van Hoomisen, Dave Thorsness, John Brubaker, Jesse Bell, Stan Reitman, Judge Karl Johnstone, Wendell Kay, Dennis Lazarus and Chancy Croft.**



The Satchell Paige game was the only game when ringers were used. Members disagreed violently over the question who was the best all around player. Some pointed to Bob Libby, others to Justice Matthews, Judge Moody and Judge Fitzgerald. (Maybe a commemorative game is necessary to resolve this dispute.)

However all of the "regulars" agreed that the Satchell Paige game was one of the highlights of their playing careers.

According to **Connie Occhipinti** Paige came to Anchorage in late August of 1965 at the invitation of some local businessmen who were trying to drum up support for the creation of the new professional Anchorage ball club. The prospective team's name, the Earthquakers, was already selected and Paige was being courted to manage the team.

James Fitzgerald

While in town, Paige was to pitch in several exhibition games and Occhipinti lined him up to pitch for the Legal Eagles in a game against the semi-pro league all star team. Prior to the game, Paige appeared at the local bar luncheon where he was introduced as a new law clerk in town and made an honorary member of the Anchorage Bar.

The night when the big game arrived, cold and overcast—a typical Anchorage summer evening. Occhipinti said he was concerned because Satch was complaining about the cold and a sore arm from pitching in an exhibition game the day before, but Paige responded to Occhipinti's persuasive pleas and agreed to pitch, alternating the early innings with Eagle ace hurler, Roger Cremo. According to Cremo, Paige was near 60 years old at the time but pitched that night like a young man.

"Nice Play Kid"

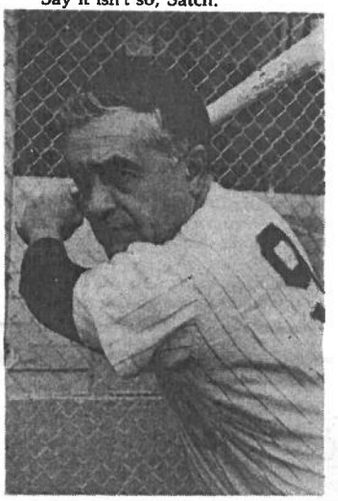
Warren Matthews recalled that Paige wore a Woolrich shirt and windbreaker over his uniform but could still be heard complaining about the cold summer Anchorage weather.

According to Matthews who played second base that evening, Paige got into trouble in one inning with runners on first and third and one away when Matthews fielded a ground ball and turned it into a double play. Afterward in the dugout, "I felt a large hand patting my head," said Matthews, "and Satchell told me 'nice play kid.' I was thrilled."

In the recollections of Matthews, Roger Cremo and Jim Fitzgerald the Legal Eagles lost the big game but were winning when Paige left the mound.

However, Jim Merbs who professed to never getting another hit after batting 1000 in the first four games of the first season said that he found it "impossible" to believe that the Eagles lost the Satchell Paige game.

Say it isn't so, Satch.



Swearing In Ceremonies

The Supreme Court has announced that investiture ceremonies for the new Criminal Appeals Court will take place in Fairbanks for **Robert Coats** on September 12, 1980, State Court building, Court Room C at 3:30 p.m.

Alex Bryner and **James Singleton** will be sworn in at Anchorage on September 23, 1980, Supreme Court Room at 4:45 p.m.

The Court System will be issuing formal invitations to members of the bar, judiciary, family, friends and other interested parties.

A VIEW FROM BEHIND THE PLATE

KH: Was the Legal Eagle team in the Anchorage semi-pro baseball league?

JF: We played some of the semi-pro teams but I don't recall ever seeing that we were ranked in the semi-pro standings.

KH: Did you play a regular schedule?

JF: We would usually play once or twice a week at Mulcahy Park and we also played down at the ball park where Ben Boeke is.

KH: Do you remember the names of any of the other teams?

JF: Well, I remember we played an all star team of the local semi-pro league a couple of times and I think the rest of the games were pick-up games against the regular semi-pro teams.

KH: How well did the Legal Eagle team play?

JF: We did pretty well actually. We had some really fine ball palyers. Some of the men had college experience and outside of being out of shape they were pretty good ball players.

KH: How many seasons did you play?

JF: About three or four.

KH: Who named the team the "Legal Eagles?"

JF: It was probably **Roger Cremo**. He and **Connie Occhipinti** were the principle promoters and mainstays of the organization.

KH: Do you remember the lineup?

JF: Oh boy, I can remember **Bob Libby** was at third, **Ralph Moody** played first sometimes, **Dick Kerns** was one of the few outfielders, **Roger Cremo** was one of the pitchers and **Tom Kern** was another. **Joe Josephson** and **Warren Matthews** played in the infield.

KH: And where did you play?

JF: I was catcher.

KH: Is there any truth to the rumor that Wendell Kay was an occasional utility outfielder?

JF: Wendell Kay was our sort of designated hitter. This was before they had designated hitters.

KH: Was he any good?

JF: Wendell wasn't scintillating when he was playing for us.

KH: Was he a better hitter than a fielder?

JF: I would have to say that he was hopeless as a fielder and at minimum utility as a hitter.

KH: From behind the plate you must have had the best vantage point from which to assess the playing ability of your teammates. Do you remember any of your teammates having sparking fielding ability?

JF: I remember Libby because Libby was a pretty good ball player and Ralph Moody was a pretty good hitter.

KH: How was he at first base?

JF: At first base he was adequate. He would stay anchored at the bag.

KH: Could Bob Libby come down the line to pick up a bunt?

JF: Yeah, Bob Libby was a good athlete.

KH: Could Moody?

JF: I don't recall, I think it was probably fortunate that there weren't too many balls directed at Moody.

KH: Were any of your outfielders able to throw a runner out at home?

JF: We had some, boy, I remember Dick Kerns and he had a pretty good arm on him. He was a little slow but he had a good arm and I can't remember the outfielders that well. But we had good outfielders.

KH: Who was the clean-up hitter?

JF: It wasn't me. I remember batting third. I don't know who it was.

KH: Could you hit a curve ball?

JF: Yeah, I could hit a curve ball.

KH: Could you catch one?

JF: We didn't have that bad a team really.

KH: How many starting pitchers did the team have?

JF: We had two, Roger Cremo and Tom Kern.

KH: Were they both right handers?

JF: Both right handers but Roger had a great curve and Tom Kern had a pretty heavy fast ball.

KH: Which one did you enjoy catching the most?

JF: I enjoyed catching Roger. Roger was sly.

KH: Did he ever shake off any of your signs?

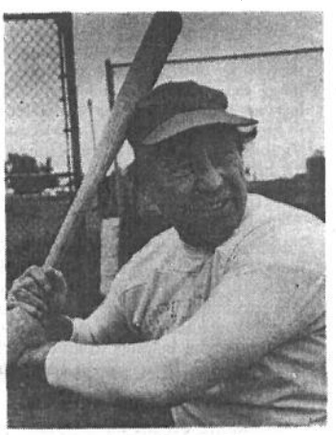
JF: I don't think Roger ever shook off a sign because I don't recall him ever throwing anything but a curve.

KH: Now you once caught Satchell Paige when he was up here on an exhibition tour. How old was he then?

JF: Nobody really knows how old Satchell Paige was and he wouldn't tell us.

KH: What kind of a pitcher was he?

JF: Well I had seen him pitch before World War II. At that time he threw a side arm fast ball. When I caught him I asked him when he wanted to warm up and he didn't want to warm up. It was a nice summer evening. He took no warm up pitches so as we were the home team we went to the field first and as I was walking out I asked him what he wanted to throw and he said he was going to throw his fast ball and if he got in trouble or if he got behind on a hitter with men on base that then he would expect to throw a curve. He had on his Cleveland uniform since he had been released by Cleveland and I was stunned when he started to pitch because he was almost a submarine pitcher. He was releasing the ball off of his hip and had changed his delivery quite a bit. He threw maybe two or three pitches and indicated that he was ready to go and the umpire called for the first batter into the box. He was easy to catch because he kept the ball close to the plate inside and outside and he moved it about and it was always low. I don't recall he ever came over with a pitch that was above the batter's belt buckle. He had a great style. He had all of the motions and he went directly after the batter. I remember the umpire at that game was inclined to give him the close ones, but when he called a close one a ball I remember turning around to the umpire and saying, "why can't you give the old fellow a break now and then." I called for the curve ball and the ball came in and it was no different and I thought how in the name of God could he have missed the sign. So the next pitch I called for was a curve and it came in no different and then I realized that Paige believed that he only had so many pitches and he wasn't going to waste them with us but I thought he did a great job. I know about three or four weeks later he got on with Kansas City and was back in the majors.



James Fitzgerald

KH: Was it a thrill for you to catch him?

JF: Yes it was. I was batting third and I came up in the first inning. We had two men and I got a bunt sign. I think Connie Occhipinti was managing the game and I got a sign from Connie and I laid down a bunt and I beat it out, so help me. I was standing on first base and all I could think was, I am out of breath, I beat out a bunt with two men and I am catching Satchell Paige. I have reached the height I am going to in baseball and this is my last game. It was my last game.

KH: Did the Legal Eagles win that game?

JF: I think the semi-pro all star team won because I think Roger Cremo came in relief and I think that they got to him. It was a close game and they had a pretty good pitcher. The only error I can remember was that a fellow hit a towering pop fly to third base and Bob Libby wandered around under it and finally dropped it and he was sitting in the dugout and kept apologizing to Satchell Paige, I remember that.

Random Potshots

by John Havelock

"The Pruning of Logan Valley"

Sometimes, anticipation of a legal problem may avoid costly and unproductive litigation. Alaskan legislators, state and municipal, should be aware of an opening for legislation resulting from the U.S. Supreme Court's recent decision in *Pruneyard Shopping Center v. Robins*, No. 79-289, 48 Law Week 4650 (June 9, 1980). This case involves the right of a person to use a shopping mall for First Amendment purposes such as the handing out of pamphlets and political solicitation.

Back in 1968, the Supreme Court of the United States said there was a constitutional right to engage in First Amendment activities even on private property when that private property was one of the few places where such rights could be exercised in the community. That case, *Amalgamated Food Employees Union v. Logan Valley*, 391 U.S. 308 (1968) followed from an earlier line of cases which determined that the private property interests of the owners of a company town did not include the ability to preclude First Amendment activities on that property. *Logan Valley* extended this line of reasoning to cover large shopping centers.

Market Place Theory

Freedom of speech received its meaning in an earlier era through the opportunities for expression found in the public market place. Now that the market place is no longer public but a public convenience provided by a private developer, the logic of the *Logan Valley* policy can be readily appreciated, whether or not lawyers agree that it should be given constitutional force.

Tamed By Tanner

In *Lloyd v. Tanner*, 407 U.S. 551 (1972), the Burger court backed off Logan Valley, holding, in effect, that as long as the exclusion was total and non-discriminatory, private property owners could keep citizens off their premises who insisted upon exercising First Amendment privileges thereon. This reversal of *Logan Valley* was made explicit in *Hudgens v. NLRB*, U.S. 507 (1975).

Since every state (I assume) has an equivalent in its own state constitution to the First Amendment, state courts ruling on the shopping center issue were free to continue with the *Logan Valley* test. Some courts adopted *Logan Valley* for state purposes between 1968 and 1975. A state supreme court is not obliged, in interpreting its own constitution, to follow the twists and turns of the U.S. Supreme Court.

