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Governor Fills Three Superior Court Positions

by Phyllis Hartke

**Keene, Cutler, Jeffrey
 Appointed to New Positions**

All three recently created Alaska Superior Court seats located in Barrow, Palmer and Wrangell are now filled. Governor Hammond announced the last appointment on November 15, 1982, the last day of the 45-day period calculated from the date the Alaska Judicial Council submitted nominations, in which to exercise his power to appoint judgeships for the vacant seats. These new posts created by the 1982 legislature have base salaries of \$72,000 annually.

Shocked and Surprised

The latest appointment was Judge Henry C. Keene, Jr., currently on the bench of the First Judicial District Court in Ketchikan. Judge Keene is the new judge for the Superior Court judgeship based in Wrangell. Keene stated he was "shocked and surprised to receive the appointment," and that although he would take time to move he expressed that he would act as fast as possible and expects to be relocated to Wrangell by mid-December. Judge Keene will have completed 15 years and nine months on the District Court bench in Ketchikan when he terminates his position at the end of November. While in this position he has served under three Superior Court justices in Ketchikan and has had occasion to visit 17 different cities in the State of Alaska, including Nome, Palmer and Hyder and has spent two to four weeks out of each year on the bench in Anchorage. Accordingly, he is familiar with Alaska and its needs.

Keene's Principles

Attorneys practicing before Judge Keene's court should be aware of the four guiding principles Keene recognizes and abides by—to be fair, patient, polite and make decisions. In addition to these principles, Keene said that he feels punctuality is very important, even though a lot of attorneys object to this standard and goal. Judge Keene also warns that there will be no "dog, cat and pony shows" in his courtroom. (To this remark Keene made reference to Gail Fraities' court cases, with which I am not familiar.)

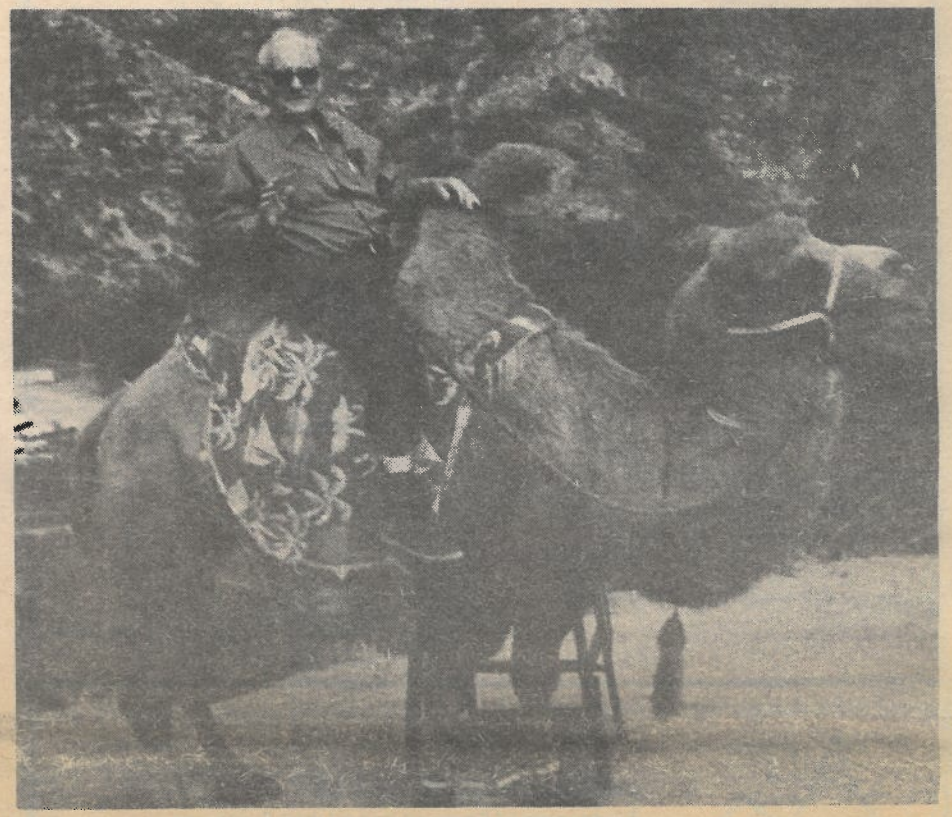
Prior to becoming District Court Judge in Ketchikan, Keene spent 26 years in the Coast Guard aboard 10 different ships. While performing general line duty functions, he was also appointed legal officer and throughout his military career effectuated legal assignments as far away as Washington, D.C. and Puerto Rico. The three years spent in Puerto Rico was in the position of legal officer over the fleet's legal affairs and matters. Keene performed many similar service-connected magistrate duties prior to military retirement.

Regarding his personal life, he has a wife, and four children. His son, Clay Keene, practices law in Ketchikan. A daughter, Charla, is an elementary school teacher in Ketchikan. Another son, James, is currently completing a course in Salem and anticipates joining the fire department of Juneau upon its completion. James is engaged to be married in November. Judge Keene has another son, Lt. Jr. Gr. Scott Keene, currently with the Coast Guard and whose wife also Lt. Jr. Gr. in the Coast Guard is expecting their first child (Judge Keene's first grandchild) which is due anytime now. Judge Keene said that with the excitement of his son's (James) wedding and his other son's (Scott) first child (the judge's grandchild) and with the Governor's appointment to the Superior Court, there has been little time to think or react to the appointment.

First Female

Governor Hammond's other two Superior Court judgeship appointments on October 28, 1982 went to Beverly W. Cutler and Michael I. Jeffrey. Anchorage District Court Judge Cutler, age 33, assumes the new judgeship based in Palmer and holds the distinction of being the first female on the Superior Court bench. Cutler has been on the District Court bench since 1977, and was appointed by the Governor "because of the outstanding job she has done." Hammond said that "she has already proven herself as a sensitive, capable judge who has a firm grasp of the law and the ability to make well-reasoned decisions. She won strong support from attorneys in the Anchorage and Palmer areas, whom she will practice before — being ranked first by a wide margin in a poll of Anchorage Bar Association workers."

Michael I. Jeffrey, age 37, has worked since 1977 for the Alaska Legal Services in Barrow. Jeffrey, the leading bar poll finisher for the new Barrow judgeship, was selected according to the Governor because "he understands well the conditions prevalent in northern Alaska, having lived and practiced in Barrow for a number of years. I was impressed by his legal reasoning ability, his philosophy and what I expect will be his manner on the bench."



Season's Greetings

Conflict Resolution Center Established

Most lawyers, in and out of private practice, frequently come into contact with disputes which they feel helpless to resolve by traditional means. The dollar amount involved may be too small to make litigation economically feasible or the cure of a lawsuit may be worse than the disease when the parties must continue to live together as in a landlord-tenant conflict.

After years of incubation, Anchorage is at last getting what hundreds of other communities have: a Conflict Resolution Center designed to aid in resolution of minor disputes through mediation and, eventually, arbitration.

The Conflict Resolution Center commenced its existence as the Committee on Alternative Dispute Resolution of the Alaska Bar Association. Under the chairship of Connie Sipe, the Committee moved from studying the problem of the extra-judicial resolution of minor disputes to the formation of agency to deal with the problem.

In February, 1981, the Committee disbanded and was recreated as the Anchorage Citizen's Arbitration and Mediation Project, Inc. The name was later changed to Conflict Resolution Center. After obtaining Municipal funding in the spring of 1982, the Center hired its executive director, Margie Ennis, and prepared to train volunteer mediators and commence operations. The Center started taking clients on October 1, 1982.

