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Dignitas. Semper Dignitas

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Silver Fox Roasted

by Stan Howitt

Over 350 people attended the Roast of the Silver Fox of the North, Wendell P. Kay, at the Sheraton Anchorage Hotel on October 22, 1981. The occasion was not only an affectionate tribute to the Dean of Alaska Trial Attorneys by his friends but also a nostalgic meeting of attorneys and others who hadn't seen each other in years.

Master of Ceremonies

District Court Judge James A. von der Heydt attempted to maintain some semblance of order as the enthusiastic audience continuously exploded in laughter and applause as Senator Ted Stevens, Cliff Groh, R. Stanley Ditus, Judge Seaborn Buckalew, Eugene Williams, Bruce Kendall, and finally Wendell took their turns on the rostrum.

Senator Stevens reminisced about the colorful campaigning he and Wendell engaged in while both were running for the U.S. Senate seat for Alaska in the 1970 election. He was followed by Cliff Groh who recalled for the audience some of the more outrageous trial tactics employed by Wendell in Territorial days. Groh noted that the times have changed; but Wendell hasn't. His trial tactics remain the same.

Stanley Speaks

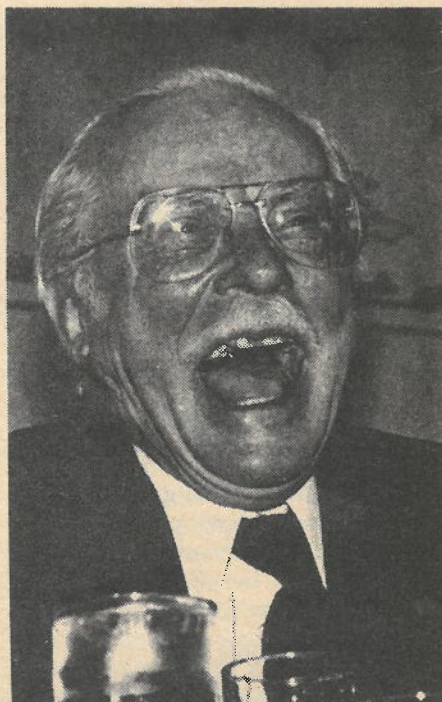
Next, that master orator R. Stanley Ditus, rose to his feet, grasped the rostrum, reared back and delivered one of the most entertaining, albeit confusing, speeches of the evening. It was never clear exactly whether Stanley was roasting Wendell or a number of other dignitaries, including himself. But it didn't matter to Wendell or the

See photos page 6

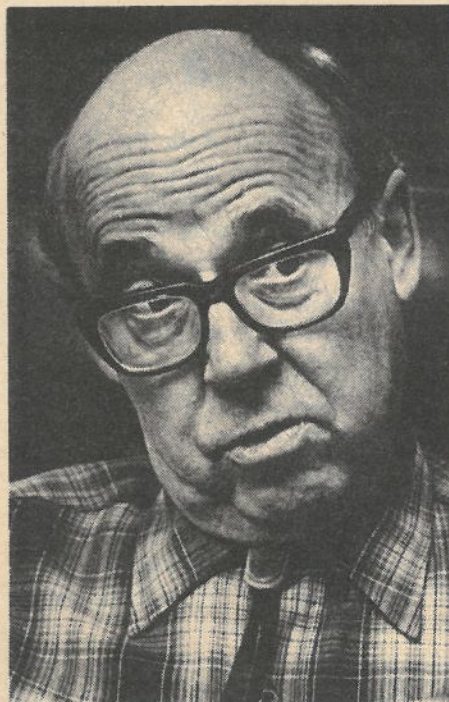
rest of the audience — they loved it. In an exclusive *Bar Rag* interview following the program, Stanley explained that he had at least three or four more good stories to tell about Wendell when the Master of Ceremonies reminded him he has used up his allotted time at the podium by vigorously tugging at his coat.

Judge Seaborn Buckalew recalled some of the hi-jinks he and Wendell engaged in during the Territorial Legislature of 1955 when Wendell was Speaker of the House and he was his roommate. Speaking of Wendell's famous courtroom presence, his former law partner remarked that there were times in the early days of Wendell's practice when he managed to win the sympathy of the jury not be-

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Wendell Kay



Judge Stewart — Juneau Empire photo

Carpeneti, Cranston Appointed to Bench

Juneau, Kenai Judgeships Filled

On October 10, 1982, Governor Hammond announced his choices of Juneau attorney Walter "Bud" Carpeneti and Kenai attorney Charles K. Cranston to fill the seats of retiring Superior Court Judges Stewart and Hanson, respectively.

Carpeneti received his law degree from the University of California, at Berkeley. He first came to Alaska in 1970 when he clerked for Justices Dimond and Rabinowitz for approximately a year and a half. Following his clerkships, Carpeneti returned to California where his wife Anne attended Hastings Law School in San Francisco.

The Early Years

Carpeneti began the practice of law in the offices of Melvin Belli in San Francisco. He left Belli's firm to start his own with his brother and subsequently, his father. In 1974, following his wife's graduation from Hastings, they moved to Alaska where he went to work for the Public Defender Agency in Juneau while she took a position with the Legislative Affairs Agency.

He worked for the Public Defender Agency in Juneau until 1979 when he went into private practice with Juneau attorney William Council in the law firm of Carpeneti and Council where he has carried on a general practice with emphasis on trial work up to the present.

Anne

Anne Carpeneti worked for the Legislative Affairs Agency in Juneau from 1974 to 1977 when she joined the criminal division of the Attorney General's

Office. In 1979, she joined the District Attorney's Office in Juneau as an Assistant District Attorney.

During his years of practice in Alaska, Carpeneti has served as a member of the Alaska Supreme Court's Rules of Evidence Committee as a member of the Alaska Supreme Court's Rules of Evidence Committee as well as the Alaska Judicial Council. He resigned from his position on this body when he decided to run for Judge Stewart's seat. Married in 1969, the Carpenetis have one child, a 10-month-old son, who has not yet expressed an interest in pursuing a career in law.

Charles Cranston

A graduate of Carleton College in Northfield, Minnesota, Charles Cranston received his law degree from the University of California, Berkeley in 1959. Cranston started his law career in Denver, Colorado after a tour in the U.S. Army. He practiced in small towns in Colorado and California before coming to Alaska in 1968 as an Assistant Attorney General in Juneau.

Subsequently, he worked for the AG's office in its litigation section in

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Judge Stewart Retires

by Kathy Kolkhurst

Retiring this month from the Superior Court Bench, Judge Thomas B. Stewart looks back on a distinguished career encompassing academic and legislative achievements along with his 15 years' service at the trial bench. He looks ahead to a year's job as Reviser of Rules for the Alaska Court System.

One of the more colorful incidents Tom Stewart remembers began with a Senate resolution in 1963 asking the Supreme Court to improve the disciplinary system in the Bar. Stewart was administrative director of the Alaska Court System from 1961-1966 and had the opportunity to observe the dispute firsthand. When Justice Buell Nesbitt "took the bit in his teeth" and ordered the adoption of disciplinary procedures written by Burt Biss, the Board of Governors refused to accede and announced its intention to disregard the rules. According to Stewart, Nesbitt issued an order to remove the Board of Governors, set up a trusteeship over the Bar, sequester the funds, records and bank account. Stewart was instructed to accompany the marshal assigned to take over the Bar Association's bank account.

Family Tradition

Born January 1, 1919, in Seattle, Washington, Stewart has been a lifelong Alaska resident. His father Benja-

NOTICE

The Juneau Bar Association will host a dinner for retiring Superior Court Judge Thomas B. Stewart on December 18, 1981 at the Juneau Yacht Club.

Tickets for the prime rib dinner, wine included, are \$25.00 per person. No host cocktail hour (all drinks \$1.00) will begin at 6:30 p.m., with the dinner to follow at 8:00 p.m. Please make your reservations through Pat Aloia, Area Court Administrator, Pouch U, Juneau, Alaska 99811, phone 465-3434. Please make your reservations early, as no reservations will be accepted after Tuesday, December 15, 1981.

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min D. Stewart served as head of the territorial mining agency under five different governors. B. D. Stewart, one of Juneau's mayors during the early part of the century, also has a mountain named after him — the highest peak in Douglas — Mount Ben Stewart. Tom Stewart went to high school in Juneau, graduating in 1936, and put himself through college at the University of Washington working in Juneau's AJ mine during the summer. At the

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JUDGE STEWART RETIRES...

[continued from page 1]

University of Washington he received a degree of Bachelor of Arts in history and literature in 1941. During the Second World War he served in the Aleutians and Italy with the Mountain Infantry (ski troops) receiving both bronze star and silver star awards. During the five years he was in the Army he rose through the ranks from private to captain.

Stewart returned to Juneau for the 1946 special session of the Alaska Legislature where he was the chief clerk of the House. He then took off for John Hopkins University at Washington, D.C. where he attended the school of Advanced International Studies and received a Master of Arts degree in International Studies, and began his study of the Russian language.

Stewart at Yale

In 1947, Stewart entered Yale Law School and continued his study in the Russian language at summer session in Middlebury College, Vermont, in 1949. After receiving a Bachelor of Laws degree from Yale in 1950, he served as clerk to the U.S. District Judge for the Territory of Alaska at Juneau, the honorable George W. Folta. Judge Folta is now deceased. Stewart then became one of few assistant attorney generals in the Territorial Executive, serving from 1951 to 1954, at which point he was elected to the House of Representatives of the Territorial Legislature. He served as chairman of the Joint House Senate Committee on Statehood and Federal Relations.