Legislative Balancing

This poses a special issue for the Alaska State Legislature and for municipal bodies because the kind of balancing of First Amendment rights and property rights which is involved in the shopping center type of decision is really much better suited to legislative disposal than adjudication in a legislative mode. The considerations which would go into determining what shopping centers might be burdened with a First Amendment privilege, criteria of size, relation to other public forums, etc., is the kind of balancing function which a legislature is much better able to do after public hearings involving representatives of the contending parties, interest groups and public debate.

The Theory Pruned

The *Pruneyard* case simply says that the states (whether through constitutional interpretation or by legislation) continue to have the right to prescribe protections for First Amendment rights more stringent that the constitutional minimums without that expan-

[continued on page 5]

Anniversary

When we first announced our intention to start this newspaper there was a great deal of legitimate skepticism among the legal community as to whether there would be a first, let alone a second edition, published. One insightful attorney took us aside and informed us that a monthly newspaper would never fly because there simply wasn't enough news about attorneys to fill it. Besides, our helpful prophet noted, "You will have to write it yourself. You can't get attorneys to sit down and write interesting stuff and meet deadlines. They are too busy! They will promise, but they won't deliver."

Our Soothsayer was wrong but there were moments, especially at first, when we weren't too sure.

The Alaska and Anchorage Bar Associations helped us to get started with generous grants of money. The Tanana Valley Bar Association gave us our first full page advertisement (and paid for it!). We stumbled through the first couple of issues with a minimum number of advertisements and a rapidly decreasing bank account. The editors hit the streets and learned how to sell advertisements to skeptical merchants. We sold subscriptions to anyone who would listen to our unsupportable assurances that we expected to go on past the next issue.

Hustling

We shamelessly hustled the Bar for copy. We printed almost everything we received. Some of it was great. Some of it was garbage. We thanked our writers over and over again until they gave up and wrote more for us. We presented them with T-shirts carrying the Bar Rag Banner and motto. We even gave them washing instructions so they wouldn't shrink.

We did our own photography for awhile until we learned we didn't know what we were doing and hired professionals. We learned how to set copy. We learned how to spell. We learned how to say "NO" occasionally to writers when we felt their copy didn't belong in the paper. Unfortunately, some of them left us because we said "NO." We are sorry about that.

We have been sometimes irreverent, but we don't think cruel. We started this newspaper with the belief that the Bar and Bench can occasionally afford a kidding, especially when its members are taking themselves too seriously. The lawyers and judges we have roasted so far seem to have enjoyed it, or at least not to have minded. We have also occasionally been guilty or lapses of taste. Queen Victoria would not have been amused by the Bar Rag, but then we are not writing for her.

Looking Ahead

Today, looking ahead towards our third year we find that we are still selling subscriptions with the promise that we will be around next year. Our advertising for the first six months this year doubled over the same period a year ago. Although certain issues have broken even, the paper over all is still in the red. Approximately three out of every four dollars we spend comes from advertising. The rest results from Bar Association contributions and subscriptions.

The paper belongs to all of the lawyers in Alaska and individually it costs them nothing. If we can increase our advertising, we may someday no longer have to depend upon Bar contributions—then the newspaper will really be free. It has always been free from editorial interference by the Alaska and Anchorage Bar Associations, despite the description "House Organ" used by one Anchorage attorney in a letter to the editors.

Help!

You can help us financially in these ways:

1. When you, your firm or department is hiring attorneys or legal secretaries or wants to buy or sell furniture, equipment or books, please advertise with us.
2. When your firm moves its office or takes on a new associate or partner or incorporates, please advertise with us (it is a lot cheaper than printed announcements).
3. If you know clients, friends or neighbors who have businesses that sell products or services to lawyers talk to them about advertising with us. Ask them to contact the Bar Office or the editors. We will do the rest.
4. Send your Mom (or anyone else you like) a subscription.

Finally, we want to thank our readers and writers for helping us to prove the Soothsayer wrong so far. Keep it up, we continue to need all the help you can give us. We are constantly looking for new writers and editorial staff to help us put out the newspaper—with your help we will still be here next year.

—Harry Branson

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All My Trials

by Gail Roy Fraties

I would like to publicly thank **Bruce Monroe** of Juneau, **Mike Schneider** of Anchorage and my mother of Watsonville, California, all of whom commented favorably on my last article. I know what the rest of you are thinking—"Yes, but can he tell war stories?"

War Story

The most effective final argument I ever heard was in the Municipal Court at Salinas, California. I had gone in to watch one of my fellow prosecutors try a local citizen for "peace disturbance," which (at that archaic time in California history) had as its gravamen the fact that swear words had been uttered in the presence of women and/or children. The State produced a number of witnesses who had heard the foul language screamed by the defendant during a fight in a local bar.

The l.c., who defended himself, did not choose to deny any of this, and apologized profusely to the jury. His statement, as I recall, was, "If Officer Bill says that I did all these things, I'm sure that it is true. However, I had just been kicked in the nuts. You know how that feels," he added, locking onto the horrified gaze of a 72-year-old lady in the first row of the jury. His acquittal from the box followed routinely.

It's obvious that if you don't have any facts, your final argument is crucial. My friends among the prosecution like to dwell on this, and are fond of saying, "Mr. Fraties is going to quote from the Bible, *Lassie Come Home* and *Uncle Tom's Cabin*—but please remember that we have presented you with ten world famous pathologists, and all he has is a hypnotist and a voice stress analyst. What does he have to say about that?" What I have to say to that, of course, is, "He that does it to the least of these does it also unto me." If the jury wants to take its chances with Divine Retribution, so be it. I've put them on notice.

The Swivel Case

Court watchers have awaited with interest the Supreme Court's Opinion 2180—August 25, 1980 in *Swivel vs. Fulano DeTal, Inc.*, in which popular Anchorage trial attorney **Ben Walters** had attempted an innovative approach to jury argument. In the words of Mr. Chief Justice **Rabinowitz**: "In this case, Plaintiff's attorney—in closing argument—stated to the jury, 'Some of you no doubt have wondered why I questioned you extensively in my *voir dire* of the jury panel concerning whether or not you believed in the tooth fairy, the Easter bunny, and Santa Claus. You will have noted that those of you who replied in the negative were assiduously challenged by defense counsel, whereas I kept as many of you as I could. I think that it is appropriate to say that I sought a jury which was in the proper frame of mind to evaluate his Honor's forthcoming instruction that an insurance company is not a party to this case.' Trial Judge **Victor Carlson** thereupon did a brief but spirited in-court imitation of a brown bear with its foot in a trap, and granted a mistrial and a dismissal of the Plaintiff's case, with prejudice. From that decision, Plaintiff appeals.

"It has been a time-honored custom in the courts of Alaska, as throughout the civilized world, to honor certain legal fictions [citations omitted] and it is not for this court, which even in its more rational moments contends that the rulings of the Supreme Court of the United States form but a threshold for our decisions [State v. Ravin, et al.] to avoid the decision which faces it now. The fictions of which I speak, number among them, but are not limited to, the suppositions that:

[continued on page 5]

ALL MY TRIALS

[continued from page 4]

1. The Defendant in a criminal case is presumed innocent.

2. Any witness is presumed to tell the truth.

3. The jury will not discuss the case among themselves (much less with their families and neighbors) before the evidence is in.

4. They will pay no attention to what the judge or counsel have done in their presence, merely because they are instructed not to do so.

5. They will forget testimony, once heard, because the Judge later rules that it is inadmissible (see, "Unringing the Bell—Does Anyone Still Believe This Bullshit?," U.C.L.A. Alaska Law Review, Issue No. 12, Dunnagan).

6. There is not an insurance company lurking somewhere behind every effective defense of a civil case.

"The Alaskan people, however pragmatic and simplistic, are highly intelligent individually or in a group. It is inconceivable that such persons can sit through a two-month trial, involving —as they usually do—witnesses flown in from the Persian Gulf and eating their heads off in the lap of luxury while awaiting the vagaries of a 'trailing calendar'—and remain convinced that all of this is being financed by the Defendant/motorist.

"It is obvious, even to the untutored eye, that either the federal government or some insurance company is on the job, and has deep pockets, it appears that they have about equal rank.

"As a practical matter, it is almost impossible to avoid the subject of insurance, once counsel have determined to raise the subject. It does not seem to us that Plaintiff's counsel should be forced to demean themselves by the usual ruses—some of which are as follows:

1. Question: 'Do you own controlling interest in any insurance company?' (directed to average middle class jurors).

2. Instrucions to one's own witnesses: 'Now, don't mention any word beginning with 'I'—but did you report this accident to anyone other than the police?'

3. The time-honored 'blurt-out' by the Plaintiff: 'He said his insurance would pay for it.' All of us, as former trial practitioners, are aware of many similar examples.

"I'm sure the Alaska Bar is well aware that I could go on for 50 more pages but I like to be unpredictable. Suffice it to say this court finds Plaintiff's argument not only harmless, but refreshing—and remands the case to the trial court for action in accordance with this opinion (if it can figure out what that may be).

"Mr. Justice Burke (dissenting): 'I must disassociate myself from any attempt of this court to make sense. Mystery is what the public demands, and mystery is what we have consistently given it. I would affirm."

Inquiry Answered

This writer has been made aware that some of the practical advice contained in his last column did not seem germane to the practice of the government attorneys in the bar. In answer to the inquiry of Kenai District Attorney **Tom Wardell**—no, a time slip is not what happens when the Starship Enterprise exceeds warp factor 9. Further, a bring-up system is not some sort of gruesome fad diet. I will explain further when you leave public employment.

In closing, all of us are indebted to Bar historian, Judge **Robin Taylor**, for his words of encouragement to the trial bar: "All great empires, however despotic, eventually fall by their own weight." See, Gibbons, *Decline and Fall of the Roman Empire*, as quoted in "The Snowden Syndrome—Light at the End of the Tunnel" (Taylor, American Trial Judges' Quarterly).

Poetry Contest Deadline Extended to November 1, 1980

Connor, Chandonnet, Ford to Judge Entries

Bill Ford, Managing Editor of the Alaska Bar Rag announced today an extension of the deadline for entries in the Bar Rag readers poetry contest to November 1, 1980. So far there have been no entries received. Ford said, "We are serious about this contest! The ad in last month's Bar Rag is not a spoof. The prizes are real. The judges—myself, **Roger Connor** and **Ann Chandonnet**—are all dignified. We know that there are a lot of unpublished poets out there among our readership whose work we want to encourage and recognize. Besides I'm getting tired of printing **Branson's** stuff."

Poets or Bookkeepers

Ford went on to remark, "I heard a pithy saying once to the effect that all attorneys must be either poets or bookkeepers. We are planning a bookkeeping contest for sometime in the future. Right now we would like to see how many poets we have."

All poems received may be published in forthcoming issues of the Bar Rag. The prizes (in case anyone has forgotten) are: First Prize—A candlelight dinner for two in a fast food restaurant of your choice; Second Prize—rhyming dictionary and a beret; Third Prize—a large jug of cheap red wine and a loaf of bread (unsliced). If at all possible, presentation of the awards will be made with much hoopla at a public gathering.

RANDOM POTSHOTS

[continued from page 4]

sion constituting a taking of property, a constitutional right of the private property owner. In Anchorage, we have already this summer had a legislative candidate and petition circulator removed from a shopping center here who presumably bases his right on the state afterglow of *Logan Valley*. However, our state supreme court has not yet spoken on the *Logan Valley/Lloyd v. Tanner* issue. But should the court be addressing the issue with nothing more before it than a trespass statute? The Alaska supreme court would be likely to uphold any reasonable balance between property rights and free speech legislatively defined.