The concepts of mediation and arbitration of minor disputes have had a wide acceptance in the last decade or so. Support has been given through Federal legislation. (___ U.S.L. Sec. ___), the Special Committee on Alternate Means of Dispute Resolutions of the American Bar Association, and literally hundreds of "Conflict Dispute Centers" or "Neighborhood Justice Centers" set up in all parts of the Republic.

In the beginning the Conflict Resolution Center will offer mediation services to resolve disputes where there is no serious threat of violence, and preferably where the parties will continue in an ongoing relationship. Typical of such disputes are landlord-tenant problems, neighborhood disagreements (as over barking dogs), and consumer-retailer disputes.

The mediators will be volunteers who undergo a rigorous 40-hour training program given by experienced trainers from the Center for Dispute Resolution in Denver. The mediation process will be, insofar as possible, non-adversarial. The emphasis will be on finding a solution that all parties can live with, rather than on fault-finding or a determination of who is "right" or "wrong."

Even if only one party to the dispute contacts the Center, outreach

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Four Poems by Jane Hixon

I Have Photographs

Everytime a window
reminds me of a screen print,
or I peer inside an Easter egg,

or in the silence between
the whistle and the sound of the train,
I remember those two afternoons.

And I have photographs:
us, holding hands in our sixties,
seated on a highback padded bench

inside Union Station.
You're pale and portly
with silver specks floating in your eyes;

I'm mottled and stretched
and neither of us is opinionated.
We're smiling, leaning back inside

the corners of the bench
because we have just finished laughing.
You have said, "Crazy?"

I have replied, "Yes, remember
your father's picture leaning upside
down
against the couch, the picture of an egg
and the second afternoon we sat
naked and cross-legged
on your zebra striped sheets.

You were buttering a cracker
and praising Bukowski.
We began diagramming,

'Opinions, that's all there is
are opinions,' and morality in Paris.
Suddenly I had to go to Alaska

and as we hustled into our clothes

you said, 'Things always end on odd
number;
we'll get back to me' "

And of the empty bench.

The Solicitation

No matter what fashion experts say,
no matter how much his wife wants
him to,
the man next door can't wear dresses.

He can't do dishes alone
without feeling unmanly. He can't
trust
his genitals in boxer shorts,

knee conscious in bermudas,
always rearranging,
he'll never be free of trousers,

no matter how fast
and easy a pretty woman makes him
twirl.
But you, an even taller,

heavier man, thighs big,
hard as tree trunks
look so pretty in a sundress.

I like your backless one best
with the full skirt
edged with the great ruffle.

When you walk, it touches you,
knee, thigh, pelvic bone,
and your hands—busy

float along beside you
smoothing little waves,
and when you toss your head,

lean back smiling at me
with one hand flat against your hip,
I feel a man watching

the only woman he's ever loved
flirt with him. Marry me and,
for the wedding,

I'll buy you a peasant blouse
and a three tiered skirt
with loads and loads of rickrack.

The Fourth Course, Trianon

Revasserie (roast fetal pig).
The perfect shape
cuddled the sauce
in labyrinths of tiny creases.

Unlike ordinary guttings,
these were gleaned
from truffle pigs,
pigs so fine

men carried them
to and from the hunt.
He held their plump bodies to light,

so I could see their pearly translucence.
He made a shallow cut,
myriad swiney eyes
seemed to blink

as he placed a thumbsize wedge
of satiney hot tenderloin
far back on his tongue,
and with each remaining nibble,

he shivered
as though feeling
a delicately wicked frisson.
Revasserie, it means daydreams.

There were twelve:

swollen and steaming,
nested in watercress.
Everyone was double creme.

Haircut

My first husband was a Swede,
a man who always married whores.
How often he said during that year
he tried to reform me, "Once a
whore. . . ."

He parked the car in the country
somewhere near frogs.
Maybe he was crying.
The black handled scissors
grinding around my skull,
the frogs burping,
that's what I remember--

and his hand blotting the moon;
a shadow trick, of course,
but when his hand seemed to span
the sky
and to shrink down suddenly
to fit my neck,
my lungs seemed to fill
with the sound and smell
of fresh running water.

He put me out at Mother's.
She tied a towel into a turban,
and called the police,
but the haircut happened
just outside their jurisdiction.

He held my hair out as he cut it,
wrapped it in wax paper,
and locked it in the glove
compartment.
I almost divorced him after that.

Fantasies

Diane F. Vallentine

Question: What would you do if you
were not practicing law?

When I first suggested to Harry that
I would take a survey questioning peo-
ple about what they would do if they
were not practicing law, his response
was: "That will be very boring, every
lawyer will tell you that he wants to
open a steakhouse." Well, Harry:

Elliot Dennis: I'd be an airplane pilot.

Karen Hunt: I would be rich, thin, and
beautiful.

Steve Van Goor: My undergraduate
training is broadcast journalish, so I'd
probably be in radio or T.V. news.

Gene DeVeaux: Millionaire astrophysi-
cist — with my own observatory.

Maryann Foley: If I had the skill — an
architect.

Ron Baird: I'd try my hand at writing.

Sandy Saville: At this point in my
career I would get manicures, take
bubble baths, and read trash novels.

Ben Hancock (Kodiak): I don't have
any desire to be anything but an at-
torney. I was an IRS agent before I
became an attorney and I like what I'm
doing now.

Ken Jensen: I wouldn't practice law!

Rich Huffman: I would simply be a
dabbling investor working on one proj-
ect at a time — never more than one
project at a time. Otherwise, I'd be a
woodworker. I'd open a store and
make furniture.

Harry Branson: I'd publish a
newspaper.

Bob Frenz: I'd probably be on welfare.
But, if I had all the money in the world
I would be retired and split my time
between California, Hawaii, Alaska,
Florida and anyplace else that sounds
interesting.

Bill Rice: I would enjoy life more than I
do now.

Steve Branchflower: I would like to be
Merlin the Magician and have three
wishes, and I won't tell you what the
three wishes are.

Wayne Ross: I would probably be dead
— I can't think of anything that I
would rather do.

Eric Sanders: I'd be Dr. J.

Natalie Finn: I'd open a restaurant.
Then, after I fell flat on my face I'd be a
psychiatrist and make lots of money.

Larri Spengler: I'd run a gracious, lux-
urious country inn where all of my
friends would come periodically to
visit.



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Alaska Bar Association Ethics Committee

The Alaska Bar Association Ethics Committee wants to remind all attorneys of its existence, and the service that it performs for Alaskan lawyers.

All attorneys confront ethical problems from time to time in the practice of law. The Committee exists to assist attorneys in dealing with these ethical problems. The Committee provides opinions and guidance relating to ethical questions submitted to it. Formal opinions, which are submitted to the Board of Governors for approval, are prepared and published in matters of general interest. Informal opinions and guidance are provided to individual attorneys regarding questions of limited application.

Requests for opinions or guidance may be submitted to the Committee through the office of the Alaska Bar Association or directly to Kenneth P. Jacobus, Hughes, Thorsness, Gantz, Powell & Brundin, Chairman. Ideally, the request should be in writing, with an explanation of the pertinent facts and situation upon which an opinion is requested. The Committee is available to assist the Bar Association as much as it can, but does limit its activity to providing an opinion or guidance in a real issue facing an Alaskan attorney. Also, the Committee has no fact-finding powers, and this limits its ability to deal with situations involving disputed facts. Finally, as a general rule, the Committee will not provide opinions on matters which are already a subject of Bar Association or Judicial disciplinary proceedings.

Questions about the activities of the Committee may be addressed to Kenneth P. Jacobus, Chairman. Other members of the Committee are Gary W. Gantz, Robert J. Mahoney, Drew Peterson, Mary L. Poteet, David

Shimek, Craig J. Tillery, and Howard S. Trickey, of Anchorage, together with Roger E. Holl of Kenai.