After working as the secretary (and a general organizer) of the Alaska Constitutional Convention in 1956, he entered a five-year private practice in Juneau. Working out of the Oddfellows Hall in Juneau, he recalls that one of his major cases was putting the plywood mill through bankruptcy. He recalls that he had "more than my fair share" of non-paying clients.

In 1959, Stewart was elected state Senator and became Chairman of the State Affairs Committee and a member of the Judiciary Committee chaired by now Superior Court Judge Ralph Moody. Stewart recalls that he helped write the statutes which established the executive branch of the government, including all the departments and various agencies.

A Pair of Squeakers

After losing a bid for re-election by two votes (it is rumored that he won

his first election to the state by one vote) he became administrative director of the Alaska Court System, a position he held from 1961 to 1966.

In 1966 he was appointed by outgoing Governor Egan as Superior Court Judge and was made presiding Judge of the district in December of 1967.

Tom Stewart is married to the former Jane Snyder who hails from Tulsa, Oklahoma. The couple has seven children: Rebecca, Donna, Elizabeth, Steven, Mary, Caleb, and Thomas.

Errata

The last edition of the *Bar Rag* (September-October) should have been captioned our comedy of errors edition in as much as in our rush to publish:

- (1) We printed Ed Burke's first name as Edmond and Edward;
- (2) We negligently demoted one of our associate editors to a contributing editor;
- (3) We mislaid a paragraph which should have been at the end of the third column of *Gail Fraties All My Trials* putting it instead at the end of his piece where it made no sense at all;
- (4) We misspelled Stan Howitt's name as "Hewitt" under his picture;
- (5) We corrected his name to Mrs. Bob Frenz under another photograph;
- (6) We put Sandra Saville's name under a photo of some children playing in a sand box;
- (7) Our typesetter accidentally added 100 reversals to Judge Taylor's record (fortunately we didn't correct the percentages);
- (8) Our addition of the total number of cases affirmed was one off;
- (9) So was our addition of the reversals (not counting Judge Taylor's inflated count).

We're sorry.

—The Editors

CARPENETI, CRANSTON APPOINTED...

[continued from page 1]

Anchorage before entering private practice here. In 1972, he began practice in both Anchorage and Kenai. A member of the Alaska, California and American Bar Associations, his general civil practice has emphasized municipal, corporate and administrative law. He is presently a partner in the law firm of Cranston, Walters and Dahl.

The Practice

In recent years, Cranston has concentrated a quarter of his time on appellate practice, with approximately 15 percent of his time spent in active trial work. He currently represents the North Slope Borough in all of its litigation and public utility matters.

Cranston is 49 years of age, married and the father of two children. He succeeds Judge Hanson in a court position which has grown significantly in case load and responsibility in the past several years. Although Kenai is pres-

WENDELL KAY...

[continued from page 1]

cause he resembled a silver fox; but because he looked more like a coyote that had been hit by an oil truck.

Eugene Williams talked about the days when he worked for Buckalew and Kay in their law firm. As the youngest member of the firm, he was privileged to represent a good share of the low, slow and no paying clients that his seniors had somehow deemed would stand to benefit from Gene's services more than from their own.

Wendell's Turn

When it was finally Wendell's turn, the audience was ready for him. We applauded and laughed with him at each remark he made. He told us that no one should really believe all of the nice things that had just been said about him. He told us that he was very sentimental — that he not only cries at the movies, but at the commercials on t.v. as well. He told us that this was the happiest moment of his life. We believed him.

After a standing ovation for Wendell, Bruce Kendall opined that all of the monies donated to the Wendell P. Kay Distinguished Professorship fund were supposed to be used for a bronze statue of the present dean of the University of Arizona Law School. The good dean then rose to the occasion, refuted this base canard, and expressed his sincere appreciation for the contributions that would make the new chair at the law school a reality.

ently allocated only one Superior Court Judge, Judge Hanson has announced his intention of making himself available for judicial duties for at least a two-year period to ease the burden on the court.

Judge Hanson's Letter

In his letter of resignation to Governor Hammond in April, 1981 Hanson stated:

"The local case load has outgrown my ability to deal with it and this resignation is offered at this time to give the legislature and the court system administration an opportunity to consider whether or not to create a second position for the area. As I have explained, for at least the next two years, I can be available to serve during the winter months which I believe will meet the area needs. I will have been a judge for 16 years this July. They have been exciting years and while there is much about the changes in Alaska that are unfortunate, the quality of the judiciary has significantly improved in the past six years. Your selections have been outstanding."

A CHRISTMAS MOTIF

A ground rhythm staccato with the sidewalk beat of rushing shoppers, the air is cold and electric accelerated and pulsing;

caravans of caroling children clad in scarves and mittens and white clouds of breath — oh, come, all ye faithful.

A blaring atonal symphony of impatient traffic interrupts the happy holiday atmosphere;

store windows trimmed and glittering like a garish aluminum tree, scent of snow and pine cones, candles and nostalgia;

all a whirl of tinsel, lights and laughter and music in quickened cadence — joy to the world;

the bell of the street corner Salvation Army Santa Claus forlorn as a distant train whistle.

Susan Hallock
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Disciplinary Happenings

by Dick Ray, Bar Counsel

The following are "sanitized" descriptions of conduct of attorneys which resulted in private, informal admonitions administered by Bar Counsel. Private, informal admonitions are authorized by Alaska Bar Rule II-14(f) and are considered to be the least severe form of discipline:

★ ★ ★

Attorney disclosed client's confidences when he discussed a client's case at a luncheon meeting with other attorneys.

★ ★ ★

Attorney drafted corporate documents and typed in date at top of documents. Later, persons signing documents appeared to have signed on the date typed in at the top. Attorney should have specified *nunc pro tunc* for each person who signed at a later date.

★ ★ ★

Attorney failed to inform clients and court that case had been settled. Clients showed up for trial. Court had to call and find out what was going on with the case. This caused clients financial hardship and the Court inconvenience.

★ ★ ★

Attorney did not continue to pursue civil case while client unsuccessfully sought the services of a substitute counsel. The attorney was still counsel of record even though client was searching for a replacement. The case was neglected for a protracted period of time. Also, attorney failed to carry out the contract of employment entered into with the client before he properly withdrew from the case.

★ ★ ★

Attorney wrote a letter to a judge wherein he accused the judge of arrogance and also used profane language regarding an award of attorney's fees by the judge.

★ ★ ★

Attorney did not return repeated telephone calls from his client regarding status of case. This failure to communicate with a client constituted neglect of the legal matter entrusted to the attorney.

★ ★ ★

Attorney neglected to follow

Anchorage Bar Association Christmas Party

The Anchorage Bar Association is sponsoring an old fashioned Dickens-style Christmas party on Sunday, December 13, 1981. All attorneys in the Third Judicial District and their families are invited and urged to attend.

The party will be held at the Carpenter's Hall located at 407 Denali from 12:00 o'clock Noon until 6:00 o'clock p.m. A Christmas luncheon will be served from 2:30 o'clock p.m. until 5:00 o'clock p.m. and the menu will feature turkey, ham, dressing, potatoes, vegetables, salads and dessert. In addition there will be a wide selection of holiday beverages both alcoholic and non-alcoholic.

Entertainment will be provided by a string quartet and a group of madrigal singers. Guests are encouraged to attend wearing costumes reminiscent of the time of Dickens. There will be a prize for the best costume.

An appearance by Santa Claus is expected and it is anticipated that he will bring small treats for the children.

The cost of Five Dollars (\$5.00) per person or Ten Dollars (\$10.00) per family. Reservations can be made by calling Kathi at Bazeley and Harrington, 272-8591 or Steve Van Goor at 276-8514.

through on a probate matter which resulted in loss of an asset of the estate.

★ ★ ★

An attorney's personal friend was involved in divorce proceedings. A court order prohibited either party from disposing of the marital property. Unaware of the court order, the attorney assisted his friend in removing certain articles from the family residence. Attorney knew divorce was acrimonious and should have inquired as to status of the case before helping remove the property.

★ ★ ★

MEMORANDUM

TO: Al Szal,
Area Court Administrator
FROM: Andrew M. Brown,

DATE: October 2, 1981
SUBJECT: Domestic Violence
Proceedings in 1981

As of today 239 Domestic Violence cases have been disposed of in 1981; of which 219 petitions fit into one of the following categories:

1. 61 of the 219 (27.8%) were dismissed due to lack of prosecution; which generally means the petitioner not appearing at the regular hearing.
2. 35 of the 219 (16.0%) were dismissed due to either the petitioner in court at the regular hearing or by written motion dropping the case.
3. 25 of the 219 (11.4%) were granted due to no appearance by the respondent at the regular hearing with the petitioner desiring to proceed with the case.
4. 26 of the 219 (11.8%) resulted in the parties stipulating to injunctions.
5. 42 of the 219 (19.2%) were granted after a contested hearing concerning one or more aspects of the case.
6. 5 of the 219 (2.3%) were denied after a contested hearing.
7. 25 of the 219 (11.4%) had denials at the emergency order state and no regular hearing on the petition was scheduled or done.

Thus of the 219 categorizable and findable petitions 57.5% were either dismissed or denied, and 42.5% were granted. A great majority of the dismissals had at least emergency relief granted.