Prune Pudding

Such a balance might include, for example, provision for a cleanup obligation or assessment of a modest fee related to the cost of cleanup after a pamphleteering activity. It might include some position on registration and space allocation. It might include specific constraints and guidelines with respect to the behavior of people circulating petitions on shopping mall property. It might also define the size or proportion of the market which would result in the imposition of an obligation on the mall owner. Obviously (or maybe it isn't so obvious) a self-styled shopping mall which includes two or three retail stores is not necessarily an essential public forum in Anchorage though it might be in Unalakleet.

Logan Valley Policy Tuned to Alaska (PTA)

Apart from the constitutional issue, it is clearly good policy in advancing the interests of free speech to provide for reasonable and clearly expressed opportunities for expression in a manner which minimizes the intrusion on private property interests. Further, legislative definition of such a right removes from the private property owner the onus of seeming endorsement of views expressed. I am sure that, in many cases, the reaction of the mall owner arises from concern that patrons will view the allowance of the activities as an endorsement by the owner of the unpopular ideas that might be expressed there.

A requirement that shopping centers of a particular size include specific allowance for First Amendment expression may be good legislative policy even if the *Logan Valley* constitutional standard is not met. In zoning and land use regulations, both state and municipal, we already require open spaces for aesthetic purposes and impose many other requirements reflecting public interest concerns. Why isn't it reasonable also to provide for a mini-Hyde Park where the relative size or location of the mall is such that persons may be inclined to take some rest or recreational time in its vicinity?

Requiem

Lochinvar is dead.

His horse went first.
Then his armor turned to rust.
But it wasn't until his lady said
"Stop! Put me down! Ironhead!
I don't love you. I never did."
That his heart gave out,
And his reason fled.

Rest in peace,
Fool Knight.

—Harry Branson

Letters

Dear Mr. Rozell:

Re: Yukon Branch of Canadian Bar Association Time Management Seminar

I have been given your name by Judge **Harry Maddison** of the Supreme Court of the Yukon Territory who attends in Alaska from time to time for meetings with Alaskan judges. I am writing this letter for two reasons. Firstly, the Yukon Law Society and the Yukon Branch of the Canadian Bar Association wishes to have greater contact and communication with the Alaskan Bar Association for purposes of discussing mutual problems and increasing our professional association.

Secondly, the Yukon Branch of the Canadian Bar Association is hosting a Time Management Seminar on November 24th, 1980, at Whitehorse, under the leadership of Dr. **Alec Mackenzie**, the author of a book on professional time management. Dr. Mackenzie is an American and well known in his field. The seminar is a day-long affair and we would be interested in your making the matter known to the members of your association and also considering the possibility of your executive meeting with the executive of the Yukon Law Society at the same time, if you are interested in our proposal to have greater communication.

I am forwarding a copy of this letter to the president of the Yukon Law Society, Donald Kidd, and I would appreciate your reply or telephone call to discuss the matter further.

Kindest regards.

Yours very truly,
Ronald S. Veale
Secretary

Announcement

The Natural Resources Section will be conducting a full-day seminar on Fisheries Resource Development.

The program will be Oct. 1, 1980, at the Captain Cook Hotel, Anchorage. For registration forms, contact **Ron Birch** or **Randall Burns.**

INSIDE/ OUTSIDE

Observations & Comments

by Karen L. Hunt

Last month ATLA unveiled its "American Lawyer's Code of Conduct." The Code is a set of proposed rules of ethics that differs significantly from several provisions in the ABA's proposed re-writing of the current code of professional ethics which has been adopted by most state bar associations including Alaska. The ATLA proposed rules are being called a "client's bill of rights" by its proponents. It takes a far more absolute position against limiting the attorney-client privilege.

The most notable variances between ATLA and ABA Proposed Rules are first that the ABA Rules would require an attorney to disclose a client's confidential information in those circumstances necessary to prevent a client from committing an act that would lead to death or serious harm to others. In contrast, the ATLA Proposed Rules include two alternatives: one which provides for the fore-stalling of harm to others as grounds for permitted disclosures and a second alternative which makes no mention of any circumstances under which client's confidential information can be disclosed.

In addition, the ABA Proposed Rules provide that a corporate lawyer who learns of illegal conduct undertaken by company officials must inform others of such activity even if it means taking that information directly to the Board of Directors or to the stockholders. Under the ATLA Proposed Rules a corporate lawyer would receive detailed instructions at the time he begins his legal duties on how to avoid such conflicts and what actions the lawyer would be permitted to take to resolve those conflicts. Thus, according to the ATLA version, the problem for the corporate lawyer is one of conflict of interest which problem is settled by resolving the conflict not by having the lawyer inform on a client.

A third major area of disagreement is in the area of *pro bono* services. ABA Proposals call for an unspecified annual amount of mandatory free public service by every attorney which public service must be reported to an appropriate agency. The ATLA Rules call such a requirement "hypocritical" since in its view, the *pro bono* rule is unenforceable.

According to ATLA officials, the states are now free to consider adopting ATLA's Rules although the Commission that drafted them will meet in the fall to consider any public comments it may receive. The ABA draft must first be approved by the ABA House of Delegates which vote is not expected until August, 1981.

Public Access to Court Proceedings

In June, 1980, the Oregon Supreme Court in a five to one decision ruled that a state Juvenile Code Law which permitted judges to bar the media and the public from juvenile court hearings violates the Oregon Constitution. The Constitutional provision relied upon by the court states that "no court shall be secret, but justice shall be administered openly...."

In so ruling, the Oregon Supreme Court struck down a 1959 amendment to the Oregon Juvenile Code which gave judges authority to admit into juvenile proceedings "only such persons...as the judge finds have a proper interest in the case or the work of the court." Even in so ruling, the majority of the court also stated that its decision should not be interpreted to guaranty the right of public access to all judicial proceedings because there are appropriate limitations to open proceedings. The court mentions the traditionally

[continued on page 13]

Alaska Pattern Jury Instructions Ready

Copies of the pattern jury instructions for criminal cases are now being printed by the court system's administrative office. These instructions were drafted by a committee appointed by the Supreme Court last fall. The Supreme Court has not yet reviewed and approved these instructions. However, the Court has requested that the instructions be distributed to the trial courts so that the trial court judges can begin to use them and make suggestions for improvements in them.

Any law firm which practices criminal law may request a copy of the new jury instructions by writing to Karen LeBeau, Magistrate Services, 303 K Street, Anchorage, Alaska 99501 and enclosing a check payable to STATE OF ALASKA in the amount of $10.00.

Foreword

To Members of the Alaska Bench and Bar:

As noted in the accompanying Preface to the proposed instructions, the Alaska Supreme Court's purpose in appointing committees on pattern jury instructions, both for criminal and civil cases, was to "start the process by which a clear, understandable and legally correct set of pattern instructions would come into existence and into use within courts of Alaska." While the supreme court has not yet reviewed these instructions, it joins the Committee on Pattern Jury Instructions (Criminal) in urging trial courts and counsel to utilize these instructions to the greatest extent possible and to bring to the committee's or supreme court's attention areas where the instructions are believed to be deficient so that appropriate revisions may be made.

Jay A. Rabinowitz
Chief Justice
Supreme Court of Alaska

Preface

The Committee on Pattern Jury Instructions (Criminal) was appointed by the Alaska Supreme Court in November, 1979, and completed its work in June, 1980. Its mandate was to prepare proposed pattern jury instructions for use with the new criminal code, which had an effective date of January 1, 1980. Membership of the committee was as follows:

Honorable **Ralph E. Moody**, Chairman, Presiding Judge, Superior Court, Third Judicial District, Anchorage
Honorable **Seaborn J. Buckalew**, Superior Court, Anchorage
Honorable **Allen T. Compton**, Superior Court, Juneau
Honorable **C. Richard Avery**, District Court, Anchorage
Honorable **Monroe N. Clayton**, District Court, Fairbanks
Jeffrey Feldman, Esquire, Anchorage
Matt O'Meara, Esquire, Fairbanks
Brian Shortell, Alaska Public Defender, Anchorage
Larry Weeks, District Attorney, Anchorage

Barry Stern, Esquire, and **Shannon Turner**, Esquire, were nonvoting resource persons who attended every meeting of the committee and, because of their expertise in the new criminal code and the drafting of pattern instructions, respectively, contributed immeasurably to the committee's work.

These instructions deal with every section of the new criminal code which the committee deemed a proper subject of jury instruction. Nonetheless, the user may discover individual code sections which require further explication for the jury. In that sense, these may be considered basic instructions only.

It is the committee's belief that the intent of the supreme court in appointing a committee on pattern jury instructions was to start the process by which a clear, understandable, and legally correct set of pattern instructions would come into existence and into use within the courts of Alaska. Because the committee is optimistic that these instructions constitute such a set, it is hoped that they will be used as presented here. If trial courts or counsel believe these instructions incorrectly state the law or are in any other way deficient, it is hoped that such mistakes or deficiencies will be brought to the committee's attention so that appropriate revision may be made.

Walter L. Carpeneti
Reporter

Juneau, Alaska
June 16, 1980

Minutes of the August 8, 1980 Meeting of the Tanana Valley Bar Association

The meeting was called to order by Secretary Art Robson, because all other officers had done a bunk. Guests were **Wayne Wolf**, **Pat Aloia** and **Bonnie Robson**. Moved by **Dave Call** to preserve Robson's image by waiving reading of the minutes in the presence of his daughter. The motion was seconded, but in response to an obstreperous demand, the minutes were read to see if they should be read; after which **Hugh Connelly** moved to table the question. That was seconded and maybe it passed. Correspondence included **Ted Stevens'** weekly news summary, an invitation to Hugh Connelly to attend a pre-opening of the state fair in costume. It was moved, seconded and passed that Hugh Connelly attend in costume representing the T.V.B.A. ad that prize money if any be divided among the members. The treasurer was absent, but the bank statement was opened with the discovery that our bank balance was $2,468.31. A letter from **Jamie Fisher** thanking us for the previous week's entertainment was read, and Robson read his letter to the Judicial Council announcing that stationery had run out, and therefore we could not write to the Supreme Court. Since no one seemed to care, he announced that he would buy some stationery and write to the Supreme Court.

Under committee reports, **Dick Burke** reported that the process server committee was meeting next Wednesday, and he would report next Friday. Some seven minutes later, a little light went on in **Dick Savell's** skull, and he announced that he had now "got it." There were no other committee reports or old business. Under new business, **Warren Taylor's** death was announced, flowers were sent and Warren Taylor stories were exchanged for a sufficiently lengthly period of time to run the meeting overtime by 15 minutes. Since the secretary was presiding, he isn't exactly sure who it was moved (probably **Dave Call**), got it seconded and passed a resolution to appoint a committee to do something concrete with "our" court building, (maybe Savell made the motion) which would be an in memory of Warren Taylor and something that we could see and feel. The motion was a smashing success and Pat Aloia invited the committee members to his house for a spaghetti dinner on a Sunday to discuss potential items. Dave Call was going fishing and so there will be a meeting sometime. People kept volunteering to be on the committee, and it appeared that there were about 20 committee members.

Moved by **Tom Fenton**, seconded and passed that we have a committee to evaluate judicial candidates and to recommend to the bar whether we take any action with respect to their candidacy and if so what. The secretary was instructed to quit calling it a "hit" committee. **Andy Kleinfeld**, **Dick Burke**, **Paul Canarsky**, and Tom Fenton (Chairman) were appointed, and then the motion was debated. After debate, it passed by voice vote and then by hand vote amid commentaries on futility. Judge **Cline** volunteered to serve, and after his third effort at volunteering, Tom Fenton indicated, "Hey, wait a minute! Aren't you one of the candidates?"