Letters

Judith Bazely, Esq.
340 G Street
Anchorage, Alaska 99501

My dear Ms. Bazely:

This comes to compliment you on the wonderful writing skill demonstrated by you in your portrayal of me in the *Bar Rag*. It gave me a chance to take a look at myself through the eyes of someone else in a manner I had never been able to do previously and actually gave me several very good chuckles. I have shown the article to several of my friends and they likewise got a big kick out of it and I enjoyed the big smiles on everyone's face as they read. Thanks for doing such a wonderful human, humorous job.

Sincerely,
Mahala A. Dickerson

Harry Branson, Esq.
Editor and Chief
Box 279
Anchorage, Alaska 99501

Warren Matthews has properly advised that the article Alaska Lawyer Legends of Basketball should be amended to include the name of Jack Roderick with the other immortals listed therein. Warren's memory is another reason why he is on the Supreme Court and I am on the District Court.

Sincerely,
James C. Hornaday
District Judge

Conflict Resolution Center Established [continued from page 1]

workers will contact the other party and attempt to convince her or him of the desirability of using mediation.

When a resolution acceptable to the parties is reached, a binding agreement is signed by the parties. Attorneys for the parties will be discouraged from attending the sessions, but may be contacted prior to the actual signing of the agreement.

At a later period, the Center may expand its role to include arbitration (where the arbitrator may reach a decision binding on the parties if they cannot agree) and a broader range of disputes.

Those entering the Alaska Bar Association offices in the last few months have noticed the "Anchorage Arbitration and Mediation Project, Inc." sign just below that of the Alaska Bar Association. The Center has, until a few weeks ago, been using the Bar Association offices as home. The Conflict Resolution Center is grateful to the Alaska Bar Association, and particularly Randy Burns, for their generous support, evidenced by this and in countless other ways.

The Conflict Resolution Center is now located at 328 "L" Street in Anchorage (Zip: 99501) and welcomes your queries and referrals (Telephone: 272-5922). Any attorney presented with a dispute that seems better suited to the Conflict Resolution Center than to the conventional litigation process is urged to refer the disputant to the Center.

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Quatrain on the Plane

by Harry Branson

*Easily breakable, good-looking woman,
Ectomorph, sized small,
If you are so commonplace,
Why can't I leave you, Barbie Doll?*

Bar Association Seeks Scholarship Applicants

The Alaska Bar Association announced that it is now accepting scholarship applications from law students and those who plan to attend law school in September, 1983. This is the fourth consecutive year of the Bar Association program to provide scholarship awards to Alaskan residents who are admitted to an accredited law school and who, at the time of application, have a present intent to practice law in Alaska after law school graduation. As in the past, scholarship awards will be based on need, merit and demonstrated commitment to the practice of law in Alaska.

The scholarship fund is administered by the Alaska Bar Foundation (a

non-profit arm of the Alaska Bar Association). The fund is supported by contributions from the John E. Manders Foundation, income from the Boney Memorial Scholarship Fund (established in 1972 in honor of Alaska Supreme Court Chief Justice George Boney), contributions from Alaska's lawyers and other private sources.

Scholarship applications are available upon request from the Alaska Bar Association in Anchorage, the members of the Bar Association Standing Committee on Legal Educational Opportunities (William Ford, Francis Neville, Patrick Anderson, Stephen Conn, and Bart Garber in Anchorage; David Case and Judge Mary Alice Miller in Fairbanks; Chris McNeil and Anthony Sholty in Juneau; and John Peterson in Ketchikan), and through the Alaska Court System; Albert Szal and Charles Gibson (Area Court Administrators in Anchorage and Fairbanks, respectively); Barbara Pittman, Janet Tobuk, Kristen Carlisle, Linda Dahl, Linda Kennedy and Vicki Bukovic (Clerks of Court for Juneau, Nome, Ketchikan, Bethel, Barrow and Kodiak, respectively), and from Peter Ashman, Dillingham Magistrate. The scholarship deadline is February 1, 1983.



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President's Column

by Andrew J. Kleinfeld

The Board of Governors has just adopted a \$790,800 budget for 1983. It includes \$202,016, 25%, for discipline, our top priority. Each of us spends about \$126 per year on this service to the public.

That number understates the true amount. Much of the budget for the Board of Governors is spent on discipline, since it is our top priority at our meetings.

We schedule discipline first on the board agenda at each meeting. We have put considerable pressure on Dick Ray, our discipline administrator, and on the volunteers on the area hearing committees, to speed up the process. Now we are going to do more.

Additional Prosecutor

We are adding a second lawyer as a prosecutor, as well as half a secretary, to our discipline office. This is approximately a \$54,000 staff increase. The money allocated is offset by \$15,500, because we are reducing the budget for contracting out to attorneys in cases of conflict by \$5,500, and reducing litigation support service by \$10,000. We think hiring a second lawyer will have a significance far beyond its cost.

We are deeply disturbed about how long discipline cases take. In our office, before they get to the Supreme Court, discipline cases take about a year and a half from filing of the complaint to ultimate resolution.

This is too long for a complaint to be hanging over an innocent attorney's head. The unresolved grievance must be reported on malpractice insurance applications, and judicial council applications, and many grievances are entirely unjustified. A pending grievance interferes with an attorney's sleep.

This is also too long to delay discipline when meritorious complaints are filed. Public confidence is undermined when people say "I filed a complaint more than a year ago, but nothing has happened."

The delay has been especially long in the past when bar counsel quit. Everything shuts down for a few months in a one-person office, until someone new is hired and figures out how to handle the cases.

We also think that it is asking a great deal of an attorney to be a solo practitioner in this delicate area. In my solo practice, I have the luxury of being able to solicit and follow instructions from a client, but bar counsel has no client but the public in discipline cases.

We think that a two-lawyer prosecution force should speed up the process a great deal, as well as facilitating the exercise of judgment by permitting consultation between the two bar counsel.

Eric Ostrovsky has agreed to serve as our additional bar counsel. He is presently with the district attorney's office in Anchorage, and will join our discipline office after the first of the year. The entire board was impressed with his intelligence, vigor, and interest in effective service to our profession and the public in this sensitive area.

No Dues Increase

I think bar dues should never increase, in the absence of extraordinary inflation. Our \$310 annual obligation is much higher than in most states. We are no longer the smallest state bar, and we are growing fast. From now on, cost increases ought to be offset by increased numbers of lawyers paying dues, rather than increased dues per lawyer.

Since most of our activities are for

the benefit of the public, and we have non-lawyers appointed by the governor to our board, we shall at some time have to consider whether the public, rather than the bar, should pay for our regulatory services.

Board Travel

One pet project of mine on the board has been cutting down board members' travel. We have done so.

Our policy is now to send only the president on show-the-flag missions, and only the president-elect to training programs. Accordingly, only the president is sent to the Western states' bar conferences, and only the president-elect is sent to the ABA-Bar Leadership Program. We generally do not find it necessary to travel in pairs.

We are boycotting the Western

State Bar Convention this year and budgeting zero dollars for it, because it is being held in the Virgin Islands. We disapprove of their decision to hold the convention other than in a western state.

I expressed to the board my absolute refusal to travel to the Virgin Islands on mandatory dues money of lawyers in this state. I will not fly to that resort on your nickel.

We are sorry to do this during the year that Donna Willard becomes president of the Western State Bar Conference, but she is in complete sympathy with our decision and also disapproves strongly of her predecessor's decision to hold the meeting in the Virgin Islands.

We have budgeted no money for any officer or member of the board to go to the spring CLE program in

Hawaii. If you see us there, it will be on our own money.

Budget Management

It is hard for a volunteer board to manage an agency budget, because of its complexity and the need for information on so many details. It is also hard for those of us inclined to economize to be curmudgeons on every item. We pretty much have to save our fire for the things that really matter, in order to avoid alienating the staff and making unbearable nuisances of ourselves. The desire to economize also runs up against the desire to carry out priorities like discipline.