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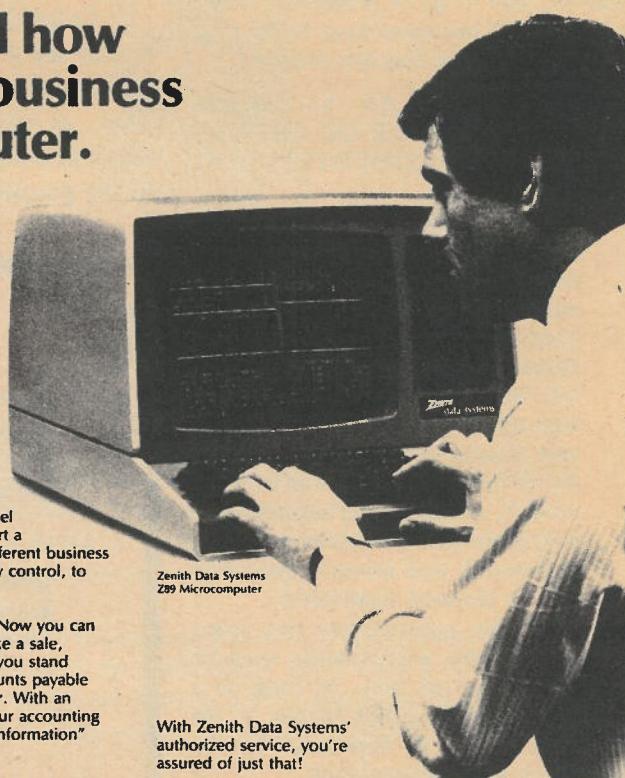
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All My Trials

by Gail Roy Fraties

The criminal bar has been appraised of proposed legislation which will soon be offered by the executive department, under the guidance of that brooding genius of law and order, Chief Prosecutor Daniel W. Hickey ("Dan" to his several friends). Mr. Hickey believes in uniformity and simplification, and there is a persistent, although apocryphal, rumor that his original proposed sentencing statute (AS 12.55.125) was as follows:

Section 12.55.125. Sentences for felonies. (a) A Defendant convicted of any felony shall be sentenced to the following presumptive disposition:

- (1) If the offense is a first felony conviction, death.
- (2) If the offense is a second felony conviction, death. Reincarnation. More death.

As the legend goes, that version wouldn't fly with certain ultra-Left Wing liberals in the House and Senate — which resulted in the cumbersome and complicated language with which the Courts are burdened today.

The Petumenos Plan

A total breakthrough in the administration of justice is no mean accomplishment, and to achieve it Mr. Hickey turned to one of his most able colleagues, Timothy J. Petumenos of the Department of Special Prosecutions. The result is a plan which should brilliantly balance the understandable desire of the various police agencies to put everybody in jail with the insistence of Constitutionalists that the accused should be accorded at least a modicum of procedural protection.

Mr. Petumenos proposes a sliding scale of entitlement to constitutional rights which would make accommodation to the sensibilities of that portion of our population which believes that bad guys ought to be treated summarily. The proposed wording is as follows, and — as its proponent freely admits, "still has some bugs in it." Suggestions from the Bar are solicited.

PROPOSED AS 12.100.100. SLIDING SCALE OF ENTITLEMENT TO CONSTITUTIONAL RIGHTS.

- (a) If the defendant has not previously been charged with an offense, other than minor traffic, municipal, or sport fishing and hunting violations (see .125 of this chapter), he shall be entitled to the full range of constitutional protection afforded by the United States and Alaska Constitutions.
- (b) If the accused has a prior conviction, the arresting agency need not give the *Miranda* warning, and search and seizure protection will be deemed suspended.
- (c) If the accused has two prior convictions, a confession may be beaten out of him, so long as a doctor and a priest (either of his own choice, or appointed by the State) are in attendance.
- (d) If the accused has three prior convictions, bail, trial, and right to counsel will be forfeit.

AS 12.100.110. FACTORS IN AGGRAVATION.

If a defendant is tried under sections 12.100.100 (b) or (c), the court may alter normal trial procedures for factors in aggravation. (a) The following factors shall be considered by the trial court for this purpose:

- (1) The defendant, regardless of prior convictions, is certified, under oath, as a "slime ball," "ass-

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EDITORIAL

Thomas B. Stewart steps down today as Presiding Judge of the First Judicial District after 15 years of distinguished service on the bench. Fifteen years may not seem like such a long time when measuring political careers, and especially one as successful as Judge Stewart's, but it takes some effort to recall that in 1966 Lyndon Johnson was in the White House, miniskirts were in fashion, and Alaska was a new state in the largely forgotten north. Much has changed in the decade and a half since Tom Stewart took the bench, but some things have not: the fairness with which he treats all parties in his courtroom, the meticulous and scholarly attention he gives to every case, and the courage which he exhibits in deciding the tough cases on exactly the same principles as the others. It is worth a moment to consider these traits.

Judge Stewart is known, not only in Juneau but throughout the state, as a judge who treats all who come into his courtroom with even-handed courtesy and fairness, and who receives respect and admiration in return. He regularly hears cases involving disputes at the highest levels of government, but the litigants in those cases (and other "large cases") know that the decision will be based on the law just as surely as his decision in a case involving an indigent and perhaps despised criminal defendant will also be based on the law. He embodies the judicial approach to cases before him.

His scholarship and legal craftsmanship are similarly known widely and widely appreciated. A graduate of Yale, he is one of the state's foremost experts in the rules of procedure. He sees them as a critical vehicle for the delivery of fairness in the judicial process, and his intimate familiarity with the rules has served him well in his years on the bench. Likewise, his decisions substantively are well-reasoned and typically based on exhaustive research.

Finally, Judge Stewart is courageous. One example, a recent one, makes the point clearly. He was criticized savagely two weeks ago in an *Anchorage Times* editorial, which incorrectly asserted that he had expressed an opinion in a case before hearing the evidence. (He had *seen* videotapes of the events in question, and heard testimony, before he issued his opinion on a motion for injunctive relief several months ago.) The editorial, anticipating a decision on summary judgment adverse to the current leadership of the Alaska House of Representatives, blasted the judge and portrayed him as captive to the political party he had been a member of 20 years ago when he was a member of the legislature. Whatever one feels about the merits of the lawsuit, it was perfectly ironic that Judge Stewart's ultimate opinion was *favorable* to the current House leadership and, therefore, unfavorable to Juneau's two representatives, both of whom are parties to the suit and one of whom is the (still) ousted speaker. A person who fit the *Times'* description — biased by virtue of pre-judgment and by virtue of loyalty to political party — would presumably have ruled the other way. Of course, the description was entirely wrong.

Judge Stewart would probably not see his decision as courageous. He would see it as a decision on the law, which means a decision which pays no regard to its effect on other considerations like party, locality, etc. That, as well as his abiding fairness and his remarkable scholarship, is why his tenure on the bench has been so distinguished and why his service to the people of Alaska has been so meritorious over these past 15 years.

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Inside/Outside Observations and Comments

by Karen L. Hunt

Barratry

The U.S. District Court in Tennessee has held a state statute unconstitutional on grounds that the prohibition of attorney payment of part or all of a plaintiff's litigation expenses is activity protected by the First Amendment.

Another Close Vote

The Board of Governors of the California State Bar has elected the first black president in the Bar's history. On a vote of 12-10 Los Angeles attorney Samuel Williams was elected. Williams is past president of the Los Angeles County Bar Association and a partner in the law firm of Beardsley, Hufstедler & Kemble. He takes office in October. Last year the Board split the term by electing two presidents each of whom served for six months.

Mandatory Malpractice Insurance?

The State Bar of Arizona is once again considering a mandatory malpractice insurance program. Currently Oregon's State Bar Professional Liability Fund created by statute in 1978 is the only mandatory legal malpractice insurance program in the country.

More Lawyers and More Lawyers

According to a recent American Bar Foundation Study, the median age of lawyers in the United States dropped from 45 to 40 in the last decade. Young lawyers comprise fifty-three percent (53%) of the total ABA membership. While most areas of the country have seen an increase in the number of lawyers, the most dramatic increase has been 75%-80% in the last ten years in the Pacific Coast States. In the past decade, the number of lawyers in this country has jumped 50%. From a figure of one lawyer for every 700 Americans in 1951 and one lawyer for every 600 citizens in 1970, according to the study, there is currently one lawyer for every 410 people in the United States. In Alaska, there is one lawyer for every 264 people (approximately).

FTC Jurisdiction Goes to Supreme Court

In June, the Supreme Court granted *cert* to hear an appeal from the Second Circuit Court of Appeals decision that the FTC has jurisdiction over some professional association activity. Second Circuit ruled that the FTC has jurisdiction over nonprofit, professional associations that engage in substantial activities to promote the economic interests of their members.

Uninsured Lawyers Fund

The New Jersey State Bar Association is considering creating a fund to compensate victims of lawyer malpractice committed by uninsured lawyers. Financed by contributions from uninsured attorneys, the fund would pay clients for negligent wrongdoing by an uninsured attorney. The concept grew out of a debate regarding the need for mandatory malpractice insurance because of a survey which indicated twenty-four percent (24%) of New Jersey attorneys are not insured against malpractice. The fund would require annual contributions of \$100 or \$50 depending upon the length of practice from lawyers who do not carry professional liability insurance of at least \$100,000 per claim. Nonpayment to the fund would result in suspension from the practice of law. A binding

[continued on page 5]

Letters

Dear Mr. Branson:

Please be advised that the following individuals have been elected officers in the Kenai Peninsula Bar Association for two-year terms:

Roger E. Holl, President
Phil N. Nash, Vice President
Edward Garnett, Secretary/Treasurer
Yours truly,
Roger E. Holl, President
Kenai Peninsula Bar Association

Dear Harry:

Fair is fair. I think it is time that someone finally told one on Gail Fraties. This tale was related to me during the wee hours at the Alaskan Hotel Bar by a gentleman of impeccable reputation, and seems apropos in view of Gail's recent column concerning *Madera v. Miranda*.