By executive fiat,

King Arthur

Anchorage Bar Association News and Views

by Stan Howitt & Doug Williams

Fall Program

The Monday noon luncheons of the Anchorage Bar Association are held at the Westward Hilton in the Commodore Room. We urge your attendance since we can only prepare a strong schedule of speakers with your support and attendance. The Anchorage Bar has considerable clout if it wants to use it and does draw interest from persons who wish to address the legal profession in the largest city in Alaska. It is also your chance to get to know fellow practioners and we can assure you that your getting to know one another on a friendly basis can make things much smoother in handling your litigation. It is better to know your opponent whom you have addressed in friendly converstion then to meet a faceless foe in the court room. Also by being able to point out a pretty good attendance we can also attract the kind of speakers that you will be more interested and concerned to hear.

Along these lines of trying to *"humanize"* the Anchorage Bar, the Board of Directors is planning to hold a fall party which may be scheduled for the Racquet Club.

Also Ron West has been unanimously selected by the Board as well as himself personally to see to it that there is an astoundingly successful Christmas party this year.

[continued on page 16]

Supreme Court Follows Board Recommendations

In The Matter of)
RAY C. PRESTON)

File No. 4889
OPINION
[2156—August 29, 1980]

From the Disciplinary Board of the Alaska Bar Association.

Appearances: Ray C. Preston, pro se, and James McGowan, Juneau, for Respondent. William W. Garrison, Bar Counsel, Anchorage, for Alaska Bar Association.

Before: Rabinowitz, Chief Justice, Connor, Boochever, Burke and Matthews, Justices.

RABINOWITZ, Chief Justice.
CONNOR, Justice, concurring in part, dissenting in part.
BURKE, Justice, concurring in part, dissenting in part.

This appeal involves a disciplinary matter in which we are faced with determining the nature and extent of the disciplinary action to be taken against Ray Preston. Preston was convicted of a felony, which, under Alaska Bar Rule II-23, is included in the definition of "serious crime" and thus calls for the automatic commencement of bar disciplinary proceedings. Preston was convicted on his plea of nolo contendre[1] to the offense of distributing cocaine to another. The superior court, after hearing, suspended imposition of sentence and placed Preston on probation for two years. The Area Hearing Committee recommended that Preston be suspended for six months. Thereafter, the Disciplinary Board of the Alaska Bar Association recommended that Preston be suspended from the practice of law for two years. The case is now before us to determine whether Preston's conviction warrants discipline, and, if so, the extent of such discipline. We have determined that Preston should be suspended from the practice of law for two years.

The relevant underlying facts are as follows. After graduation from law school in 1971, Preston was employed by the Attorney General's office in Juneau. He worked there continuously from August 1971 until he was suspended in 1978 as a result of the criminal offense discussed herein. In May 1978, Preston was indicted by a grand jury on three counts of drug violations. Count I charged that on April 28 he had given marijuana to a thirteen-year-old minor in violation of AS 17.12.010.[1] Count II charged that on April 29 he had given this same minor cocaine in violation of AS 17.10.010. The final count, count III, charged that he had, on April 29, given to an undercover agent approximately .03 grams of cocaine in violation of AS 17.10.010. On March 19, 1979, Preston changed his plea of not guilty to nolo contendre as to count III. This was done pursuant to an agreement in which the state dismissed the remaining two counts of the indictment. As previously mentioned, at sentencing the superior court suspended imposition of sentence for two years and placed Preston on probation for that period. In addition to the usual probation conditions, Preston was ordered not to possess any controlled substances except under doctor's orders and to pay a fine of $5,000 or complete 500 hours of community service.

On April 5, 1979, we issued an order, pursuant to Bar Rule II-23(a), immediately suspending Preston from the practice of law for conviction of a felony,[2] "pending final disposition of a disciplinary proceeding to be commenced upon such conviction."[4] Since the conviction is conclusive evidence of the commission of a serious crime,[5] the sole purpose of the hearing was to make a recommendation as to the extent of discipline to be imposed.[6] After hearing testimony and reviewing all the evidence submitted, the Area Hearing Committee issued findings of fact and a recommendation of six months' suspension.[7]

The Area Hearing Committee's findings and recommendations were then filed with the Disciplinary Board. The parties "stipulated that the Disciplinary Board could hear the matter on an expedited basis without further oral argument or briefing." The Disciplinary Board made its own findings of fact which deviated somewhat from those of the Hearing Committee. These findings formed the basis for a recommendation to this court to impose a more substantial penalty than was recommended by the Hearing Committee. The relevant findings of the Disciplinary Board are as follows:

> As an officer of the court, respondent is charged with obedience to the law. When admitted to the practice of law, he swore to uphold the law.
>
> Conviction of a serious crime is conduct that adversely affects respondent's fitness to practice law.
>
> The Respondent's violation of the law manifests his want of fidelity to the system of lawful government.
>
> Respondent's felonious activity engenders disrespect for the law if such activity is to go without sanction.
>
> Respondent's '...criminal conduct, employing conscious dishonesty, deserves greater condemnation than if it were committed by one not obligated to adhere to high standards of honor and integrity.' *Webb v. State*, 580 P.2d 295, 304 (Alaska 1978).
>
> Respondent's testimony repeatedly asserts that as a lawyer his duty to obey and uphold the law is no greater than that of any other citizen.
>
> Respondent's testimony evidences that he regrets his violation of the law only because of the sanctions imposed for such violations.
>
> Respondent's testimony evidences that he knowingly violated the law simply because respondent disagrees with the law.
>
> The record evidences that respondent did not violate the law as an act of civil disobedience in order to effectuate changes in the law. He disregarded the law simply because he disagreed that the acts which he wanted to perform should be illegal.
>
> The record evidences that respondent acquiesced to similar illegal conduct by a minor age 13.
>
> ...
>
> The record evidences that Respondent's violation of the law unaccompanied by the purpose of effectuating a change in the law raises substantial doubt that he can exercise judgment in giving legal advice to members of the public who may seek his services as a licensed attorney.
>
> By reasons of the foregoing, the Disciplinary Board unanimously finds that the recommendation of the Hearing Committee is inadequate...

As a result, they recommended that this court suspend Preston from the practice of law for two years.

Before this court Preston has made the initial contention that no discipline should be imposed against him since the offense for which he was conficted does not reflect adversely on his fitness to practice law. He also argues that the offense is not one that involves moral turpitude.

In the record before the Board were numerous letters from Preston's friends and associates suggesting that his professional skill and ability to represent clients was not affected by his use and distribution of cocaine. Preston also adverts to the observations made in *State v. Erickson*, 574 P.2d 1, 7-10 (Alaska 1978), that the present state of scientific knowledge does not suggest that cocaine is more dangerous than alcohol. In light of the foregoing, Preston concluded that the criminal sanction imposed on him is sufficient and that he should not be subjected to further sanctions by way of professional discipline.

"The major concern involved here is the damage done to the reputation and integrity of the legal profession."

Lawyers in Alaska are held to a high standard of professional conduct. Alaska Bar Rule II-9 provides, in part:

> The license to practice law in Alaska is, among other things, a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and counselor, and as an officer of the courts. It is the duty of every member of the bar of this State to act at all times in conformity with standards imposed upon members of the Bar as conditions for the privilege to practice law. These standards include, but are not limited to, the code of professional responsibility, and the code of judicial conduct, that have been, and any that may be from time to time hereafter, adopted or recognized by the Supreme Court of Alaska.
>
> ....
>
> Any attorney admitted to practice law in Alaska or any other attorney who appears, participates, or otherwise engages in the practice of law in this State is subject to the supervision of the Supreme Court of Alaska (hereinafter called 'the Court') and the Disciplinary Board hereinafter established.

As part of this supervision, the Supreme Court of Alaska and the Alaska Bar Association perform self-policing functions to assure that these high standards are maintained. As the Hawaii Supreme Court recently noted in *Disciplinary Board of Hawaii v. Bergan*, 592 P.2d 814, 818 (Hawaii 1979):

> It is the solemn duty of this court to regulate the practice of law in this state and to see that the integrity of the profession is maintained by disciplining attorneys who indulge in practices inconsistent with the high ethical standards demanded of all members of the bar. *Disciplinary Board of the Hawaii Supreme Court v. Kim*, 59 Haw. 449, 583 P.2d 333 (1978); *People ex rel. MacFarlane v. Harthun*, Colo., 581 P.2d 716 (1978). In carrying out this duty, we will not hesitate to impose substantial sanctions upon an attorney for any act—whether committed in a professional capacity or not—which evidences want of personal honesty and integrity or renders such attorney unworthy of public confidence.

We reject Preston's contentions that because his conduct was unrelated to his professional skill and ability to practice law that he should receive no discipline. Preston relies upon California cases suggesting that unless the crime involves moral turpitude no discipline should be imposed. *In re Fahey*, 505 P.2d 1369 (Cal. 1973).[8] As bar counsel notes, the latest California Supreme Court pronouncement has rejected this position. *In re Rohan*, 578 P.2d 102 (Cal. 1978).[9]

We are not persuaded that the underlying crime must be one involving moral turpitude as a prerequisite to the imposition of disciplinary sanctions.[10] An attorney acts in a position of public trust and is an officer of the court. He has a duty to the profession and the administration of justice, especially to uphold the laws of the state in which he practices. The ABA Code of Professional Responsibility Ethical Consideration 1-5 (Final Draft 1969), provides, in part:

> Because of his position in society even minor violations of law by a lawyer may tend to lessen public confidence in the legal profession. Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude.

The term "serious crimes" in the Alaska Bar Rules is drafted so that conviction of any felony, an offense which is punishable by imprisonment for one year or more, carries with it the possibility of the imposition of a range of disciplinary sanctions. Certain misdemeanors, dependent upon the moral turpitude of the attorney, are defined as serious crimes.[11] This different treatment accorded felony convictions is based upon the rationale that a felony conviction, standing alone, is a serious enough breach of the public trust of an attorney's position

[continued on page 15]