Although we are doing our best at this complex task, we recognize that our best is pretty distant from perfect. Please don't hesitate to tell us your criticisms and suggestions for change.

How to Get Rich Practicing Law, or, When to Give the Client a Definite Maybe

by Russ Arnett

Getting Clients

Once there was a poor lawyer who had few clients. He sought the advice of a prosperous colleague who said that for several years he also had few clients until he made a discovery which changed this. Reaching behind his desk he picked up a single volume entitled *Family Legal Advisor in Plain English*. He said he used this to the exclusion of all other works with which, nevertheless, his office was lined. The advice worked wonders and soon the poor lawyer also had many rich clients. His advice now had the ring of authority.

Charging Fees

When Stan McCutcheon first saw a criminal client he often would read to the client the criminal statute, giving the penalty at least equal emphasis to the elements of the crime. Then he would quote an ample fee and tell the client that he would be happy to give him the names of several other attorneys who were at least as able as himself and who would probably charge much less. The client at this point was usually panting to have Stan take his case and did not question the fairness of Stan's fee.

One of Anchorage's prominent personal injury lawyers in explaining his contingent fee contract to the client would say, "I'll do all the work and you don't do anything, and we'll split 50-50!"

Keeping the Client

Several of us were discussing how an insurance counsel was able to hold on to an insurance client after a result which could only be called a disaster.

One of the guys said "You have to understand his relationship to the agent. They're close friends. They drink together."

Elihu Root, one of the most admired corporate counsel of his day, defined a corporation lawyer as someone who finds a way for the corporation to do what they already decided they wanted to do. I accept this definition. I would merely add that it would further aid one's career if corporate counsel acquired a similar mind set to the corporate officers'. Usually this comes quite naturally. Take for example the young wimp whose firm represents Megabuck Industries. His adversary should realize that when he speaks Megabucks speaks. It's incredible how confident and self-possessed he becomes. How corporate clients treat them is another matter. I have seen mature lawyers take unjust public abuse from their corporate clients and keep their mouth shut with no recourse other than perhaps padding the bill. They thought it necessary to keep their mouth shut or lose the client.

I have found that all lawyers may be divided into two categories. Probably the more prosperous group usually interrupt the client within the first five minutes of his narrative by expostulating "They did what. Why, we'll..." Clients appreciate counsel who have a strong sense of justice.

In this period of increasing specialization, the *cachet* of "specialist" is well received. Some lawyers use it to advantage by specializing in seven or eight different areas. I hold with those who oppose board certification of lawyer specialists.

Environmental Law

This seems to be a rich and untapped field. I recommend to the law-

yer looking for high-paying clients to join several development groups or resource industry organizations and growl about greenies and the Sierra Club. Be doctrinaire. Praise Watt. When you establish credibility the clients will surely follow.

The Appearance of Success

An Anchorage P.I. lawyer drove his client to court in his Model A Ford. After the litigation had been successfully completed, the client confided to the lawyer that his opinion of him suffered when he saw the ancient car he was driving. The lawyer took his fee in the case and bought the biggest, blackest, newest car he could find.

In the '50's in Anchorage vice was a principal underpinning of the economy, certainly of the legal profession. It was centered in *Eastchester Flats*. The vice lords and ladies used an expression in discussing the merit of a lawyer of "Has he got the juice?" Being a former prosecutor often helped bring an affirmative response. Whatever this nectar was, I found I had none to my dismay and financial impoverishment.

Work Habits

I have found that bad work habits sometimes give a big boost to a practice. Not answering phone calls and not completing work on time is frequently seen by clients as an indication of a busy and successful practice. Arrogance is also well-received by some clients.

Summation

Bob Reeve, who knew something of lawyers, would often ask the riddle, How is a lawyer like a rooster? Answer: A rooster clucks defiance. A lawyer...

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Robert A. Rehbock
Tom Schulz
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House Poet
Susan Hallock

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New Post-Judgment Interest Rates Announced

Effective October 1, 1982, post-judgment interest on most civil money judgments in the U.S. District Court will be computed at a new and varying rate. Pursuant to 28 USC 1961 such interest shall be calculated from the date of the entry of the judgment, at a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52 weeks U.S. Treasury Bills settled immediately prior to the date of the judgment.

The interest rate attaches as of the date of judgment and does not change thereafter unless the judgment is vacated or otherwise set aside.

After October 1st, the amounts for post-judgment interest may be obtained by calling the Clerk's Office.

All My Trials

by Gail Roy Fraties

It was 4:00 p.m. by the clock on the wall in Anchorage Superior Court H, and we were awaiting the arrival of Honorable Ralph E. Moody, who was to preside over a motion set at that hour. I was chatting with opposing counsel—veteran trial attorney Edgar Paul Boyko—and remarked, apropos of the hour, that we have a saying in Spanish that, "It takes a man's mind off his other problems when he knows that he's going to meet the Devil at 4:00 o'clock."

Ed smiled and replied, "Never mind, Gail, they're never going to be able to prove what the hell time it is in this courthouse anyway—there's too many time zones."

E = mc² and Other Dilemmas

He was referring, of course, to the well-documented fact that the whole courthouse system in Anchorage seems to be permanently trapped in a time warp of some sort. The Superior Courts proceed on an entirely different time than the District Courts in the adjoining building, and there are variances from floor to floor, as well as from court to court. Nobody seems to mind, but all of the judges have prudently taken the position that they don't care what the time may be in the outside world, the clock in their courtroom is the final arbiter so far as punitive action for late arrival may be concerned.

Faced with this grim dilemma, Anchorage lawyers have various solutions—mostly consistent with their own quirks and personalities. Bill Ford, for example, advocates a row of clocks in the lobby indicating the various time zones presently in effect (they tend to vary from day to day), while John Murtagh prudently sets his watch by "Judge Carlson time"—having learned the futility of relativity arguments before that particular tribunal.

Angel Face and other Evidentiary Problems

Students of evidence will be pleased to know that judicial interpretation of our own new code is proceeding at a satisfactory pace, as evidenced by an exchange between trial lawyers Peggy Mantele and Mike Keenan before Anchorage Superior Court Judge Milton M. Souter in a recent civil case. Mr. Keenan had been probing rather close to the bone with one of Ms. Mantele's witnesses, and she rose to object to a particularly pointed question.

Ms. Mantele: "Your Honor, I've been patient with opposing counsel—but I must object to this line of questioning."

The Court: "Will you state your grounds, counsel?"

Ms. Mantele: "It's a cheap shot, your Honor."

The Court: "Sustained."

It occurs to me that this is probably the only evidentiary objection in the whole trial that made any sense whatsoever to the jury. Lawyers have enough trouble with evidence, and I can't imagine what jurors must think about it all—particularly since I'm aware that they get most of their legal precepts from television programs. My readers know by now that I am an inveterate television watcher, and I must report that *Angel Face* (1952), starring Jean Simmons and Robert Mitchum, directed by Otto Preminger, contains an excellent example of the sort of thing that laymen apparently expect in a courtroom situation. I'm not saying it isn't a good idea.

The scene to which I refer involves the trial of a lady (Jean Simmons) ac-

cused of murder. The prosecution witness has just made a devastating eye-witness identification. The dialogue then proceeds as follows:

Juror (rising to his feet and addressing defense counsel): "May I ask a few questions?"

Defense Counsel (without so much as glancing at the judge): "Certainly."

Juror (to witness): "I see that you are wearing thick spectacles. How is your vision without them?"

Witness: "I am legally blind unless I am wearing two sets of contact lenses, together with these glasses."