It seems that this gentleman was, some years ago, driving around Juneau "taking care of business." Unfortunately, it was the officer's opinion that he "oughtn't to have been taking care of business" at 70 miles per hour, at 2:30 in the afternoon in front of the elementary school. The gentleman, however, felt strongly that the charge should have been something less than reckless driving, and therefore he determined to contest the case vigorously.

Upon consulting with his friends, the gentleman determined that the best trial lawyer in Juneau at the time was Gail Fraties, and that he ought to go and see him about the case. Entering Gail's office, the gentleman was somewhat disturbed at the appearance of the place, particularly at the presence of police officers. However, trusting his friend's judgment, and assuming that the officers were simply there to "make deals," he marched right up to the desk, slapped down a \$500 "retainer," and proclaimed that Fraties had to get him off.

In his most business-like and forthright manner, Fraties inquired as to what the problem might be. Whereupon, the gentleman unburdened himself of the entire facts of the case, concluding with an impassioned statement as to why he believed a conviction on the charges simply would not do. During the entire conversation, Fraties listened attentively, jotting the occasional note and asking the occasional probing question.

Our gentleman was, of course, most anxious to know "what his chances were," and directed inquiry along those lines to Mr. Fraties. After some lengthy period of silent (but probably insightful) analysis of the facts which he had just heard, Fraties delivered himself of the opinion that he felt the gentleman had an Excellent Case.

"However," said Fraties, "I am the prosecuting attorney on this case. . . ."

By this time in the story, our gentleman had become somewhat maudlin about the whole thing, and I was not able to get a clear picture of the eventual outcome. However, before we parted he mumbled something about "a fifty dollar fine or some S--t."

I give you this story lest Gail's natural modesty obscure the true nature of his accomplishment. He would give credit to others for the *Miranda* modification. However it seems clear that, but for his bashful desire to eschew the limelight, Gail should take all the credit for the discovery.

Very truly yours,
BIRCH, HORTON, BITTNER,
MONROE, PESTINGER AND
ANDERSON
Paul H. Grant

[continued from page 4]

hole," or "scum bag" by the arresting officer (two demerits).

(2) The defendant, regardless of previous criminal history, has talked back, demanded his rights, or otherwise impeded an orderly investigation (one demerit).

(3) The defendant has previously been suspected of having committed a crime, smoked dope, or otherwise offended public decency (one demerit).

(4) The defendant's conduct created a risk of offending the sensibilities of law abiding citizens (one demerit).

(5) The defendant's conduct during the commission of the offense indicated that he is a smart-ass (one demerit).

(6) The defendant, at the time of committing the offense, was under suspicion for having possibly committed other offenses or indiscretions (one demerit).

(7) The defendant's attitude has generally pissed off the prosecutors, the police agencies, or the court system (three demerits).

(b) Upon a showing that any of the above factors are present, the court may, at its discretion, apply the following modifications of procedure:

(1) One demerit. The prosecutor is entitled to unlimited peremptory challenges, as opposed to one for the defense. Conviction may be achieved by a simple majority of the jurors. Hearsay objections by the defense, but not by the prosecution, will be overruled.

(2) Two to three demerits. All of the penalties under (1), with the addition that the defense will dispense with opening statement and final argument.

(3) Four to five demerits. All of the penalties under subsections (1) and (2), with the further proviso that the defendant must dispense with cross-examination, and may be called as an unfriendly witness in the prosecution's case in chief.

(4) More than five demerits. All of the penalties under subsections (1) through (4), and in addition the Judge may — at his discretion — sit at prosecution table, while

ALL MY TRIALS...

the prosecutor is entitled to join the jurors in their deliberations.

Dankworth Dissents

It is hoped that the above procedural changes will insure the protection of the law abiding public, and the meting out of justice to the lawless, with maximum efficiency. However, civil libertarian Senator Ed Dankworth, when asked whether he felt that these changes were in the interests of justice, replied, "I don't think they go far enough. After all," he continued with a twinkle, "these people wouldn't be arrested if they hadn't done something."

Boyko's Theory

Edgar Paul Boyko, whose exploits in the trial courts of Alaska and California need no embellishment here, once remarked that attorneys who specialize in a particular field of law eventually begin to resemble their clients, undergoing in that regard the same mysterious alchemy that affects husbands and wives, and pets and their owners. That is, insurance defense litigators start to resemble insurance executives or adjusters — depending on their place in the hierarchy — and tax attorneys assimilate the whimsical and fey characteristics of IRS agents. Other examples abound — aviation attorneys tend to be able to fly airplanes, medical malpractice specialists act like, and often are, doctors, and divorce lawyers have hideous home lives, terminating in protracted and agonizing litigation.

Suspicious Confirmed

Criminal lawyers, of course, are aware of this phenomenon — and are naturally sensitive to its far-reaching implications. Personally, I've always comforted myself with the thought that it simply makes us more broad-minded about the frailties of our fellow human beings ("So he dusted a dude who burned him with some bad shit. So what?"). I suppose that the continued exposure to our clients does have a pervasive effect on our thinking, and I was never more aware of it than during a confrontation which took place five years ago when I was defending one of the more engaging rogues in the Fairbanks area.

This was one of the first criminal cases to be tried before the then newly appointed Superior Court Judge Frank Jay Hodges, Jr. — himself a formidable trial attorney before he ascended to the bench — and I was on my best behavior. My relationship with my client was kept on a highly professional level until the moment arrived when we were deeply involved in jury selection. I felt extremely fortunate in the general makeup of the jury, particularly one black lady of great intelligence and dignity who I perceived to be not only motherly, but compassionate and understanding as well — qualities the defendant sorely needed if his transgressions were to be forgiven. However, my client's sensibilities on the subject had been affected by the many years that he spent in tough prison populations, during which time he had become a militant racist.

Power Jury Selection

When both sides had used up most of their peremptories, Judge Hodges graciously permitted me a few minutes with my client in the privacy of a small office immediately adjacent to his. The walls were thin, so we kept our voices down as much as possible. My client lost no time in giving me his opinion of my key juror. "The nig," he stated, with chilling finality, "goes."

Thereupon, I reasoned with him for the better part of 10 minutes, while he sat quietly — apparently listening attentively. I pointed out that black people, as a result of a long history of oppression, tend to identify with the underdog, a description that certainly fits the defendant in most criminal cases. Further, since their color sets them apart, they are often unfairly selected as logical suspects if a crime has taken place in their proximity, and many of them — although in every respect totally law-abiding — have no great love for the police. If anyone is willing to give some poor fool the benefit of the doubt, a black person will — at least that's my opinion. I finished this summation, and asked my client whether anything I had said affected his thinking. "The nig goes," he repeated.

I was in despair, but my investigator took up the cudgel. He spoke to our client in a friendly, man-to-man fashion, employing the street argot that we all seem to learn in the criminal specialty, but to no avail. Quoth my client, "The nig goes."

"GOD DAMN YOU, JEFF," I shouted, suddenly stung beyond endurance, "WHAT THE HELL DO YOU KNOW ABOUT JURY SELECTION? THE NIG STAYS!"

The Defendant, who — despite his sinister reputation — does not lack for a sense of humor, grinned and relented. I am informed by reliable sources, although I've never dared to discuss it with him, that Judge Hodges leaped like a gazelle when this proclamation roared through the thin walls of his chambers, as it apparently did throughout the entire floor. I don't think my favorite juror heard me, though. At least, I hope not.

INSIDE/OUTSIDE...

[continued from page 4]

judgment against an attorney or an enforceable settlement would be presumptive evidence of legal responsibility and the amount of damages. Discretion as to when a payment should be made and its amount would be left with the Trustees of the fund. The fund would also reserve the right to recover from the attorney involved any payments made to claimants under the program.

Attorney Advertising

Connecticut lawyers were reprimanded for advertisements on a local television station on grounds that the content had "no redeeming informational value." The complaint alleged that the advertising showed exaggerated situations such as a lawyer and a judge in a courtroom saying only the words "mumbo" and "jumbo" to each other as well as a divorcing couple using a powersaw to split their property.

Legal Assistants Organize

Under the auspices of a new organization entitled Alaska Association of Legal Assistants, over forty (40) persons presently working or seeking employment as paralegal/legal assistants in Anchorage have organized into an association that meets once a month. Organized for the purpose of supporting the quantity and quality of availa-

ble legal assistant services to the legal community in Alaska, the group hopes to see similar organizations develop in other communities in Alaska.

Attorney Disqualification

The Georgia Supreme Court has held that the *per se* disqualification of a law firm was improper where it was based solely on the marital status of an attorney in the disqualified firm and a former associate in the firm representing the opposing party. In view of the facts and its analysis of the Code of Professional Responsibility, the Court held that after a showing that special circumstances exist which provided for adequate representation of the client, disqualification based solely on marital status is neither justified nor mandated by canons 4 and 9 of the Code. In the case, the defendant executrix was presented by a law firm which employed an attorney whose husband was a partner in another law firm. After the first attorney severed her association with the firm representing the executrix, plaintiff, who was challenging the will, sought to associate as her counsel the firm in which the first attorney's husband was a partner. The executrix to disqualify the husband's law firm on the grounds of conflict of interest and the appearance of impropriety.