Judicial Sweepstakes

CANDIDATE	LEGAL EDUCATION	AGE/YRS. IN ALASKA	YEARS IN PRACTICE	% IN LITIGATION	JUDICIAL EXPERIENCE
Victor Carlson	Michigan	45/18	6 years	40%	Anchorage/Sitka Superior Court Judge—9¾ years; Justice Pro Tempore—10 cases
Allen Compton	Colorado	42/9½	13 years	30%	Juneau Superior Court Judge—4 years
John Havelock	Harvard	48/20	10 years	30%	None
Andrew Kleinfeld	Harvard	35/11	9 years	90%	U.S. Magistrate, Fairbanks—3 years
Arthur Peterson	Chicago, John Marshall, Wayne State	40/14	7 years	15-20%	None
William Ruddy	Yale	43/16	17 years	70%	None
James Singleton	Berkeley	41/15	5 years	33%	Anchorage Superior Court Judge—10 years; Justice Pro Tempore on Several Cases
Donna Willard	British Columbia, Oregon	36/15	10 years	90%	Quasi-Judicial as Arbitrator for American Arbitration Association, Anchorage Public Employees Association and Municipality of Anchorage

rt of Alaska

Scratch Sheet

OTHER LEGAL EXPERIENCE	APPELATE EXPERIENCE	OTHER QUALIFICATIONS
Assistant A.G., Juneau; Assistant D.A., Fairbanks and Nome-2½ years; Assistant City Atty., Anchorage—1 year; P.D.—1½ years; Anchorage Borough Atty—3 years	10 Oral Arguments and 25 Briefs	Ridgeview Correctional Center Advisory Board; National Council of Juvenile Court Judges; National College of State Judiciary; Teacher of Business Law at University of Alaska
Alaska Legal Services, Supervising Attorney—2½ years; Legislative Counsel for Poverty Organizations and Interior Villages	10 Cases before Alaska and Colorado Supreme Courts	Governor's Commission on Administration of Justice; Southeast Alaska Mental Health Planning Council; Supreme Court Public Communications Committee President and Treasurer; Juneau Bar Association
Legal Assistant, Dept. of Law, Juneau—1 year; Assistant A.G., Juneau—½ year; Deputy A.G.—2 years; Attorney General—3 years; Special Assistant, Secretary of Agriculture, D.C.—1½ years; Professor of Law, University of Alaska—5 years	6-8 Oral Arguments and 12 Briefs	Board of Governors, Alaska Bar Association; Board of Directors, Anchorage Bar Association; House of Delegates, American Bar Association; Harvard Summer Program For Lawyers; Has Written 18 Articles, Contributing Editor, Alaska Bar Rag; Chairman, Judiciary—Arizona Legislative Committee
Law Clerk, Justice Rabinowitz—2 years	Argued 1 court-appointed appeal	President, Vice-President, Secretary and Treasurer, Tanana Valley Bar Association; Alaska Legal Services Corporation; Board of Directors, Hillcrest Home for Boys; Teaches Constitutional Law, University of Alaska; Author of Several Law Review Articles
Examiner for National Railway Conference—2 years; Legislative Counsel—1 year; Revisor of Statutes—6 years; Assistant A.G.—7 years	Some Alaska Supreme Court cases, the first approximately 12 years ago. Also argued in the 9th Circuit Court of Appeals.	Vice-Chairman, Alaska Code Revision Commission; Board of Directors and Executive Committee, Alaska Legal Services Corp.; Board of Directors, American Civil Liberties Union; National Legislative Conference, Chairman Statute Revision Commission and Attended NITA Seminar
JAG Corps, U.S. Army—6 months; Office of General Counsel, Federal Maritime Commission—1 year; Assistant A.G.—1 year	20 Oral Arguments and 30 Briefs	Board of Directors, Alaska Legal Services Corp.; Board of Directors, Gastineau Manor Halfway House; Chairman, Legal Services Conflicts of Interest Committee
General Practice	50 or 60 Oral Arguments and Briefs	Board of Directors, Alaska Child Abuse; Board of Directors, Anchorage Community Mental Health Center; Board of Directors, Alaska Children's Services, Chairman, Advisory Board Criminal Justice Center, University of Alaska; Committee on Minority Sentencing; Teacher at Trial Judge's College
General Practice	10 Oral Arguments and 30 Briefs. Petitions for Review	Board of Governors, President & Secretary Alaska Bar Association, Chairman, Statutes, Bylaws and Rules Committee, Alaska Bar; State Bar Delegate, American Bar Association, House of Delegates; American Bar Association, House of Delegates, American Bar Standing Committee on Unauthorized Practice of Law; Vice-Chairman; Alaska Code Revision Commissn; Anchorage Advisory Council; American Arbitration Association; Annual Reviser, Probate Counsel

Anchorage

Judicial Sweepstakes

CANDIDATE	LEGAL EDUCATION	AGE/YRS. IN ALASKA	YEARS IN PRACTICE	% IN LITIGATION	JUDICIAL EXPERIENCE
Glen Anderson	Willamette	35/6	5	40%	District Court Anchorage—2 years
Stephen Branchflower	Arizona	34/15	7	100% (Criminal)	None
William Donohue	Cornell	35/9	9	100% (Civil)	None
Sheila Gallagher	Michigan	40/9	14	50%	None
Cheri Jacobus	Arizona	33/7½	7	75%	Quasi-Judicial, 3 years
Carolyn Jones	Yale	39/5	12	60%	None
William Mackey	San Francisco	52/9½	17	90% (Criminal)	None
Daniel Moore	Golden Gate, Denver	46/19	19	100%	District Magistrate and Judge, Anchorage—1 year
Eugene Murphy	Oregon	45/7	7	100% (Criminal)	None
Chuck Robinson	U.C.L.A.	31/7	6	40%	None
Douglas Serdahely	Harvard	34/5½	8	100%	None
Brian Shortell	Calif. Hastings	40/7	10	50%	None
James Wanamaker	Washington	45/20	20	20%	None

Nome

Paul B. Jones	Texas	38/14½	11	75%	Superior Court, Kotzebue—3 months; District Court, Anchorage—3 years
Charles R. Tunley	San Francisco	44/44	15	100%	None

Superior Court

Scratch Sheet

LEGAL EXPERIENCE	OTHER QUALIFICATIONS
Law Clerk, Justice Erwin; Assistant D.A.—2 years; Assistant A.G.—1 year	Judicial College, Reno; Negotiator, Professional Negotiations; World Law Fund, Moot Court Board; Honor Code Committee; Washington Education Assoc.
Student Prosecutor—1 year; Municipal Prosecutor—6 months; Assistant D.A.—6½ years	Hands—Up Anti Crime Community Seminars; Alaska Bar Paralegal Committee; Criminal Code Revision Committee; Lecturer on New Criminal Code; Teacher, Detection and Preservation of Evidence at Crime Scenes; Mng. Editor—Arizona Advocate
Law Clerk, Ak. Transport; Comm—6 months; General Practice—8½ years	American Arbitration Association; Alaska Academy of Trial Lawyers
Anchorage Area Borough—6 years; Anchorage School Dist.—2 years	Chairman, State and Local Boundary Commission; President, National Association of Women Lawyers; League of Women Voters; Editor, Women Lawyers' Journal; National Institute of Municipal League Officers
Office Counsel, U.S. Corps of Engineers—3 years; Chairman, Alaska Pipeline Comm.—3 years	Society for Labor Relations Professionals; Lectures on Government and Women in Law
Legal Aid Society Alameda County—4½ years; Legal Editor and Researcher, Berkeley—4½ years; Assistant A.G.—5 years	Co-Editor, California Civil Discovery Practice; Preliminary Editor, California Civil Procedure Before Trial; Chairman, Ak. Bar Legal Educational Opportunities Committee; Instructor, "Women and Law"; Panelist, Techniques of Appellate Practice
Deputy D.A., Marin County—3 years; Chief Major Crimes Trial D.A., Soland County—5 years; Assistant D.A.—9 years	Certified Police Instructor; Established program of seminars to assist bush and non-urban law enforcement agencies; Teacher, Junior College Level, California, in Criminal Law and Evidence
Civil Trial Practice	Board of Governors, Alaska Bar Ass'n; Chairman, Judicial Qualifications Commission; Calendaring and Civil Rules Committees
Anchorage Area Borough—1 year; Assistant D.A.—6 years	Personal Injury Insurance Adjuster and Examiner for Six Years.
Assistant D.A.—1 year; Private Practice	Judicial Committee on Presentence Reports; Alaska Bar Natural Resources Committee
Law Clerk, Chief Justice Boney and Rabinowitz; Public Defender; Private Practice	Pattern Criminal Jury Instructions Committee; Criminal Rules Committee; Calendaring Committee; Alaska Academy of Trial Lawyers
Public Defender—5 years; P.D. Staff Attorney—2 years; Private Practice	Governor's Commission on Administration of Justice; Part-time Business Law Instructor, Kenai Peninsula Community College
Assistant A.G.—2 years; Assistant D.A.—2 years; District Attorney—1 year; Private Practice	Anchorage Parking and Traffic Commission; Anchorage Charter Commission; Alaska Selective Service Appeals Board; Hearing Officer, State Administrative Procedures Act

Superior Court

Staff Attorney, Alaska Housing Authority—2 years; Assistant A.G.—1 year; Private Practice	One of Founders of Studio Club
General Practice	

Attorney Liability: Delegation, Association and Referral of Client's Representation

by Ronald E. Mallen

Attorneys routinely seek the advice or assistance of other lawyers. If such other lawyers also share the responsibility of the client's representation, then an association of counsel may exist. If the involvement of other counsel constitutes a transfer of the legal representation, then a referral may take place. The distribution as to whether an association or referral has occurred may be significant as to whether one of the attorneys is derivatively liable for the errors of the other.

Liability Consequences

The relationship between an attorney and a client is personal. However, the retention of an attorney in a firm is usually considered to be retention of the firm. Thus, an attorney has the inherent authority to delegate aspects of the client's representation to other members or employees of the firm. The attorney would not only be derivatively liable for wrongs by his employees but also for negligent supervision.

Of course, an attorney may contract to personally handle all or specified aspects of the client's representation. However, even then well-aged decisions hold that a breach of such an agreement will not result in liability for damages unless the substitute's performance fell below the standard of care and caused injury.

Aside from delegation within the law firm, an attorney does not have the inherent authority to associate outside counsel or to refer the client's representation without the client's consent; however, he may employ such technical assistance as he needs to complete the task.

An attorney is not liable for the malpractice of associated counsel who is independently retained by the client. If an attorney requests permission to associate counsel and the client agrees to a division of responsibility, there is usually no liability of one attorney for an error committed by the other. However, even an association with the client's consent can result in joint liability if the attorneys share representation and fees instead of designating specific areas of responsibility. Derivative liability can also result where counsel is associated or the matter is referred without the client's consent. In such cases, the attorney who commits the wrong is also personally liable for his own tortious conduct.

Liabilities Among Counsel

The rights and liabilities of associated or referred counsel are judicially unsettled. In a recent California decision, the appellate court rejected the argument that counsel who referred a case could assert a duty against counsel who accepted the representation. Referring counsel was precluded for suing for malpractice resulting in his loss of his "referral" fee for lack of privity. However, a New York trial court has concluded that an associating attorney may have a cause of action against the associated attorney for legal malpractice which alledgedly resulted in a loss of his potential legal fees. The associated attorney had been hired to prosecute the trial but the action was subsequently dismissed for lack of prosecution. The trial court found that the trial attorney owned a duty to the associating attorney—an implied covenant of good faith—not to injure his right to recover his fee. The client had also sued for malpractice and the court treated the associated attorney's settlement of $25,000 with the client as an admission of the value of the case, utilizing that sum as a basis for computing the probable attorneys' fees which would have been recovered.

Need For Other Counsel

Association or referral may be dictated by both practical and legal considerations. Counsel's motivation may relate to personal feelings about the client, the subject matter of the representation, the adequacy of the legal fee or limitations of time. The distance between the attorney's office and the locality of the necessary representation may also make it economically desirable for the client to retain more local counsel.

Legal considerations may be compelling. For example, the original attorney may be unable to practice in another jurisdiction or may need information and assistance as to local custom, practice or conditions. Perhaps, the most common reason for referral to or association of other counsel is the need for special skills or knowledge.

The need for other counsel may be mandated where the area of law involved is a specialty in which the initial lawyer does not practice. This rule was the subject of the very recent California decision of *Horne v. Peckham*, which concerned an error in preparation of a "Clifford trust" by an attorney who conceded a lack of expertise in such tax matters. Drawing an analogy to the law governing medical malpractice actions, the court approved an instruction that a general practitioner has a duty to refer the client to a specialist or seek such assistance where a reasonable lawyer would do so. The consequences of a failure to fulfill this duty is that the attorney will be held to the standard of care exercised by such specialists. Although *Horne* is the first published judicial decision examining the civil consequences, such a duty is recognized in the American Bar Association's Code of Professional Responsibility. DR 6-101(A) provides that a lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

Ethical Considerations, EC 6-3, amplifies upon this obligation:

While the licensing of a lawyer is evidence that he has met the standards prevailing for admission to the bar, a lawyer generally should not accept employment in any area of the law in which he is not qualified. However, he may accept such employment if in good faith he expects to become qualified through study and investigation, as long as such preparation would not result in unreasonable delay or expense to his client.... A lawyer offered employment in a matter in which he is not and does not expect to become so qualified should either decline the employment or, with the consent of his client, accept the employment and associate a lawyer who is competent in the matter.