Juror: "You have identified the defendant from a brief glimpse at a range of 200 yards on a dark and rainy night with no street lamps lit."

Witness: "That is correct."

Juror: "Did you have any of your bifocals or contact lenses on that night?"

Witness: "I don't recall."

Juror: "Isn't it true that you were accompanied by your seeing-eye dog, and carrying a white cane?"

Witness: "That's true, but I could sense the defendant's presence. Besides, what does it matter? The police told me she's guilty anyway (Pandemonium in courtroom)."

I mean, how are you going to top that sort of thing when opposing counsel keeps citing the rules to you? Judge Souter is to be commended for his courageous ruling, which may be the thin edge of the wedge in the never-ending effort by trial counsel to make legal proceedings more intelligible to the layman.

In that vein, we of the legal profession are also going to have to deal with the public acceptance (particularly in today's depressed economy) of "no frills" packages, super-saver air fares and generic drugs—as opposed to more expensive name brands. These concepts have obvious implications to the experienced trial lawyer, in both criminal and civil situations, as follows:

CRIMINAL TRIAL

Name brand lawyer—engages in extensive research, drafts imaginative trial brief and instructions, conducts an omnibus hearing which last for three weeks, several points taken up to intermediate appeals court on writ of review before trial, extensive review of jury panel by hypnotists, handwriting expert, gypsy, sociologist, psychologist and body language expert; three weeks of trial and presentation of eleven expert witnesses, extensively briefed motion for reconsideration after conviction, and appeal to both the intermediate and Supreme Courts. Result: Guilty verdict affirmed, 100 years to serve without the option of parole, total cost, \$75,000.

Generic lawyer—glances at police report, briefly interviews client and his chief witness, and advises, "You're going to spend about \$75,000 for a trial, and the result will be that you will be convicted and sentenced to 100 years to serve without the option of parole." Result: The same as in name brand lawyer's office. Cost, \$200.

CIVIL TRIAL

Civil cases, particularly those involving insurance companies—are as many of them do—are subject to the same basic principles, particularly where the insurance defense bar is involved.

Name brand defense firm—defendant is heavily insured motorist who—while drunk driving with his lights out on the wrong side of the highway—runs into a school bus, seriously injuring several children. Depositions set in 13 states for all of the school children, their teachers, and every known doctor who has treated any of them—including those who were not injured—since birth; pro-

tracted motion practice concerning protective orders, esoteric legal points, and abstruse evidentiary questions; requests for admissions from all 70 passengers, their parents, siblings, relatives, heirs and assigns; subpoenaing of witnesses, expert and otherwise, throughout the known western world, and groundwork laid for six-week trial; offer of settlement on courthouse steps (which is accepted), in a total of \$65,000. Defense costs (exclusive of settlement), \$86,903.12 in fees and expenses.

Generic lawyer—briefly studies the police and accident reports, and advises bus company to put its \$50,000 policy on the table to cover all three victims—which offer is accepted. Cost, \$250 in fees.

Even though members of the lay public occasionally have access to the *Bar Rag*, I hardly feel that these revelations are going to change anything. In the first place, it would be rather difficult for most criminal defendants to accept the generic lawyer's grim prognosis, and in the second—as my old friend trial attorney Stephen S. DeLisio tells me—the insurance companies want to go first class.

Remembrance of Things Past

As much as I would like to give every one of my loyal readers a Christmas present at this most joyous of all seasons, the only thing I have to offer at the moment is something for my growing body of critics to get their teeth into (if that is the expression I want), involving—as it does—overtones of racism, cruelty, and a generally frivolous attitude toward human suffering. Anchorage investigator Gary Veres and I were having a drink together the other afternoon, when he recounted an electrifying story from his days with the Los Angeles Sheriff's Office. Gary, a (white) deputy sheriff, was assigned to the notorious Watts ghetto area for a period of six years—during part of which he served as training officer on the night shift. On this particular occasion, he was training a rather withdrawn and quiet Black officer, whom he only remembers by his first name. There were many of them in those years.

The conversation had been about attack dogs, and I stated that of all breeds, it seems to me that the Doberman pinscher is the most awe-inspiring. Gary agreed, and related the following:

"I had this young Black dude with me one night as my trainee," he said, "and it came to my attention that he shared the same general fear of dogs that seems to infect the whole Black community in Watts. Everybody keeps a junkyard dog of some sort, and most Blacks give them a wide berth—I don't know whether it's from folklore, or actual experience, probably the latter. Anyway, we were approaching the door of a well-known dope dealer in that area to serve him with an arrest warrant, and Morris (the trainee's first name) noticed a large Doberman pinscher chained to a post outside the door.

Morris spoke, "I'm not going in there, man. They train those dogs to bite you right in the balls, and I was just married and my wife..."

"Look, Morris," Gary replied patiently, "that dog is tied to a post with a chain thick enough to hold the QUEEN MARY, he's probably well-behaved anyway, and I don't want my partner acting like a ghetto Black—be-

ing afraid of dogs and everything. I know what a good policeman you are, but there's some red-necks on the department that would make fun of you for being afraid to walk past a chained Doberman."

Morris was unconvinced. "Did you look in the mother's eyes?" he asked plaintively. "I know he wants a piece of me, and I'm afraid I know which piece he wants."

Gary was unrelenting. "Morris, this is for your own good—I'm going to walk up to that door with you, past the dog, and we'll say no more about it. There's enough things to be afraid of on these streets without you creating additional problems for yourself."

Morris steeled himself for the ordeal, and the two officers resolutely marched past the dog on the way to the door—whereupon it snapped the chain effortlessly, shouldered Gary out of the way, and connected with an eight-foot springing leap for Morris's crotch, where it locked its teeth and prepared to stay for the night.

Poor Morris, insane with fear and pain, was whirling like a dervish with the dog growling as loud as the fact that its mouth was full would permit. "Jesus, Gail," recalled Gary, "it was really terrible. Morris was spinning around and around, screaming, and the dog had his feet right off the ground from the centrifugal force. I was trying to get a shot at him, and all that Morris could do was scream the same thing over and over again (Gary was referring to a hyphenated expression, descriptive of oedipal relationships, used in street parlance as an adjective, noun, pronoun, verb, and punctuation mark). Anyway, I finally busted the dog up with my sap (a blackjack) and got Morris to the hospital. I saw him there the following night, when he was being visited by his mother and wife. He was lying on his back with his equipment in an ice pack, and although he hadn't suffered permanent damage, the doctor said he would have teeth marks on his privates for the rest of his life."

"What did they have to say?" I wanted to know.

"They called me the same thing Morris called the dog," replied Gary sadly.

I don't know about the rest of you, but trial work makes me crazy—as do most of my clients. In such an atmosphere, it is refreshing to have a friend such as the philosophic and gentle Joseph Paul Pierre. Joe, whose true vocation is art and music, occasionally assists me with household repairs, which are beyond my limited capabilities. He intervened on an occasion last winter when I was plagued by an unusual number of irritating problems. I had just lost a trial, my pipes had broken and the sewage had backed up, the St. Bernard had eaten two volumes of a transcript I had been studying, the car had broken down, and I had just received word that I was going to have to make a series of motions to correct some oversight or another. About six inches of raw sewage had backed up in my garage, and when Joe arrived in answer to my frantic call, I bitterly assailed him with all of the problems that had occurred at once. He listened patiently, and then replied in his usual optimistic vein: "You know," he said, reflectively, "I've always thought that great men are beset with great problems." He paused, and then mused, "I wonder what sort of domestic problems Alexander the Great...?"

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**In the Superior Court for
the State of Alaska
Third Judicial District at Anchorage**

**In Re JOHN WOOD,
ORDER TO SHOW CAUSE**

Case No. 3AN-81-6112 Civil

Order and Judgment

The court having considered the brief of John Wood and the amicus briefs filed by the Anchorage Bar Association, Alaska Bar Association, Public Defender Agency, and the Attorney General's Office, and being otherwise sufficiently advised, the court enters the following findings of fact and conclusions of law.