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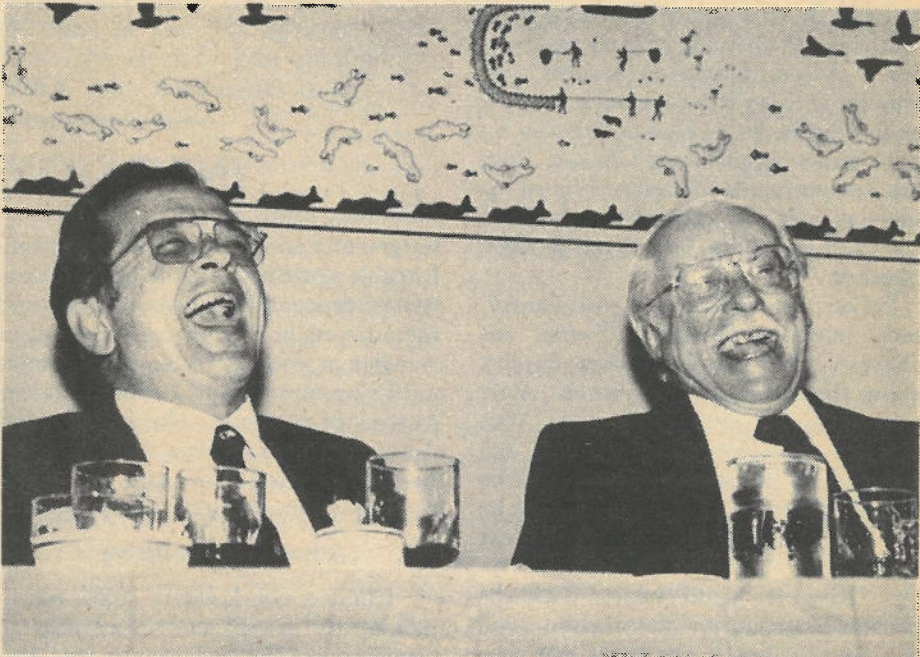
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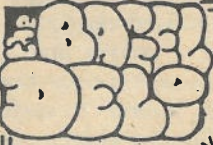
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Unalaska/Dutch Harbor Bar Association - Hog Island Chapter

September 17, 1981

DA BA UDPS UI

The fall meeting was a slug fest at QH₁. When "Hit Man Hearn" took a dive in the 14th, Halter & Monson went down with him. "Sugar Ray's" boys, Olson, Cowan, & Bolger (out cold himself in the 11th), were feeling pretty spunky. Ref, Tom Schulz, refused to speak during the fight, but Sherry Erwin made up the difference.

Peter Mysing was cheered and awarded an honorary membership. He single-handedly taped the fight including the warm up bouts, and "speed packed" it to Dutch Harbor in time for the meeting.

Fresh shrimp and 50 pounds of crab went well with several cases of beer donated by longtime Cold Bay Magistrate Karl Heiker. When Karl missed the meeting, Bolger was quick to note that "Karl bagged it for the night with a young debutante."

QH₁, Quonset Hut #1, was full to the gills by fight time. Roll Call: Present: Olson, Bolger, Monson, Halter, Cowan, Schulz (voting members), VanCleve, Williams, Hayes, Mann, Erwin, Osborne, Anderson, Hawkins, Harrison, Brown (ex-officio's). Absent: Wildridge (kicked out-old business) Beckwith, whereabouts unknown. Rumor has it that she may have changed her name to Graham.

Old Business

Wildridge was summarily kicked out of the bar. The voting was rather quick. Our condolences to the Tanana Bar Association.

New Business

Bob Cowan's membership vote was unanimous when he threatened to abscond with the tape if any one voted against him. A thank you also goes to him for arranging the taping of the fight with Mysing.

Olson moved that Tom Schulz be admitted. Amidst boos, he slipped in when several voting members were out on the porch eating crab. Schulz's appeal record for the week was: Reversed 2 Affirmed 0 Tied 4. Schulz was also adamant that the Ripley rumor was regrettably true.

The Alaska Bar Association recently tried to suspend Monson for prompt nonpayment of their outrageous dues for which a Hog Island member receives so much in return. An apology to Mr. Monson and the Hog Island Chapter is demanded for this outrage. This matter has also been referred to our brothers in Hawaii for disciplinary action. In accordance with Rule 2890742 (b)(2)(d)(11), Hog Island Rules, the right to practice "Law West of Akutan" shall not be abridged for any reason. It is well established that since we ceded from the Alaska Bar, they have no authority West of Akutan. We are deeply concerned over this matter. In lieu of an apology, we

will accept one case of fine California wine, or we will trade Monson for six cases of assorted import beer, two cases of scotch, and one sheep. We also agree to limit Bolger's wrath.

A shocking letter was received from Ross Cushman, a former secretary-treasurer. It is attached and appropriate action is tabled until the next unscheduled meeting. Judge Hornaday in a recent article on the Aleutians said that he had retained an itinerant member of the Mississippi Bar he met in Cold Bay to pursue a due process claim against the Hog Island Chapter. M-I-S-S-I-S-S-I-pee pee in your eye! TABLED!

Olson, Monson and Hayes met stiff competition from the Canadians in Izembek lagoon. After four days, the score was: Geese 30 Hunters minus 18 boxes of shells, minus 5 cases of beer and plus nine hangovers. Cold Bay residents are still bitter. Apparently the geese are still laughing so loud that no one can sleep!

Respectfully submitted this 17th day of September, 1981 in Unalaska, Alaska.

Vernon G. Halter, President
Unalaska/Dutch Harbor
Bar Association
P.O. Box 594
Dutch Harbor, AK 99692

Re: Formal Grievance (maybe)

Dear President Halter:

I have in my possession a copy of the recent "hot off the press" minutes of the latest bar meeting, July 8, 1981. I was astonished and astounded to read that I had been replaced as Secretary/Treasurer without so much as a by your leave or a word of notice.

Is it not the usual custom to notify someone of their impending dismissal, not just a casual reference in some bar minutes?

Knowing this association as I do to be such forthright, honest, kind, considerate etc. etc. folk I can hardly believe that you would stoop to such a low degree as to dismiss me for no reason stated.

Now I am aware that I have been unable to attend several of the bar association meetings but I am quick to point out to you that because of your gross mismanagement of the calendar no in-court has been required out there for some time. Didn't I remain true to the cause and travel out there three times last year? I always am ready, standing by to travel there and what happens? There is never a need for an in-court. What kind of a court are you running there anyway? I am also quick to point out to you that the other non-resident members do not fund their own trips to Dutch Harbor, the state or their agencies pick up the tickets and pay per diem. Am I then, in order to be in attendance, required to pay my own way? It would seem that the bar associ-

ation could fund the ticket for the secretary/treasurer to be in attendance rather than casting her aside like an old shoe just because she doesn't attend the meetings.

I am very close to making this a formal grievance. However I do feel there is room to talk it over, negotiate if you will. For instance, perhaps the "new" secretary/treasurer and I could share the job or in the alternative I could become the travel reservationist for the association, making arrangements for trips as necessary. Or, in a cause very close to my heart, would it be possible for me to become the official sign-language interpreter for the association? That way when Monson or somebody is in a heap somewhere I can sign to him and make him understand what's going on when he is too far gone to hear what's going on. That's definitely my preference but I would like some consideration here.

After all, I've put in lots of time and effort and I feel the rejection very strongly.

In any event I suggest a meeting. You and I can get together in secrecy for a high-level talk, and I suggest that it occur on August 6, 1981 at SEA-TAC airport. That way no one will know of the discord in the upper management until it's absolutely necessary.

I am counting on your total discretion and sense of justice and fair play. I expect an immediate reply. Just in case you don't get this in the mail before you leave I'm going to put a copy in your plane ticket jacket.

(dis)Respectfully submitted,
Ross Cushman
(ousted)Secretary/Treasurer

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A Visit to China

A group of 16 persons including Alaska Bar Association members S. J. Buckalew, Bernard Dougherty, Charles Drennan, Cheri Jacobus, Kenneth Jacobus, Richard Savell, and Kenneth Wallack participated in the 1981 Alaska Bar Association CLE Tour to Hong Kong and China. All agreed that the trip was an unforgettable experience and most people plan to make a return visit to China at some point in the future.

An itinerary of our trip has been submitted to the Alaska Bar Association for a determination of the amount and nature of continuing legal education credit to be granted. A copy of that itinerary which includes the major events with an emphasis on the legal events is printed below.

If sufficient interest exists among members of the bar, another CLE trip to Hong Kong and China can be organized for the spring or summer of 1982. Plans are now being worked out for a CLE trip to another part of the world for 1983. As with this last trip, family members and friends who are not attorneys will also be welcome to join the group.

Those readers interested in a CLE tour to Hong Kong and China in 1982 are asked to contact

Kenneth L. Wallack
Johnson, Christenson & Associates
1007 West Third Avenue, Suite 300
Anchorage, Alaska 99501
279-9422

Itinerary of 1981 CLE Trip to Hong Kong and China

May 10, 1981

Departed from Anchorage International Airport to Hong Kong on

Japan Airlines with a change of planes at Narita Airport in Tokyo.

May 11, 1981

Due to crossing of international dateline arrival late in the evening at Kai Tak Airport in Hong Kong.

May 12, 1981

Hong Kong Island Tour including visits to Tiger Balm Gardens, Repulse Bay, Aberdeen, and Victoria Peak. Kowloon area shopping orientation.