Manner of Referral or Association

A referring attorney can be liable for errors in selecting or recommending counsel. This issue was examined under unusual facts in the New Jersey federal district court decision of *Tormo v. Yormark*. The defendant, a New York attorney, was retained to bring an action for personal injuries which his client had sustained in New Jersey. A New Jersey lawyer contacted the lawyer to solicit the representation of the client. The attorney eventually referred the case to the New Jersey lawyer. His only investigation as to the attorney's qualifications was to ascertain from a legal directory that he was licensed to practice law in New Jersey. Having made no further inquiry, he was unaware that the New Jersey attorney had just been indicted for fraud. After the referral, the New Jersey attorney was convicted of the crime and disbarred. Meanwhile, the New Jersey attorney settled the case and embezzled a substantial portion of the proceeds. The client sought to impose liability on all of the attorneys.

In analyzing the client's charge of "negligent referral" the court started its analysis from the proposition that an attorney must exercise ordinary care and skill in referring a client to another attorney. The specific issue was whether the New York attorney had to ascertain any more about the New Jersey attorney than he was licensed to practice. The court stated that normally no further factual investigation was required since the New York attorney could safely rely upon the determination of New Jersey that the granting of a license means that the attorney is presumptively fit and competent to practice law. However, liability could be based upon the need for further inquiry because of suspicious facts known to the referring attorney, specifically that the New Jersey attorney had engaged in unethical conduct by soliciting the client's representation.

Thus, an attorney in making a referral or an association must comport with the standard of care. That standard necessarily depends upon the circumstances of the particular subject matter. For example, an attorney declining the client's representation because of a lack of a required special skill or knowledge, should be wary of referring the client to or associating counsel who also does not possess such skills or knowledge.

In referring the client to other counsel, the attorney should also consider whether the *manner* of referral requires any particular cautions. For example, in a recent California case an attorney undertook to refer the client's medical malpractice to more specialized counsel with but days remaining before the claim would be barred by the statute of limitations. The court held that the attorney could be liable for the loss of the claim even though the client was told to make the appointment with referred counsel because she was not warned of the need for immediate diligence.

Ronald E. Mallen is a partner in the San Francisco and Los Angeles law firm of Long & Levit. Concentrates on litigation of legal malpractice suits, and on the liability and coverage problems of legal malpractice insurers. Frequent national lecturer on malpractice and trial advocacy for professional societies such as the American Bar Association, American Trial Lawyers Association, the National College of Advocacy, the California State Bar, the Vermont State Bar, etc. Author of over 10 analytical law review articles on the multiple phases of legal malpractice. Graduated, as Valedictorian, from the University of California's Hastings College of Law, where he was an editor of the Hastings Law Journal.

ABA Studies Big Impact Cases

Philadelphian To Head Blue Ribbon Group

KAUAI, HAWAII, July 30—The Board of Governors of the American Bar Association today approved implementation of a coordinating group to study the "impact of the 'Big Case' on litigation costs and delay."

In making the announcement, ABA President **Leonard Janofsky** said "big cases," such as the government's antitrust suit against IBM, have contributed to court costs and delays which have made it more difficult for the average American to achieve timely justice at an affordable price.

"This group," Janofsky continued, "will help us and other interested entities outside the ABA to better marshal our limited resources of personnel and dollars."

Edward W. Mullinix from Philadelphia has been named to head the Coordinating Group. Chief Justice **Warren E. Burger** and the United States Supreme Court will be represented by **Mark W. Cannon.** The Judicial Conference of the United States will be represented by three judges, **Andrew Caffrey** of Boston, **Milton Pollack** of New York and **Philip Pratt** of Detroit.

Members of ABA entities on the Coordinating Group in addition to Mr. Mullinix of the Litigation Section are: **Donald M. Haskell** of Chicago (Tort and Insurance Practice Section); **David L. Foster** of New York (Section of Antitrust Law); **Richard S. Kelly** of Chicago (Section of Corporation, Banking and Business Law); the Honorable **Frank Kaufman** of Baltimore (Judicial Administration Division); **Paul Nejelski** of Washington, D.C. (ABA Action Commission to Reduce Court Costs and Delay); and **Alice Daniels**, an Assistant Attorney General in the Department of Justice in Washington, D.C. (Special Committee on Tort Reform).

Marvin Schwartz of New York will represent the American College of Trial Lawyers. The Center for Public Resources will be represented by **Nancy Fabian Walter.** A representative from the Conference of State Court Judges will be named soon.

In addition to exploring problems relating to the impact of the "Big Case" on litigation costs and delay, the Group will monitor existing experiments and encourage new and innovative experiments and make recommendations for changes in the preparation for and trial of the "Big Case."

How to Assist Crime Victims

WASHINGTON, D.C., August 22—How bar associations can assist crime victims and witnesses is detailed in a manual recently released by the American Bar Association's Criminal Justice Section.

The 112-page booklet, entitled "Bar Leadership on Victim Witness Assistance," outlines nearly 50 programs bar associations can undertake to end the sometimes "shabby and indifferent treatment of crime victims."

"Lawyers cannot undo the criminal wrongs inflicted upon victims," explains **Richard E. Gerstein,** immediate past chairperson of the Section, "but they can see to it that the wrongs cease with the initial criminal act."

Gerstein said that a recent ABA report on intimidation of crime victims and witnesses found that supportive services can reduce the effects of real and perceived intimidation, a major problem confronting crime victims and witnesses.

[continued on page 14]

Law is 53rd Iranian Hostage, Says Past ABA President Janofsky

Calls for World's Lawyers To Protest

BERLIN, AUG. 26—The law itself is the 53rd hostage of the Iranian crisis, **Leonard S. Janofsky** of Los Angeles, immediate past president of the American Bar Association, today told lawyers of the International Bar Association in Berlin.

Janofsky said the rule of law is a hostage that "belongs to all nations and all people.... And it is being abused, scorned and trampled upon." He called on his international colleagues to defend the "edifice of law" from terrorism, lawlessness and anarchy as demonstrated by the seizure of the U.S. Embassy in Teheran in November and the detaining of American citizens as hostages ever since. Janofsky, who completed his term as ABA president just 10 days ago, spoke at a luncheon for heads of delegations of lawyers from around the world. The luncheon was sponsored by the American delegation.

The hostage-taking is not merely an Iran—U.S. dispute, said Janofsky, but "affects all nations and if the voices of law and reason remain mute, it is an invitation to anarchy."

"Since November 4, there have been no fewer than 38 recorded incidents in which the legal sanctity of embassies and the immunity of diplomatic envoys have been violated," said Janofsky. "Unless this challenge is arrested, the violence is likely to continue to spread," he warned.

[continued on page 14]

JUDICIAL CANDIDATES

[continued from page 1]

know the people there."

Tunley, like most attorneys, is well aware of the political controversy which surrounded the appointment of Paul Jones to the Kotzebue Superior Court, and says he realizes that a certain amount of politics is involved in any such appointment, but that he sees no point in worrying about it. "I truthfully believe I could do a good job at it...I think I could help the judiciary in that part of the state." Whether he is the successful candidate or not, Tunley promises that he will *not* seek the Kotzebue Judgeship.

["For more background on Paul Jones, see the Alaska Bar Rag, May 1980 Edition. For more information on all the candidates see Sweeepstakes on pages 8, 9, 10 and 11 of this issue.]

INSIDE/OUTSIDE

[continued from page 5]

closed jury delibations and court conferences, as well as the discretionary power of the judge to control access by members of the public or the press who would overcrowd the courtroom and attempt to interfere in the proceedings or otherwise obstruct them.

Lawyer Malpractice

The sixth U.S. Circuit Court of Appeals has ruled that although an attorney may be immune from malpractice claims based upon his choice of trial tactics, that immunity does not shield the lawyer from a malpractice lawsuit for allegedly failing to interview potentially valuable witnesses suggested by the client and failing to direct the trial court's attention to relevant statutes. The case arose over a lawyer's alleged negligence in handling a personal injury case.

Good Moral Character—Who Proves?

A recent ruling of the Alabama Supreme Court held that there is no presumption in favor of findings by the Bar Association's Character and Fitness Committee. The Committee had denied certification for admission on grounds that the applicant "lacked candor" in not disclosing on his application that he had convictions for driving while intoxicated or under the influence of drugs as well as for disorderly conduct. The Alabama Supreme Court reversed the Committee's ruling and held that the Committee failed to rebut evidence of the student's good character which evidence was contained in several letters of recommendation from judges and from lawyers. In contrast, the South Carolina Supreme Court ruled that it is up to a lawyer who seeks reinstatement to the bar to establish by clear and convincing evidence that he has been rehabilitated from the character of one who would, and who did, grossly overreach and improperly deal with the financial affairs of uneducated and naive clients. In so ruling, South Carolina denied the application of the suspended attorney for reinstatement and based its denial on a record that included a bar committee report of the lawyer's failure to prove rehabilitation.

Upcoming CLE in Alaska

INAX, the bar-endorsed malpractice carrier, wants to present the second of its loss prevention seminars in Alaska this fall. Discussions between INAX and the Bar Association are underway to determine in what cities the seminar can be presented and how the presentation can include information and discussion of standards for lawyer competence being developed in many varied legal malpractice decisions around the country. Watch for the program; it should be of interest to every attorney in Alaska.

New ABA Program Designed to Improve Foster Care Planning

WASHINGTON, D.C., August 22 —How the legal system can help make foster care programs more responsive to the long-term needs of foster children is the focus of a special program being launched by the American Bar Association's National Legal Resource Center for Child Advocacy and Protection.

Sponsored by the ABA's Young Lawyers Division through a grant from the Edna McConnell Clark Foundation, the Center's new program will study how the legal system can contribute to foster care planning and recommend ways to reduce unnecessary foster placement.

Noting that there are presently more than 500,000 American children in out-of-home placements, **Mark Hardin**, the program staff attorney, points out that "it is widely recognized among experts in child development and psychology that children suffer from being adrift in foster care."

Yet, he says, many children are nedlessly separated from their parents or placed in one or many temporary homes or institutions.

"While foster care placement is necessary in some cases, it is imperative that it be utilized sparingly, and that the foster child be returned home, or placed in an alternative stable environment, as soon as possible," explains Hardin, formerly attorney for the Permanency Planning Project at the Regional Research Institute of Portland, Ore.

Hardin says the legal system can be justly criticized for contributing to the problem.

"Without competent legal counsel representing the interested parties at all stages of legal proceedings, appropriate planning for foster children cannot be assured," he says.

Further, Hardin says, foster children suffer when the legal system fails to properly coordinate its actions with those of child welfare agencies, parents and foster parents.

The project, Hardin says, will survey legislation and juvenile court and child welfare agency practices in the fifty states as they relate to permanency for children in foster care. It will prepare a legal manual and conduct training programs to assist practicing attorneys handling these difficult cases. The project will also make intensive reform efforts in selected states, efforts which will involve working with local organizations and attorneys. Reform goals will be to promote changes in legislation and court procedures and to expand and improve legal representation in foster care cases.

For further information on the legal project on planning for foster children, contact Mark Hardin at (202) 331-2250 or write him at 1800 M Street, N.W., S-200, Washington, D.C. 20036.

LAW IS 53RD HOSTAGE

[continued from page 13]

Lawyers, said Janofsky, have a "special obligation to register our protest, to express our indignation, to condemn boldly and without reservation tis brutal attack on the law."