(1) Administrative Rule 12 was the basis for the order setting forth the procedures for appointment of conflict attorneys to represent indigent clients. This order was handed down by the presiding judge's office and became effective on July 1, 1979, and was in effect at all times during the controversy involved in this case. A copy of the order is attached and made a part of this order.

(2) The attorney, John Wood, appeared before the Hon. Beverly Cutler on July 16, 1981, and refused to accept an appointment as an attorney for an indigent client in the following criminal cases: 3AN81-2538, 2989, 3167, 3188, 3407, 3408, 3618, 3779, 3802.

(3) At the hearing before Judge Cutler, John Wood also asserted that he would not comply with that portion of the order which required him to provide legal representation or to arrange for another attorney to provide said representation.

Based upon the refusal to comply, Judge Cutler appointed another attorney to represent the indigent defendant.

(4) Pursuant to Adm. R. 12(d), Judge Cutler found that all nine of the cases were not significantly difficult nor did they require a particular expertise in criminal law. Judge Cutler also found that it appeared that John Wood did have some prior experience in criminal law. See Tape No. 2-802, Log No. 3075-3147.

(5) The order to show cause was issued by this court on July 31, 1981, and a hearing set for early September 1981. Through a series of hearings, the

court felt that a solution could be reached which would be satisfactory to the court and, therefore, allowed the filing of amicus curiae briefs and proposed orders. The court has reviewed those briefs and the proposed orders and has reviewed the applicable case law from other jurisdictions as well as information obtained as to the methods employed by at least two other jurisdictions to appoint attorneys for indigent clients and conflict attorneys.

(6) The proposed orders of amicus are generally in agreement and urge the

volunteer list proposal is prefaced by the suggestion that the court increase the hourly rate of compensation. In other words, it appears to the court that the success or failure of the volunteer list depends upon an increase in the hourly rate of compensation, such that any increase would "encourage" members of the local bar to offer their services to the court.

(7) The drafters of the proposed orders assume that the court finds the present method of appointing attorneys to be a violation of the Code of

attorney is allowed only nominal compensation for his services, and it was never intended that an attorney receives full compensation for services rendered. *Id.* at 491. The court feels that the real issue in this case is whether court-appointed attorneys should be compensated in full for services rendered. Amicus points out that the contract attorneys receive compensation far in excess of the amounts allowed under the rule. However, according to the figures used by the Anchorage Bar Association, the court has determined that the contract firm receives approximately \$1,400 per case assuming that the firm handles 35 felony cases and 65 misdemeanor cases over a 10-month period of time. The court feels compelled to point out that \$1,400 per case is not full compensation and while that sum may exceed the amount allowable for misdemeanor cases, the sum falls below the amount allowable for felonies disposed of by trial. Admin. R. 12(i) provides:

The administrative director may enter into agreements to provide for the legal representation of indigent defendants in criminal cases if he determines that the best interests of the court system would be thereby served. The provisions of an agreement entered into under this paragraph supersede the other provisions of this rule. (Emphasis added.)

The Alaska Supreme Court specifically provided the provisions of the rule, including those directed at compensation, would not be applicable in the event that a contract for legal representation of indigent defendants was entered into by the administrative director. Under the rule, private counsel and the contract attorneys receive nominal compensation. Neither group receives full compensation for services rendered. The rule is not inflexible and allows for payment in excess of the amounts to prevent manifest injustice. Furthermore, the rule provides that the court may depart from the strict rotation procedure where the complexity of the case exceeds the level of experience of the appointed attorney. However, the rule does not allow the attorney to evade service entirely as Attorney Wood is attempting to do in this case.

(9) The court does not feel compelled to excuse the attorney from service on a mere assertion to the court that he is incompetent to represent a criminal defendant. Attorney Wood had several options once he was appointed: (a) he could have accepted the appointment and represented the indigent defendant; (b) he could have accepted the appointment and associated himself with competent co-counsel; (c) he could have accepted the appointment and informed the client that he did not feel competent to undertake the responsibility of representing a criminal defendant and the defendant could have sought a change of attorney. See *Easley v. State*, 334 So.2d 630 (Fla. 1976); or (d) he could have refused the appointment. This proceeding is the result of having chosen the latter alternative thereby disobeying a lawful order of Judge Cutler based upon the presiding judge's order of July 1, 1979.

In view of the court's previous rulings, the issue which must be decided is whether the attorney has shown good cause to the court as to why he should not be held in contempt of its order dated July 1, 1979. This court finds that Attorney John Wood has not shown good cause and, therefore, finds Attorney Wood in contempt. Time for disposition of this matter is set for the 7th day of December, 1982, at 9:00 a.m., in Courtroom F-306, before the undersigned.

IT IS SO ORDERED at Anchorage, Alaska, this 12th day of November, 1982.

Ralph E. Moody
Superior Court Judge

**In the Trial Courts for the
State of Alaska
Third Judicial District**

**In the Matter of the Establishments of
a List of Attorneys Re: Appointments
for Criminal Conflict Cases.**

ORDER

The Supreme Court has announced that, effective July 1, 1979, counsel appointed to represent defendants in criminal cases in which the Public Defender has established a conflict exists will be compensated at the rate of \$40 per hour with a maximum of \$1,500 in misdemeanor and \$2,500 in felony matters.

The Alaska Court System expenditure transactions reflect approximately two hundred ten (210) appointments of counsel in criminal conflict cases during the calendar year of 1978.

As the Greater Anchorage telephone directory contains approximately four hundred seventy (470) names of lawyers engaged in the private practice of law,

IT IS ORDERED that a list be established which will contain the name of each lawyer above-described. The order in which the names will appear on the list will be from a drawing, and

court to strike down the current method of appointment and enter an order which provides for the establishment of volunteer lists for criminal and civil matters, with mandatory lists to be used only if the volunteer lists are exhausted. It is at this point the amicus proposed orders begin to differ as to the method of compilation and the composition of the mandatory list. The

it will be the responsibility of each attorney so appointed to provide legal representation or to arrange for another attorney to provide said representation.

If, during the preceding six-month period, any lawyer has been appointed to represent a defendant in a criminal matter, and so requests, his name will appear at the end of the newly established list.

Any lawyer who has been admitted to practice in Alaska for less than one year may request and have only misdemeanor assignments for a period of not more than one year.

IT IS FURTHER ORDERED that similar lists will be established for Palmer, Kodiak, Kenai and Valdez. In the event that hardships result in small communities from the lack of adequate numbers from which to rotate assignments, with approval from this office, appointments may be made from the Anchorage list or other convenient locations.

DATED at Anchorage, Alaska, this 22nd day of June, 1979, with an effective implementation date of July 1, 1979.

Ralph E. Moody
Presiding Judge
Third Judicial District

Professional Responsibility and violation of due process and equal protection and, therefore, unconstitutional. However, the court does not subscribe to that belief. The court specifically rejects the argument that an attorney admitted to practice law in Alaska is not under a duty to provide representation to indigent criminal defendants, and further rejects the proposition that anything less than full compensation is a violation of due process. *Jackson v. State*, 413 P.2d 488 (Alaska 1966). The court also rejects the argument that an indigent defendant's right to equal protection is being violated on the basis of the study conducted by the Alaska Judicial Council on felony sentences. The results of one study do not justify a decision by the court that constitutional rights are being violated.