May 13, 1981

Macau Tour. Travel from Hong Kong to Macau and return by hydrofoil. In Macau the tour included a Buddhist temple, the St. Paul Ruins and market, the Roman Catholic Cathedral, and the Casino. Our guide also discussed the legal system in Macau to the best of her ability. Macau is a possession of Portugal with direct representation in the Portuguese Parliament. All of Portugal's law is directly applied and there is little or no home rule.

May 14, 1981

Free day.

May 15, 1981

CLE meeting and luncheon. Our lecturers were Michael A. Cuervorst, Michael Everett, Desmond O. Mayne, Michael Moser, and David Siegfried.

Mr. Cuervorst is a political officer attached to the United States Consulate General in Hong Kong. He was born in Moline, Illinois and raised in Iowa. He joined the Foreign Service in 1974 and came to Hong Kong in September of 1980 after prior service in West Africa, Taiwan, and Washington D.C. Mr.

Cuervorst spoke on the current political trends in China.

Mr. Cuervorst spoke about the continuing tensions between the Deng Xiaoping and Hua Guofeng factions within the Chinese Central Committee, the successes and failures of China's economy and her modernization efforts, the prospects of continued normalization of relations between China and the United States including the Taiwan question, the prospects of increased trade between China and capitalist countries including the United States, and the extent to which the China seen by the foreign tourist accurately reflects the reality of life and conditions in China.

Mr. Everett is the resident partner of the Hong Kong office of the American legal firm of Heller, Ehrman, White and McAuliffe. The firm is based in San Francisco. He was born in Nashua, New Hampshire and obtained his legal training at the University of Pennsylvania. He joined Heller, Ehrman, White and McAuliffe in 1978 after working for four years with the legal firm of Cravath, Swaine and Moore. He has been the resident partner in Hong Kong since March of 1981. Mr. Everett spoke about the disclosure requirements and tax aspects of real estate investment in the United States by foreign investors.

Mr. Everett discussed the reasons for the large increase in foreign investment in real estate in the United States, State and federal restrictions on foreign ownership of U.S. realty, disclosure requirements under federal law and some examples of state disclosure requirements, federal tax consequences of such foreign investment, and the different application of such laws to individuals as opposed to corporations and shareholders. He also discussed the advantages of utilizing corporations with a situs in a tax treaty jurisdiction, and some practical problems in representing foreign clients investing in United States real estate.

Desmond O. Mayne was born in East Africa and has lived in Hong Kong for 29 years. He is Irish and was the former honorary consul for Ireland in Hong Kong. He took legal training at Dublin University (Trinity College), Kings Inn in Dublin, and Grays Inn in London. He is a member of the Hong Kong Bar, Irish Bar, and English Bar. He was formerly a Magistrate, Director of Public Prosecutions, and Founding Director of Legal Aid. He is presently in private practice as a Queens counsel in Hong Kong. Mr. Mayne spoke on the criminal justice system in Hong Kong.

Mr. Mayne discussed the structure of the criminal courts in Hong Kong, when jury trials and legal aid was available, the nature and frequency of various types of crimes in Hong Kong, and the effects of illegal immigration, race relations, and drug trafficking on the Hong Kong crime statistics and the

criminal justice system.

Michael Moser is an associate with the multinational legal firm of Coudert Brothers. He has a doctorate in Chinese Studies from Columbia University and received his legal training at Harvard. He has been an associate with Coudert Brother for one year and has been in their Hong Kong office for all of that time. Mr. Moser spoke on the role of an American law firm in China with an emphasis on foreign trade with China.

Mr. Moser discussed the fact that Hong Kong is the primary base for the China operations of many multinational firms and the reasons for that, the reasons why such firms utilize an American law firm such as Coudert Brothers and others, the distinction between having a presence in Peking as opposed to having an office (none of the American law firms have offices in Peking), the rebuilding of the Chinese legal system after the Cultural Revolution when the Courts and law schools were closed and the attorneys, judges, and teachers were sent to farms and factories; the tension between the Chinese legal community and the American lawyers over Americans counseling clients on Chinese law, the obligations of a Chinese lawyer to his client vis a vis the State, and the effects of growing Chinese involvement in international trade on the way the Chinese view international law and foreign lawyers.

David Siegfried is the resident partner in Hong Kong of the New York-based law firm of Milbank, Tweed, Hadley and McCloy. He was born in New York and received his legal training at Harvard. He joined Milbank, Tweed, Hadley and McCloy in 1968 and has been their resident partner in Hong Kong since 1979. Mr. Siegfried discussed the role of an American law firm in Hong Kong.

Mr. Siegfried discussed the structure of Hong Kong's divided bar of some 700-800 solicitors and some 150 barristers, the types, size and nationalities of foreign law firms in Hong Kong, the means by which an American law firm opens an office in Hong Kong and its working relation with the Hong Kong Bar, the reasons why American law firms have offices in Hong Kong and why they are generally expanding, and the areas of practice of the American law firms. He also spoke of the rising prices for commercial property in the business district of Hong Kong. A recent sale was priced at U.S. \$15,000.00/sq. ft.

In the afternoon there was a pre-departure briefing, and a China kick-off party.

May 16, 1981

Departed Hong Kong by plane to Shanghai on Cathay Pacific Airlines. A flight delay and then a long delay in clearing Chinese customs caused us to

[continued on page 9]

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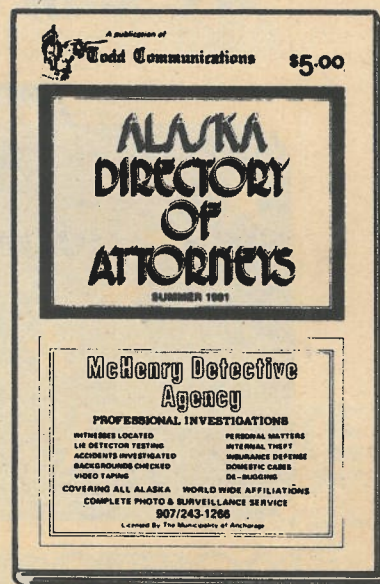
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CHINA...

[continued from page 8]

arrive at our hotel fairly late in the evening leaving time only for a late dinner. We also discovered that due to a bureaucratic guide (Mr. Kung Ken Teh) had no advance notice that we were a legal group. Thus, arrangements for legal events had to be initiated on the morning of May 17, 1981.

May 17, 1981

In the morning there was a general city tour as well as visits to the Yu Fan Gardens, and the Band. In the afternoon there were visits to the White Jade Buddha Temple, the five-story Shanghai Number 1 Department Store, and the Shanghai Industrial Exhibit. In the evening the group went to a local dance drama performance.

May 18, 1981

In the morning our national guide gave us a short lecture to the best of his ability on the Chinese legal system. He discussed the structure of the courts including the division of the Peoples Courts into criminal, civil and economic sections, the jurisdiction of the Peoples Courts, High Peoples Courts, and Supreme Court, the major types of cases heard in the criminal, civil, and economic courts, and the effect of the Cultural Revolution on the Chinese legal system.

We also toured the Shanghai General Carpet Factory which is administered by the Handicraft Industrial Bureau of Shanghai. Although neither the manager or any of the assistant managers were available to meet with us, a factory representative did brief us on the origin and size of the factory, the types and styles of carpets manufactured for both export and domestic production, the role of the trade union and workers rights vis a vis factory

management, how production quotas were determined, and how disputes between the factory and other economic entities in China are resolved.

In the afternoon we departed Shanghai by train for Wuxi (approximately two hours). On the train we were able to mingle with other foreign groups as well as Chinese. Some of the group had a discussion with a vice-commander of the local military region. After exchanging introductions and discussing our travel itinerary we spoke about military life in China and the United States; including the jurisdiction of the Chinese military courts, rights of accused in military courts, and the military prisons.

After arriving in Wuxi we had a brief city tour by bus and toured the Li Gardens near our hotel on Lake Li.

May 19, 1981

In the morning we had an extended boat tour along the Grand Canal in Wuxi. In the afternoon we toured the Wuxi Number 1 Silk Weaving Factory. We were briefed on the origin, size, and achievements of the factory. We were also able to have a more in depth discussion of the workers' salaries, vacations, and working conditions as well as the role of the trade union. We were told among other things that quotas are set by Textile Industrial Bureau and were non-negotiable or appealable, that the safety regulations were issued generally by the factory, and that the union was allowed to make constructive suggestions to the factory manager such as about meals at the factory canteen. We were told of their sick leave program and policies concerning injury and disability from industrial accidents. We also learned that of the 1,500 workers and staff some 200 are Communist Party members including the factory political offi-

[continued on page 9]