While Janofsky said "the 53rd hostage belongs to all nations and all people," lawyers are, he added, "its children."

"The first, last and constant client of every lawyer is the law itself. That client is in grave danger.... We must speak out," he said.

The Iranian crisis is the first time that "terrorism has received the active encouragement and support of a sovereign nation," and thus represents terrorism in "its most dangerous form," said Janofsky. "It is lawlessness masquerading as order; anarchy masquerading as authority, savagery masquerading as justice."

Janofsky noted that the Iranian government has "actively supported" the detaining of the hostages, although he said "some may doubt" the government actually encouraged the initial seizure. Government authorities have ignored two resolutions of the United Nations Security Council and an order of the International Court of Justice for the hostages' release, in which "judges from 15 nations sitting on the court spoke with one voice." That ruling was "based on Iran's flagrant violation of traditional international law, a bilateral treaty and the specific provisions of three international conventions," he noted.

The court predicted the seizure of the U.S. Embassy and the taking of the hostages could cause "irreparable harm," and Janofsky said that prediction has "proven tragically prophetic."

HOW TO ASSIST

[continued from page 13]

The manual, Gerstein said, will be sent to almost 1,000 state and local bars.

"The organized bar," he said, "has special responsibilities and unique qualifications for helping ensure that crime victims and witnesses are not victimized by the criminal justice system."

The manual suggests programs bar associations can undertake alone or in cooperation with the police, prosecutors, courts or citizen organizations. Several model budgets are included as well as advice on financing and evaluating victim/witness assistance programs.

The manual is a product of the Section's LEAA-funded Victim Witness Assistance Project, which serves as the national information center on bar-related victim/witness assistance programs. Requests for copies of the complimentery publication or inquiries about the project should be addressed to project coordinator **Susan Hillenbrand**, Victim Witness Assistance Project, Criminal Justice Section, American Bar Association, 1800 M Street, N.W., Washington, D.C. 20036, (202) 331-2260.

Wanted: Parent Aides

by Shirley Pittz

A Parent Aide is a volunteer who provides support and understanding to parents having difficulty coping with their children. He/she establishes a relationship with one family at a time and develops a stable, caring, nonjudgmental relationship with at least one of the parents. (Parent Aides are assigned to a parent of the same sex but occasionally develop a relationship with both parents.)

The Parent Aide provides an atmosphere in which the parent can feel comfortable disclosing her feelings and concerns with the assurance that these will be held in confidence. The Parent Aide is someone on whom the parent can rely to be fair and honest and not be demanding or manipulative, someone who will be available in emergencies. Together the parent and the Parent Aide search for alternatives and solutions to problems. The Parent Aide helps the parent gain self-confidence and learn to value herself and conquer the feelings of vulnerability and helplessness that may prevent her from reaching out to people or becoming part of the community.

Parent Aides are adults, men and women, usually who have had children of their own. They are people who are able to listen and show caring and understanding for others. In becoming a Parent Aide one will experience two interviews and in-depth training. Parent Aides are given ongoing guidance and training from a Parent Aide Supervisor.

Parent Aides:
Listen, Care, Support, Share

Families with a wide range of needs are served through this program. Some parents find dealing with their children difficult because of temporary stressful situations that have entered their lives. Other parents feel at a loss or inadequate because they have no knowledge about child rearing methods. Some parents find themselves taking their frustrations out on their children because they have not developed appropriate outlets. Whatever the situation, Parent Aides are there to befriend the parent, to listen to their frustrations and to provide genuine caring and concern.

The Parent Aide Program is sponsored by the Center for Children and Parents and has been successfully providing services for a number of years. For more information about this program and how you can become involved, call the Center for Children and Parents and ask for the Parent Aide Supervisor.

If You Like Being a Parent,
Why Not Become a Parent Aide?

The Center for Children and Parents is looking for supportive, caring people to become Parent Aides. Parent Aides are trained volunteers who help troubled parents learn to cope with their children. Parent Aides are given in-depth training on child abuse and neglect, communication skills, child development and "helping" skills. To find out more information about this program, come to an Informational Meeting.

Time: September 23, 7:30 p.m.
OR
September 30, 9:30 a.m.
PLACE: Providence Hospital,
Large Conference Room
First floor, south tower

For more information call: Shirley Pittz 277-1494

You can help troubled families learn to cope with their children.

WASHINGTON, D.C. AFFILIATION

Washington, D.C. law firm specializing in federal agency practice with emphasis on agriculture, energy, transportation, patent, intellectual property, customs and foreign trade desires to affiliate with an Alaska firm that would be interested in having a Washington office and which currently has the type of practice that could make active use of such an affiliation. Contact Philip C. Jones, 420 International Square, 1875 Eye Street, N.W., Washington, D.C. 20006.

Supreme Court Opinion

[continued from page 7]

in the community that interim suspension and the imposition of disciplinary sanctions, including disbarment, are appropriate. In some states, conviction of a felony mandates automatic disbarment. *Matter of Goldman*, 602 P.2d 486, 489 (Ariz. 1979) (en banc); *In re Hopfl*, 400 N.E.2d 292 (N.Y. 1979).

The purpose of disciplinary proceedings under the Alaska Bar Rules is not to impose criminal sanctions. As the California Supreme Court has stated, "[T]he purpose of a disciplinary proceeding is not punitive but to inquire into the fitness of the attorney to continue in that capacity to the end that the public, the courts and the legal profession itself will be protected.[12] When the conviction directly touches on the attorney's competence and ability to practice law, the interests involved are clear. In the circumstances where the conviction does not involve these interests, the integrity and reputation of the legal profession are jeopardized by "the spectre of an individual convicted of a 'serious crime' continuing to serve as an officer of the court in good standing."[13] Public confidence in the profession is detrimentally affected in such circumstances. Disciplinary Rule 1-102(A) provides, in part: "A lawyer shall not:...(6) Engage in...conduct that adversely reflects on his fitness to practice law."[14] We think a felony conviction unquestionably adversely reflects upon the legal profession and the particular attorney's fitness to practice law.

In determining what is the appropriate disciplinary sanction to impose, we first consider the underlying criminal conviction and the relevant surrounding circumstances. ABA Standards for Lawyer Discipline and Disability Proceedings § 7.1 (Approved Draft 1979) provides:

> The discipline to be imposed should depend upon the specific facts and circumstances of the case, should be fashioned in light of the purpose of lawyer discipline, and may take into account aggravating or mitigating circumstances.

Admitted into record before the Area Hearing Committee was the presentence report which was filed in the superior court in connection with the criminal prosecution against Preston. It includes the statements by witnesses that Preston did in fact give small amounts of cocaine and marijuana to the thirteen-year-old son of a friend with the permission of the boy's father. Preston refused to comment to the author of the presentence report as to his participation in these occurrences. However, at the hearing before the Area Housing Committee, when Preston was asked if the presentence report was accurate, he said, "Yes." It is doubtful that the Area Hearing Committee condered the evidence of these two instances of criminal conduct, since there was no mention of them made in its findings. On the other hand, the Disciplinary Board did consider these dismissed charges, since they are explicitly mentioned in the portion of the Board's findings previously quoted. The difference in the recommendations by the Disciplinary Board and the Area Hearing Committee may be largely explained by the emphasis that the Disciplinary Board placed on this conduct, which it found extremely reprehensible.

Though not argued in the briefs before this court, Preston's counsel at oral argument raised the issue of whether this court must limit its determination of the appropriate extent of discipline solely to the conviction and not consider these dismissed charges. Bar counsel responded that he thought that this conduct, given Preston's admission and its inclusion in the record, could appropriately be considered both by the Disciplinary Board and this court as part of the totality of circumstances surrounding the underlying offense. We agree.

This court, while taking into consideration the findings of fact of both the Area Hearing Committee and the Disciplinary Board, must review all the circumstances surrounding Preston's felony conviction appearing in the record in order to determine the appropriate extent of the discipline which is to be imposed. Within the context of Preston's conviction for distribution of cocaine to an adult, we cannot fail to take into account the facts appearing in the record establishing that Preston also engaged in conduct which provides the factual basis for additional violations of Alaska's statutory laws.[15]

The legislative penalties provided for a first conviction of giving narcotic drugs to a minor include a minimum term of imprisonment of ten years. AS 17.10.200(c). This legislative determination evinces Alaska's concern regarding the distribution of dangerous drugs to its minors. We cannot ignore that Preston's conduct has demonstrated disrespect for the legislatively enacted laws of this state.[16]

Such conduct we think reflects gravely on the legal profession and calls into question the public trust accorded this attorney as an officer of the court. Though the record does not suggest that Preston's conduct involved sales or distribution of the drug for profit, it is not merely the recreational use of drugs, as he contends, that is involved. Serious sanctions are appropriate when the felony offense of distribution is involved and the underlying facts show a course of conduct involving distribution to minors. But before stating the disciplinary sanction we deem fitting, we think it appropriate at this point to consider what mitigating factors appear in the record.

We agree with Preston that this conviction does not reflect on his professional ability or competence to serve his clients. Those are separate concerns. As we noted, the major concern involved here is the damage done to the reputation and integrity of the legal profession. The record suggests that Preston has otherwise been an exemplary attorney and that he is widely respected by clients, colleagues and friends. His use of these drugs and his willingness to give them to others in knowing violation of the law occurred at a time when he was emotionally suffering from the traumatic break-up of his marriage. Preston was not acting as a professional dealer or acting for profit; nor was he addicted to any drug. The distribution of the drugs to a minor was carried out in the presence and with the permission of the thirteen-year-old boy's father. Further, the overall picture conveyed by the presentence report is that "the intent of [Preston] was benign and the incidents were the result of exceedingly poor judgment."

Upon consideration of the circumstances pertaining to Preston's felony conviction and these mitigating factors, we are convinced that Preston's conduct is deserving of a disciplinary sanction. In the case at the bar, suspension was originally requested by bar counsel to roughly coincide with the two-year term of Preston's probation and suspended imposition of sentence on the rationale that Preston should not practice while on felony probation.[17] We have concluded that the interests of society and the profession would best be served by suspending Preston from the practice of law for two years. It is therefore ordered that Preston's license to engage in the practice of law in Alaska shall be suspended for two years commencing with the date of this court's interim suspension order of April 5, 1979.

Separate Opinion by CONNOR, Justice.

I would impose only a suspension from April 5, 1979, until the date of this opinion, which will amount to a suspension in excess of 16 months.

BURKE, Justice, concurring in part, dissenting in part.

I concur in the opinion of my colleagues, except as to the measure of discipline that should be imposed. I would order Mr. Preston disbarred. His intentional and knowing disregard of the law he was sworn to uphold, both as an assistant attorney general and a member of the bar, demonstrates that he lacks fit character to practice law in Alaska.

1. AS 17.12.010 provides:

> Except as otherwise provided in this chapter, it is unlawful for a person to manufacture, compound, counterfeit, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, a depressant, hallucinogenic or stimulant drug.

2. Alaska Bar R. II-23(a) provides:

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

3. Alaska Bar R. II-23(b) provides:

> The term 'serious crime' shall include any crime which is or would be a felony in the State of Alaska, except violations of Alaska Statutes Title 28 and violations of motor vehicle laws of other states or local governments, and shall also include any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, corruption, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a 'serious crime.'

4. Alaska Bar R. II-23(a), *supra* note 2; *see also* Alaska Bar R. II-10, II-15.

5. Alaska Bar R. II-23(c) provides:

> A certificate of a conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against him based upon the conviction.