(8) Addressing the argument that the disparity in the compensation received by the contract law firms and the compensation received under the rule by privately appointed counsel violates counsel's right to equal protection, the court cites to the holding of *Jackson*:

[3] We hold that an attorney appointed to represent an indigent prisoner in a criminal matter has no constitutional right to receive compensation for his services. He has a right to compensation only to the extent that a statute or court rule may so provide.

id. at 490. Later in the opinion, the court concludes that a court-appointed

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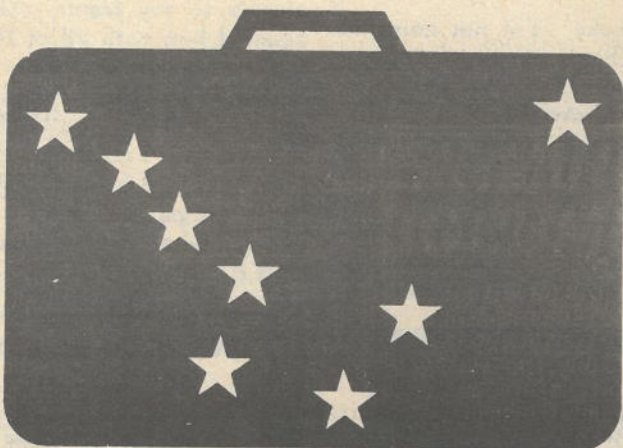
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Alaska Bar Association 1983 Adopted Budget—Income and Expense

INCOME

MEMBERSHIP DUES	\$504,250
ADMISSION FEES	84,000
ADDRESSING & COPYING	2,500
SPLIT PAYMENT SERVICE FEES	5,000
INTEREST	45,000
LAWYER REFERRAL	40,750
THE BAR RAG	6,000
PENALTIES	4,800
ANNUAL MEETING	30,000
ANCHORAGE BAR	5,000
CONTINUING LEGAL EDUCATION	60,000
SUBSTANTIVE LAW SECTIONS	3,500
TOTAL INCOME	\$790,800

EXPENSES

• ADMISSIONS	
Staff	\$ 45,122
1983 includes:	
Exec. Dir. 30%—\$18,640	
Regular Staff—\$26,482	
Grading	
MBE	4,738
Local	35,482
Exam Review Training & Consulting Fees	8,000
Exam Administration	600
Exam Rent	10,000
Postage/Supplies	10,809
Telephone	481
Total ADMISSIONS	\$115,232
• BOARD OF GOVERNORS	
Travel & Per Diem for Board Meetings	
Anchorage (4)	\$ 12,658
Fairbanks (1)	4,928
Juneau (1)	5,422
Misc. Travel	1,000
Lay Members	12,962
Other Meetings	
ABA Mid-Year (1 person)	1,650
Bar Leadership (1 person)	1,625
Bar Annual (2 people)	4,200
Telephone	2,000
Misc./Mail/Supply	2,000
Total BOG	48,445
• LAWYER REFERRAL	
Staff	\$21,687
Advertising	5,836
Telephone	6,256
Supplies/Misc.	1,022
Total LAWYER REFERRAL	\$34,801
• DISCIPLINE/BAR COUNSEL	
Staff	\$142,876
1983 includes:	
1/2 Additional Sec.—\$11,629	
Assistant DA(36,000)—\$42,410	
Regular Staff—\$88,837	
Litigation Support Services	5,000
Travel & Per Diem	
N.O.B.C.	4,096
FAI B.O.G.	721
ABA Workshop	1,564
Investigations & Area Hearings	10,000
Contract Labor/Conflict Litigation	2,500
Supplies/Copies/Misc.	11,768
Transcripts	5,000
Telephone	7,771
Rent	8,220
ABA Discipline Team	2,500
Total DISCIPLINE	\$202,016

• THE BAR RAG	
Typesetting	\$ 8,400
Printing	6,000
Photo/Artwork	1,000
Distribution	300
Ad Commissions	1,200
Promotion	500
Miscellaneous	12
Total BAR RAG	\$17,412
• CONTINUING LEGAL EDUCATION	
Administrative Expense:	
Staff	\$ 41,465
1983 includes:	
Exec. Dir. 10%—\$6,213	
Regular Staff—\$35,252	
Telephone	1,211
Misc./Supplies	3,680
ABA Travel-CLE	5,246
A.C.L.E. (2)	
N.A.B.E.—P.R. (1)	
Depreciation Video Equipment	3,138
Direct Costs of Seminars†	50,000
Total C.L.E.	\$104,740
• SUBSTANTIVE LAW SECTIONS	
Funded Expense	\$1,500
Budgeted by Signups	2,800
Total SECTIONS	\$4,300
• ADMINISTRATION	
Staff	\$108,542
1983 includes:	
Exec. Dir. 60%—\$37,280	
1/2 Additional Bkpr/Sec.—\$11,629	
Regular Staff—\$59,633	
Telephone	2,750
Directory Ad	2,119
Travel & Per Diem	
ABA Midyear	1,762
ABA Annual	2,334
FAI B.O.G.	846
JNU B.O.G.	868
Supplies	9,452
Postage	18,581
Equipment Leases	18,401
Equipment Maintenance	9,287
Printing	2,800
Rent	39,348
Library	1,000
Annual Audit	6,000
Dues & Subscriptions	800
Advertising	750
Casual Labor	500
Property & Liability Insurance	7,080
Depreciation	13,060
Newsletter	3,000
Interest Expense	2,500
Miscellaneous	2,000
Total ADMINISTRATION	\$253,780
• COMMITTEE EXPENSE (C.L.E.)	
	\$7,000
• UCLA/AK LAW REVIEW	
	\$11,895
• ANNUAL CONVENTION	
	\$30,000
• MEETING—LOCAL BAR PRESIDENTS	
	\$3,000
• DONATED SERVICES	
	\$6,000
TOTAL EXPENSE	\$838,621
Total INCOME from All Sources	
	\$790,800
Total EXPENSE from All Departments	
	\$838,621
Net Gain (Loss) for the Period	
	\$(47,821)