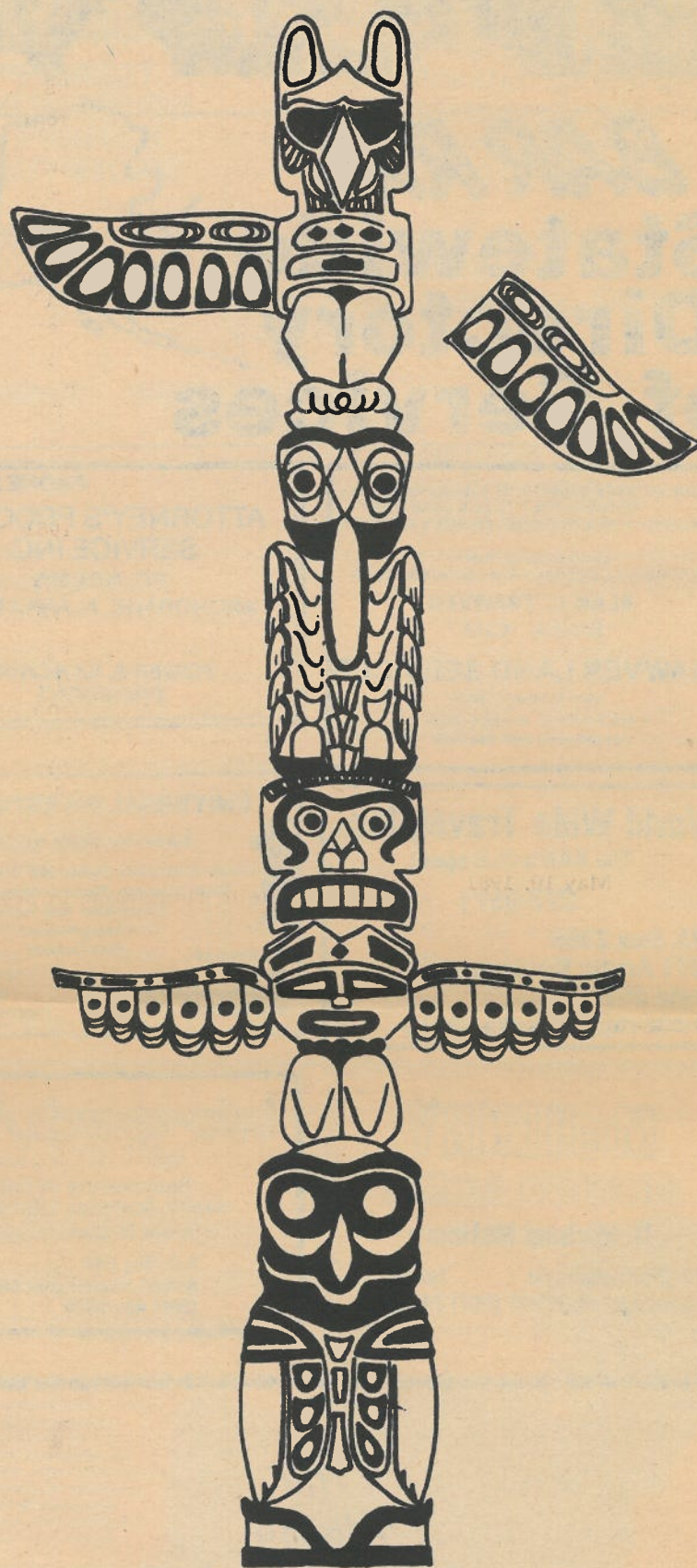
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CHINA...

[continued from page 9]

cers and the manager and deputy managers. The method by which a person could apply for and be chosen for party membership was also explained. We also discussed a program whereby a worker could apply for an interest-free loan which could be used to build a house on factory land. The house, but not the land, would then be private property of that worker and that the ownership could be sole or passed by inheritance. However, if a worker's application to the Housing Bureau was denied there was no real right of appeal, and since the mill was established in 1958 only 18 families had constructed such homes.

The group also visited a silkworm farm and a kindergarten.

In the evening we arranged for a banquet at a local restaurant to sample the local foods including crisp eel and other local seafood from Tai Lake, as well as the local spirits.

May 20, 1981

Departed Wuxi by train for the three-hour ride to Nanjing (Nanking). Again we mingled with other foreign groups and Chinese. Some of the group met an elderly Chinese army officer on leave who had participated in the Long March in 1934.

After arriving in Nanjing we had a brief city tour including visits to the Drum Tower and Bell Tower.

We then visited Nanjing University. We were met by Chen Wen Bao who was the University's Director of Foreign Relations. Mr. When discussed the origin and size of the University as well as the various departments, research groups, and course of studies. He discussed the methods of selection and admission of students and the extracurricular activities available to students.

After this introduction the non-lawyers were taken on a tour of the campus by a number of English language students while the attorneys met with three members of the Law Faculty, Wang Yu Huia, Lin Jen Dung, and Qin

Ku-Sen. The law faculty explained the required and optional courses offered in their four-year program and this was compared with courses offered at U.S. law schools. The means of enacting and amending the Chinese constitution was discussed as was the concept that all legislation in China is compatible with their constitution. The unified Chinese law system was discussed as was the progress on the drafting of the Chinese Civil Code. Also discussed was the concept of private property in China's socialist system (e.g. land as a means of production cannot be privately owned), the method of selection and training of judges, the requirements to be a judge, the system of lay assessors, the death penalty and public executions in China, and the use of mediation at the local level to resolve civil disputes. We also learned that pain and suffering was not a compensable tort damage.

In the evening we attended a Chinese opera.

May 21, 1981

The group returned to the Drum Tower in the morning to participate in the opening ceremonies of an art exhibition where we were greeted by Chun De Xi of the Nanjing Academy of Arts. We then toured the Sun Yat Sen Mausoleum, Ming Tombs, Ling Kuo Temple, Yangtze River Bridge, Old City Wall, the former home of Madame Chiang Kai Shek, and the Xuan Wu Lake where we had dinner before departing by overnight train (some 14 hours) for Louyang.

May 22, 1981

After arriving in Luoyang and lunch the group toured the White Horse Temple, one of the first Buddhist temples in China. In the evening there was a film about a family separated during the cultural revolution.

May 23, 1981

The group toured the Long Men Caves with their almost 100,000 statues of Buddha ranging from one [continued on page 11]

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Judge John H. Gray:

The Legal Mind of a British Columbia Jurist and its Contribution to the Alaska Boundary Dispute by Gerald Williams

On September 6, 1876, a naturalized American citizen, Peter Martin, was convicted of assaulting a Canadian police officer at Laketon, B.C. He was

sentenced to serve 15 months imprisonment at Victoria and while enroute there escaped from the Canadian officers while they were camped on the Stikine River proceeding to Wrangell where they would have boarded a British vessel. He was recaptured, but the incident resulted in the American Secretary of State remarking to the British Ambassador that since the offense of escape took place on American soil, he should be released since he could not be charged and tried for this offense if it took place within the jurisdiction of the United States.

Few persons at the time were to

realize that this incident and the part which was subsequently to be played in this controversy by British Columbia Supreme Court Judge John H. Gray, was to prevent an amicable settlement of the Alaska-Canadian Boundary Dispute for 27 years; leave a lasting feeling of bitterness in the relations between Canada and the United States; complicate British Empire relations; delay the building of the Panama Canal and to provide an opportunity for President Theodore Roosevelt to wield his "big stick" in a manner which has outraged Canadian sensibilities even till the present day. The Canadian Parliament is even considering asking the United States to re-open the entire question of the Alaskan-Canada Boundary dispute which was settled by an International Tribunal meeting in London in 1903.

The beginnings of the controversy extended back to the 1820's when the Russian Government sought to limit the Hudson's Bay and American trading influence in the area of Alaska controlled by the Russian American Company. An Imperial Decree was issued in 1821 which declared that Alaskan waters within 100 miles of the coast were closed to any but Russian vessels. This flagrant challenge to the freedom of the seas was immediately objected to by the British Ambassador at St. Petersburg. The Russian Government agreed to recede from this extreme position, and also to execute a Treaty with Great Britain which would specifically define the extent of Russian holdings in Alaska. A Treaty was negotiated and signed in St. Petersburg in 1825.

The only charts of Alaska existing at the time were based upon the maps made by the English Explorer Captain James Vancouver, and these charts specifically identified a range of mountains which ran close to the shoreline of Alaska on the mainland of the continent. These maps, essentially unchanged, remained in substantial use for 50 years, and on the basis of Vancouver's observations the two countries agreed that the southern boundary of Russian influence would progress up the Portland Canal and from there northward on the continent to the base of the identified mountain range, but in any event not more than 30 miles (10 Italian leagues) inland, from the coastal lisiere (sinuosities of the coastline).

When Alaska was purchased from Russian in 1867, the terms of the Treaty specified that the United States was purchasing the identified territories of the Russian American Company as de-

fined in the Treaty of 1825 between Russia and England. The discovery of gold in the Cassiar Region of upper British Columbia in the 1860's presented the first occasion for misunderstandings to arise in the determination of the boundary. Almost all access to the interior of British Columbia and the Yukon Territory was dependent entirely upon transit over American soil. Judge Gray was one of the first Canadians to espouse the position that perhaps the treaty of 1825 had been inarticularly drafted, and with lawyerlike zeal he proceeded to enlarge on the share of the territory that Canada and England could lawfully claim as being their entitlement.

In October 1876 Judge Gray, of the Supreme Court of Canada, with his Chambers in Victoria, had written to the Canadian Prime Minister indicating that he was personally familiar with the coastal range in the vicinity of the Stikine River and that it was within 15 miles of the shore. This would seriously reduce American territorial claims. He was concerned also about the legal problems which were arising along the river and he felt that recognition of a reduced American territory would give British subjects a larger claim to the mineral wealth in the area.

[Continued in next issue]

CHINA...

[continued from page 10]

inch to 57 feet in size. Lunch was served in a home which used to be one of Chiang Kai Shek's private retreats. After lunch the group visited an arts and crafts factory, the Luoyang Museum and a local commune, and later departed Luoyang by overnight train (some nine hours) to Xian.

May 24, 1981

Arrival in Xian. The group visited the Great Mosque, the Old City Wall, the Bell Tower, Provincial Museum, Drum Tower, Big Goose Pagoda, and Small Goose Pagoda.