6. The types of discipline available for this court to administer are set forth in Alaska Bar R. II-12, which provides:

> Misconduct shall be grounds for:
> (a) Disbarment by the Court; or
> (b) Suspension by the Court for a period not exceeding five years; or
> (c) Public censure by the Court; or
> (d) Private reprimand by the Disciplinary Board; or
> (e) Private informal admonition by the Administrator.

7. Among the relevant findings of fact made by the Area Hearing Committee are the following:

> The formal petition charges that the commission of the crime of distribution of a narcotic drug as referred to in Finding No. 4 herein, constitutes engaging in conduct that adversely affects Respondent's fitness to practice law, and that said conduct is in violation of DR 1-102(a)(6) of the Code of Professional Responsibility, which states that:
>
> (A) A lawyer shall not:
>
> .....
>
> (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

Respondent-attorney, as an officer of the court, is charged with obedience to the law. He assumes a position of responsibility to the law itself, and to uphold the law, and any serious disregard of the law by him is more grave than that by a layman who breaks the law.

The Respondent's breach of the law manifests his want of fidelity to the system of lawful government.

Respondent's felonious activity may well engender disrespect from the public if such activity were to go without sanction.

"We think a felony conviction unquestionably adversely reflects upon the legal profession and the particular attorney's fitness to practice law."

Conviction by the Respondent of a serious crime, namely said felony, is such conduct that adversely reflects upon his fitness to practice law.

The Respondent, prior to the institution of the criminal charge herein, properly performed his duties as an attorney. Since the institution of criminal charges, he was discharged from his position as an attorney with the State of Alaska. He has suffered financial loss prior to and since his suspension on April 5, 1979. He admits sorrow for his actions involving said felony, although he has a philosophical disagreement with that law. He agrees that an attorney has an obligation of public trust, but disagrees with the premise that an attorney's duty to obey the law and uphold it is any higher than any other citizen.

8. We note that California provides for a different scheme of discipline than that provided for in Alaska. Alaska follows the ABA Standards for Lawyer Discipline and Disability Proceedings §§ 9.1-9.4 (Approved Draft 1979) in providing that conviction of a serious crime, which includes any felony, calls for the immediate suspension of the offending attorney as well as disciplinary proceedings to determine the nature and extent of discipline to be imposed. Compare the procedures noted in *In re* Rohan, 578 P.2d 102, 104 n.3 (Cal. 1978).

9. *But see* Chief Justice Tobriner's concurrence in *Rohan*, 578 P.2d at 106-08.

10. Thus, we need not consider whether, by its nature or the surrounding circumstances, the conviction in this case involved moral turpitude. *See In re* Kreamer, 535 P.2d 728, 731-32 (Cal. 1975).

11. *See* note 3 *supra*.

12. *In re* Kreamer, 535 P.2d 728, 733 (Cal. 1975) (citation omitted). *See also* Louisiana State Bar Ass'n v. Bensabat, 378 So.2d 380, 382 (La. 1979); State *ex rel.* Oklahoma Bar Ass'n v. Denton, 598 P.2d 663, 665 (Okla. 1979).

13. ABA Standards for Lawyer Discipline and Disability Proceedings, Commentary to § 9.2 (Approved Draft 1979).

14. ABA Code of Professional Responsibility, Disciplinary Rule 1-102(A) (Final Draft 1969).

15. An attorney may be disciplined for illegal conduct which does not result in a criminal conviction. *In re* Hanratty, 277 N.W.2d 373, 375 (Minn. 1979); Ohio State Bar Ass'n v. Weaver, 322 N.E.2d 665 (Ohio 1975); Annot., 76 A.L.R.3d 1028 (1977).

16. The Indiana Supreme Court in *In re* Gorman, 379 N.E.2d 970, 971-72 (Ind. 1978), found criminal activity involving cocaine distribution for profit by an attorney warranted disbarment and noted:

> In the present case the Respondent was convicted of possession with intent to distribute, distribution and conspiring to distribute cocaine. These are not the acts of an experimenting youth. Respondent actively engaged himself in the introduction of a controlled substance into a market place that, unfortunately, is too often occupied by children and adolescents. He intentionally set in motion, without any apparent regard for the consequences, factors which could have serious impact on other societal members. By our society, through the enactment of laws, the use, possession and sale of cocaine have been deemed unwanted and illegal acts. By his conduct, the Respondent has attempted to place himself above the law and superior to societal judgments. These acts, being committed by an attorney, are evidence of a baseness, vileness, and depravity in the social and private duties which an attorney owes to his fellowman.

17. *Cf.* State *ex rel.* Oklahoma Bar Ass'n v. Denton, 598 P.2d 663, 665 (Okla. 1979) (discipline for possession of marijuana ordered as suspension for length of period of probation).

Anchorage Bar

[continued from page 6]

It has been suggested that we have CLE Programs at least once or possibly twice a month by utilizing either the standing committees of the Alaska Bar Association as we will be doing for one ongoing program or by using video tapes from such organizations as the American Trial Lawyers Association or the National Institute for Trial Advocacy. The advantage of such video tapes would be that they can be replayed for newly admitted members of the Anchorage Bar. We do have enough funds to start such a video tape library.

Nominations in October

The Nominations Committee is now accepting nominations for officers for the Anchorage Bar Association. Please contact the members of the Committee if you are interested. They are:

Dennis Lazarus, Chairperson
(tel. 279-6425)
Mary Hughes (tel. 274-7522)
Paul Kelly (tel. 276-1994)

Elections will be held October 20th which is also the date of the annual meeting for the Anchorage Bar Association.

New Luncheon Meeting Place Reviewed

The Feds have offered us noon luncheon space in the new Federal Building in their cafeteria which has a partitioned room. The advantages would be that you could either go through the cafeteria line and the luncheons would be cheaper than the present price of $7.90 being charged at the Hilton Westward or in the alternative, you could bring a sack lunch and just buy liquid refreshments. The disadvantages of course is that the location is distant from the downtown core center of office buildings and courts but if it's the price of the luncheon that is stopping you from attendance, then we wish your comments towards making a move to get you down to our luncheons. Please let us know by sending your comments to:

Anchorage Bar Association
P.O. Box 3715
Anchorage, Alaska 99510

Alaska Bar Association: Under Supreme Court Rule or Legislative Statute?

The Anchorage Bar Association has not yet taken a stand as an Association regarding whether or not the Alaska Bar Association should be integrated under an Alaska Supreme Court Rule or continue its efforts to obtain an extension of the present Alaska Bar Act with the legislature. This issue is of great concern to all members in the Anchorage area and the Bar Association will attempt to take a formal stand on the questions. We hope to air fully the matter at our future meetings.

September - October
Schedule of Monday Noon Luncheons
Westward Hilton - Commodore Room

September 8th: **Common Sense For Alaska.** J. Shelby Stastny, Paul Robinson.

September 15th: **Ed Clarke,** Libertarian. Candidate for President.

September 22nd: **Richard Gantz, ABA Delegate,** Significant Highlights of the recent National meeting of the American Bar Association.

September 29th: **Craig Duncan,** C.P.A. and President of the Alaska Society of CPA's. "Tax Shelters."

October 6th: **CLE Mini Program.** Administrative Law Committee by Alaska Bar Association. Mary Hughes, Chairperson.

October 13th: **Frank Murkowski** - Candidate for the U.S. Senate.

October 20th: **Annual Meeting** of the Anchor[illegible] Bar Association—Election of offi[illegible]

Tanana Valley Bar Minutes

August 1, 1980 Meeting

The meeting was called to order by Vice-President **Bob Groseclose** after stalling an extra 15 minutes to see if the president would show up. Guests were **Jamie Fisher,** formerly esquire and of Kenai; semi-justice (or super judge) **Bob Coats;** and retired Colonel **Mary Alice Miller.**

Minutes were read, and the treasurer indicated that we were solvent; although the margin of solvency was in doubt. The mail contained amendments to the corporate law, as either codified or in the administrative code, but no one was interested. Imitation President **Groseclose** indicated that **Frank Murkowski** had been rejected for attendance at today's meeting. **Dick Burke** was going to move to let him visit on the 15th 'til he discovered that **Valerie Therrien** was really present.

Jim DeWitt, being the entirety of the committee to award an *'eques rumpus profundus* trophy to the most asinine administrator of the month, nominated someone named **Davis** in the corporate section who sent his reservations of corporate name back. **Dick Savell** argued that he had bigger horror stories. Judge **Connelly** was nominated by Judge **Van Hoomissen,** Judge Connelly replying that it takes one to know one. Dick Savell asked for wills forms which were tendered only if he would sign them, have them witnessed and notarized.

Old business consisted of the cheesecloth-like appearance of the attorney general's office with **Doug Mertz** leaving to clean up oil spills, **Bob Coats** returning to be a clerk for the Supreme Court, and nobody to represent the pipeline coordinator. New business included a motion by **Larry Wood,** seconded by Judge Clayton, that we request the Judicial Council and the Supreme Court to allow designees for the Appellate Court to live wherever in this state that they might wish and/or to retain the salary differential for living at their former home. **Andy Kleinfeld** raised a substitute motion that the court travel in the same manner as the Supreme Court does so that Fairbanks cases would be heard in Fairbanks. There were a number of seconds to this, and after a procedural hassle that the secretary refused to take down, the substitute motion passed, and the main motion passed, and the secretary was directed to do something about them. Judge Clayton propbsed resolving the matter by moving to abolish the court of appeals because it had become too controversial. People were laughing too hard to second the motion. **Dae Backstrom** was chided for not making his contribution to charity which was to provide adequate consideration for Judge **Miller's** judicial clothing.

By executive fiat,

King Arthur

August 15, 1980 Meeting

The meeting was called to order at 12:30 by President **Jon Link.** Guests were **Jack Hessen,** who has been newly-appointed magistrate of the District Court in Fairbanks, and Col. **Ken Haycraft,** the retired member of Call, Haycraft and Fenton. The minutes were unexciting. There was no treasurer's report. **Barry Jackson** brought forth a resolution which had been typed and duplicated in advance and is attached to the minutes. He explained that compensation for bankruptcy trustees was "niggardly" which, as he put it, meant "quite small." Judge **Connelly** moved to refer the matter to the Process Servers Committee or someone to review the qualifications of **Jeanette James.** By executive fiat, President Jon referred the matter to a committee consisting of Barry Jackson, **Jim DeWitt** and **Winston Burbank.**

The Process Servers Committee, or at least **Dennis Bump,** had been served by **Neil Kennelly** with an order regarding **Charles Cowles,** who has lost his certification to serve process. The title of the order made it sound like an adoption, and the Clerk's office has refused to accept it. **Dick Burke** indicated that the committee could use one more member, so that they could more effectively be sued, that Cowles had called **Pat Aloia,** court administrator, names, and President Jon appointed **Chris Zimmerman** to put his thumb in the dyke (allegorical, not obscene).

Since the Chamber of Commerce wanted to know why we wouldn't become members at $500 a year, **Bob Coats** was appointed as chairman with **Tom Fenton** and **Bob Groseclose** members of a committee to determine whether we would gain to join any organization that would have us as a member.

Considerable hullabaloo rocketed about the room with respect to politicians speaking. Since **Frank Murkowski** wasn't speaking today, he was invited to talk to **Mike Wallace,** and Judge **Crutchfield** even volunteered to pay for the phone call.

Dick Savell presented the coveted Stanley Award to **Ralph Beistline** for his masterpiece "Ode to a Chena Burger."

Judge Clayton rose to his feet, and with a smile at least 74 teeth across, announced that as of October 25th he was retired from the District Court bench. In the ensuing gasp, the room ran out of air, and we were adjourned.

By executive fiat,

King Arthur