May 25, 1981

The group toured the New Diggings where the terra cotta army of Emperor Qin Shihuangdi was excavated as well as the New Diggings Museum, the burial mound of Qin Shihuangdi, the Hua Qin hot springs (site of the Xian Incident of 1936), and the Neolithic Village at Ben Po. In the evening there was a film about Xian.

May 26, 1981

The group visited the Xian zoo to see the pandas, as well as other animals before departing for Beijing (Peking) on a CAAC flight. After arriving in Beijing, the group visited the Temple of Heaven.

May 27, 1981

The group toured the Ming Tombs and the Underground Palace and then walked along the Great Wall.

May 28, 1981

The group visited Tian An Men Square and the Mao Memorial where the body of Mao Tse Tung lies in state; and the Imperial City (Forbidden City) and Palace Museum. In the afternoon the attorneys and other interested persons met with three judges of the High Peoples Court in Beijing while the rest of the group went shopping.

The judges Mrs. Gu Nian, Chief Judge of the economic department, Shu Ru-hian, Chief Judge of the criminal department, and Li Cheng, Chief Judge of the civil department, as well as Li Deng-Yi, a staff member of the Secretariat of the High People's Court, discussed the four-level structure of the Chinese courts (Lower Peoples Court, Intermediate Peoples Court, High Peoples Court, and Supreme Peoples Court), and the original and appellate jurisdiction of each. The division of the

different levels into the criminal, civil, and economic departments was also discussed as was the administration of the courts. The selection and training of judges was explained as was the role of the lawyers and lawyers associations, and the role of the prosecutor.

With regard to criminal trials, the judges discussed public vs. closed trials, the use of lay assessors and a collegiate bench of judges, the right of the accused to present a defense and defend himself, the use of the accused's prior criminal record, the prohibition on torture or the use of an uncorroborated confession, and the fact that there are detailed rules governing the obtaining of facts about the accused. The types of crimes most common in China were also discussed.

The judges also spoke about the remedies available to the economic courts and the need for further legislation regarding the resolution of disputes between State-owned enterprises. They also briefly mentioned some of the recent economic laws enacted by the Second Plenary Session of the Fifth Party Congress regarding forest protection, the environment, joint ventures, and income taxation; and some of the special courts such as military, forest protection, and water transportation. They also discussed the lack of any precedential authority of case decisions. They also spoke of the abolition of the legal system and lawyers by the Gang of Four and their own personal experiences during the cultural revolution.

In the evening the group attended a gymnastic and magic show.

May 29, 1981

The group toured at the Summer Palace as well as visiting the Beijing Zoo and a cloisonne factory. In the evening we had a Peking Duck Banquet.

May 30, 1981

The group departed China in the morning on a CAAC flight to Hong Kong.

May 31, 1981

The group departed Hong Kong on a Japan Airlines Flight to Tokyo where we overnighted to make connections with a Japan Airlines Flight to Anchorage. Having recrossed the international dateline we arrive late at night on May 31.



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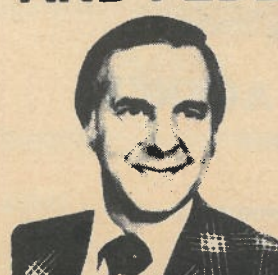
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Judicial Council Releases Preliminary Sentencing Report

The Alaska Judicial Council today announced the findings of a preliminary statistical report of 1980 felony sentencing patterns for all Anchorage, Fairbanks and Juneau cases. The report provides the first statistically comprehensive view of sentencing patterns under the state's criminal code.

The report indicates that more defendants are being sentenced to jail while average periods of incarceration are down sharply compared to the Council's last study of 1976-79 sentences.

Implications of the findings, according to the report, include the impact of the increased numbers of incarcerations in Alaska's overburdened prison system. The final report in February will analyze the impact of the sentencing patterns on jail populations, which state officials in recent weeks claim have reached crisis levels.

Violent Felony Sentences Drop

The study shows that the sharpest drop in average jail sentences, 56% occurred in the category of violent

felonies, according to the Judicial Council's Executive Director, Nicholas Maroules.

The typical sentence imposed for violent felonies in 1980 was 29.2 months, compared to 66.3 months during 1976-79.

"While average sentences are down, however, the proportion of convicted felons receiving no jail time but straight probation decreased in most 1980 felony classes," Maroules said. For example, only 28% of property offenders received straight probation compared to 41% during the 1976-79 period.

Finally, the report also provides the first statistical view of the impact of the new criminal code's presumptive sentencing scheme which establishes sentences for repeat felony offenders whose prior conviction is less than seven years old. "Presumptive Sentencing results in an extremely low probability of receiving probation as well as considerably longer average sentences than non-presumptively sentenced cases," Maroules said.

Malpractice is Not Just for Doctors

Medicine is not the only profession to be plagued by the threat of malpractice suits. A recent study of professional malpractice by Jury Verdict Research, Inc. showed that the number of suits against attorneys, dentists, psychiatrists, druggists, beauty parlor operators, nursing home operators, rental agencies and the government is on the rise. Recently, there has been a great amount of personal injury litigation involving professional malpractice and large verdicts are being awarded.

An exceptionally high verdict of \$750,000 was rendered for the wrongful death of a 3-year-old black child who ingested a lethal amount of flouride while having his teeth cleaned. The city health and hospital corporation, the dental clinic, and the city itself were held liable for the child's death.

A wide variety of complaints have been made against psychiatrists. These ranged from improper diagnosis to overprescription of medication leading to drug addiction. Sexual assault, often in the guise of treatment, was another

common plaintiff allegation. A \$365,000 verdict was rendered for the negligent psychiatric treatment of a 25-year-old woman which resulted in serious psychiatric injuries and drug addiction. In addition, the defendant psychiatrist allegedly induced the plaintiff to have sex with him as part of her therapy. The plaintiff received an additional \$300,000 in punitive damages.

Many pharmacists have been involved in lawsuits due to negligent drug dispensation. A 51-year-old man was mistakenly administered female hormones instead of a drug for his circulatory problem. The plaintiff developed memory lapses, enlarged and tender breasts, and personality changes as a result of the prolonged ingestion of the hormones. The man, who still had psychological problems even after he discontinued use of the drug, was granted a \$136,000 verdict for his injuries.

The above are just a few examples of the type of information discussed in this lengthy study of professional malpractice suits. For further information on this and other studies analyzing personal injury cases, contact Jury Verdict Research, Inc., 5325 Naiman Parkway, Suite B, Solon, Ohio 44139.

MEAN ACTIVE SENTENCES FOR SIX OFFENSE CLASSES FOR THREE STUDY PERIODS (IN MONTHS)

Class of Offense:	1974-76 Period	1976-79 Period	1980 Study
Murder/Kidnapping	231.4 (22)	356.1 (49)	434.7 (14)
Violent Felonies	36.5 (274)	66.3 (293)	29.2 (119)
Property Offenses	10.4 (257)	20.0 (283)	14.8 (144)
Fraud Offenses	16.4 (99)	19.9 (136)	17.6 (18)
Drug Offenses	33.1 (120)	27.3 (110)	16.3 (65)
"Morals" Offenses	38.4 (22)	44.0 (37)	16.7 (3)

PROPORTION OF CASES RECEIVING PROBATION FOR SIX OFFENSE CLASSES FOR THREE STUDY PERIODS (IN PERCENT)*

Class of Offense:	1974-76 Period	1976-79 Period	1980 Study
	%	%	%
Murder/Kidnapping	12%	0%	0%
Violent Felonies	35%	20%	21%
Property Offenses	48%	41%	28%
Fraud Offenses	49%	33%	31%
Drug Offenses	53%	43%	21%
"Morals" Offenses	44%	33%	67%

*Percentages rounded to nearest whole number

Proposals to Restrict Federal Courts

BRIDGEPORT, CT., Nov. 11 — Legislative proposals to restrict the jurisdiction of the federal courts in constitutional cases present a possible constitutional crisis that could prove the most serious since our great Civil War," said American Bar Association President David R. Brink.

Brink's remarks were prepared for delivery tonight at a dinner marking presentation of the first Raymond E. Baldwin Public Service Award to former Sen. Abraham A. Ribicoff (D-CT) by the University of Bridgeport School of Law.

Noting the debate over the constitutionality of current legislative proposals to rescind federal court jurisdiction over abortion, school busing and school prayer cases, Brink said "it is precisely because the present (constitutional) question is not free from doubt that a constitutional crisis is threatened," and that the policy of preserving jurisdiction in the federal courts is vital.

Brink said he personally believes Congress does not have power to "make an exception" to Supreme Court jurisdiction "that would limit the fundamental rights guaranteed our citizens by the Constitution and Bill of Rights." Brink said Congress clearly can make

some alterations in the jurisdiction of lower courts. But he noted the "physical inability of the Supreme Court to hear all cases would have the practical result of depriving citizens of their right to be heard on constitutional questions in federal courts.

"Therefore, in my personal view, all bills that would limit the power of the federal courts to consider or grant remedies in cases affecting the fundamental rights of citizens under the Constitution should be held violative of the Constitution," he said.

Whether or not the legislative proposals are constitutional, "they represent dangerous policy and threaten constitutional crisis," said Brink.

"If we can justify violating the Constitution merely by claiming we need to, our Constitution will soon be a scrap of paper," he said. He called for adherence to the constitutional amendment process by those who would reverse court rulings based on the Constitution, saying, "If we permit Congress, or even the people, to avoid this process at will by simple majorities, we have, at best, but a parliamentary system. We have lost our Constitution as the supreme law of this land. And if we lose that, we lose our system of government."

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