Anchorage Bar Christmas Party



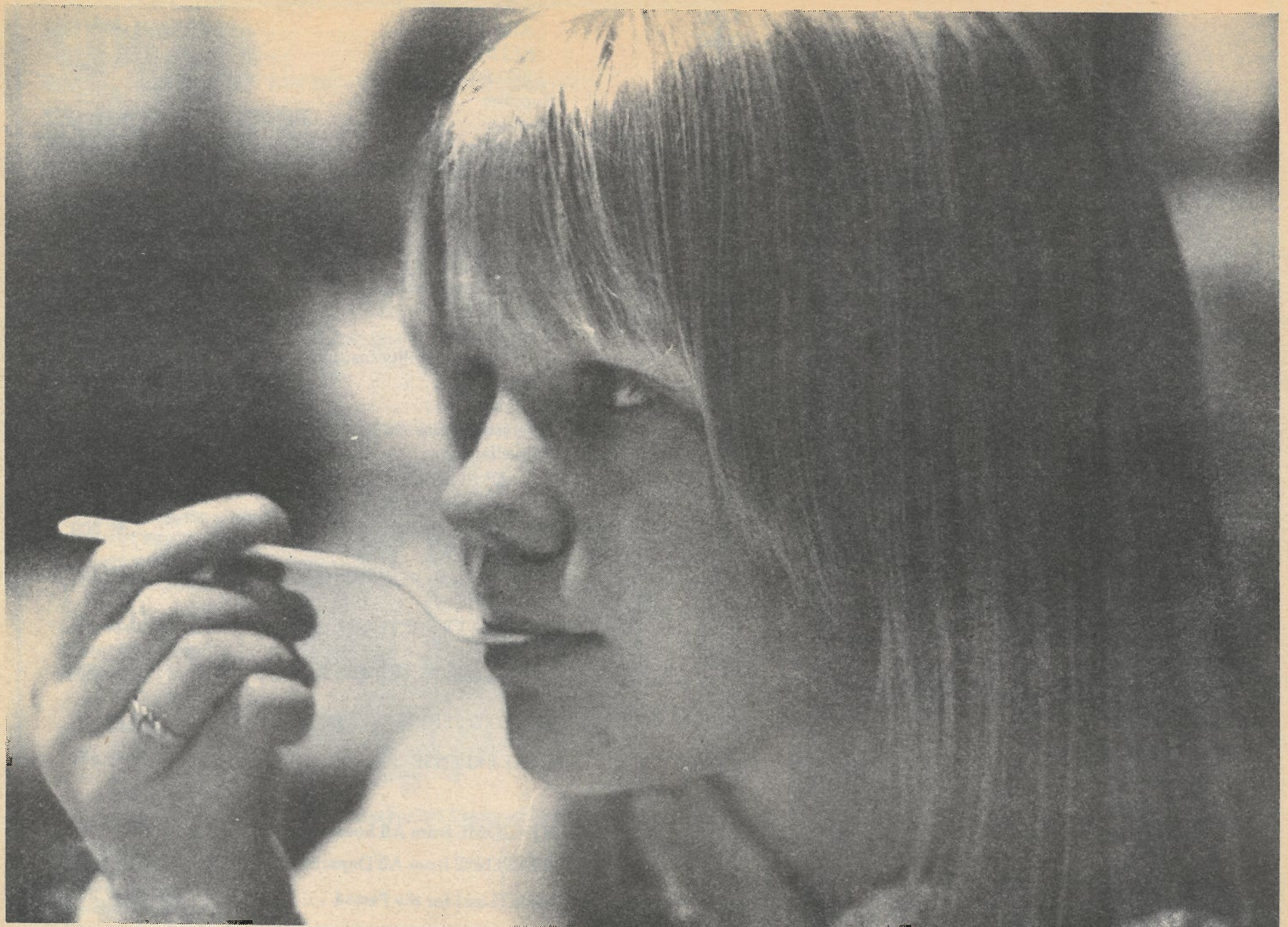
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Stanley Claus



A Spoonful of Fun



Magician's Helper



Christmas Belle

Photos
by
Ken Roberts



Judith



High Fashion



The Man of the Hour

Interview with Beverly Cutler

by Judith Bazeley

Appointment

As of November 23rd, 1982, Palmer has its first Superior Court Judge and the state of Alaska has its first woman Superior Court Judge. She is Judge Beverly Cutler, formerly one of the District Court judges for Anchorage. As most members of the Bar know, there were a number of qualified applicants for the position and of the three recommended to the Judicial Council, Beverly Cutler was Governor Hammond's selection.

When asked why she wanted to be a Superior Court Judge in Palmer, Beverly responded that she applied for this position in part because she and her husband, Mark Weaver, own property in the Palmer area and have always wanted to work as lawyers in that area as well as work on their property and added that she also applied for the job because she had greatly enjoyed her District Court position in Anchorage and did not want to give up working in the courtroom. "I guess I've always worked in the courtroom except for one year when I worked with the Judicial Council and I have really enjoyed that kind of work." One other reason that the Palmer Superior Court Judgeship appealed to Judge Cutler and in particular appealed to her more than an Anchorage Superior Court Judgeship is that "you're kind of an all-purpose trial court judge as opposed to having masters to handle many different functions and never having any contact with them. Already, in a couple of weeks, I can see how much more variety there is because I may have some divorces or dissolutions or adoptions of probate matters first thing in the morning than either a felony or misdemeanor trial or a change of plea

or some other more prolonged civil matter."

Breaking In

Judge Cutler has been working in Palmer since the day after she was sworn in and points out that a great deal of her time has been devoted to figuring out how to run the Superior Court in Palmer. She has to deal with such matters as the processing of felonies, when the first Grand Jury is going to be convened, how to deal with the fact that there is no public defender in Palmer, how to transport prisoners from Anchorage, how to figure out a civil calendaring system all have to be worked out. She comments that "one of the first things you observe when you go into any situation like that is that you can't make too many rules until you know what you've got to work with. "While eventually I'm sure we'll have a trial setting conference where some kind of pre-trial order will be issued, I think the way to make a lot of mistakes would be to assume that the trial setting conference order should be just like it is in Anchorage, or just like Judge X's that you've always admired and issue one like that. In fact, at the first Matanuska Valley Bar luncheon I attended, one of the members said to me with a perfectly straight face, 'I assume we are going to have at least a twenty-five page pre-trial order' and then he winked at me and said, 'you know anything they do in Anchorage we can do much better out here.' "

The Unwritten Practice

As far as the local Bar's reaction to her is concerned, Judge Cutler says that she thinks there's some understandable apprehension and fear that someone might come out from Anchorage and



all of a sudden start bossing people around and telling them that they have to do things in certain specific ways. "There's a lot of unwritten practice rules out there. For instance in criminal misdemeanors I'd say maybe one out of fifty motions is in writing, and I feel that it's important to make a lot of observations about how things are done before any written rules are promulgated, so long as I'm not prolonging a situation of total anarchy."

Judge Cutler met her husband, Mark Weaver, in contracts class in the second year of law school at Yale Law School. And although he was attending law school, he had always been interested in farming and agriculture and had been a geology undergraduate. She came to Alaska the summer that she graduated from law school after having lived in Washington, D.C. most of her life. She took a job working for the Judicial Council, packed up her car and drove from Connecticut to Alaska, where she has remained ever since.

The Farm

At the Judicial Council she worked on the very first sentencing in bail studies. In off-work hours, during her

first and second years in Alaska she and her husband began to look around for property to purchase and learned that the Matsu Borough occasionally sold off large parcels of undeveloped farm at big auctions with restriction that the land be used for farming. "This was no problem for us, because that was what we wanted to do. In the spring of 1977 we bought a parcel that is a little over 200 acres and is about 50 miles from Anchorage, about 12 miles from Palmer and 12 miles from Wasilla, and we had to submit a plan to the borough detailing how we would clear it and farm it. Our plan, which we have to stick to in order to keep the property, has us clearing 90 to 100 acres by the end of 10 years at the rate of about 10 acres a year. The first year we had the property we mainly put in roads and figured out our access and at the beginning of the next year we started clearing and we've been clearing about 10 acres a year for about five summers and last year actually planted for the first time a crop for harvest. It is a cover crop to enrich the soil so this year we'll have our first real crop." Judge Cutler and her husband agree that they will probably next plant their farm with seed potatoes and will possibly attempt to raise cattle or hay.

Building a Home

In addition, Judge Cutler and her husband have been building a home on their Palmer property. They started with a 10'x12' trailer, and graduated from that to a big army tent with a stove. After they had had the place for about three years they built a 12'x14' cabin that they were able to put a wood stove, a water pump and some bunks into. During this entire time, Judge Cutler continued to work full time in the District Court, however, her husband was able to arrange his employment so that he had six months

[continued on page 11]

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Beverly Cutler

[continued from page 10]

off every year and every summer friends and relatives would come to Alaska to help them work on the property. "Every summer I would feel like I had four children, in fact I felt like I had more because these guys were all 18, 19, 20, 21 and they were doing really heavy work, they were clearing with chainsaws and bucking wood and must have been burning about five or six hundred calories a day. I was sort of the camp cook and bottle washer."

Just before the cabin was finished, Judge Cutler, in 1980, gave birth to her daughter, Lucia, and over the last two years she and Mark Weaver have actually been building a house. It is an actual log home built completely out of 8-inch logs that they brought from Hope because the trees on their property were not big enough. At this point the house is completed on the outside, has a roof, but is not quite ready to be inhabited.

Trailblazer

When asked "What about being the first woman Superior Court judge in this state?" Judge Cutler responded:

"I think right now I'm trying to think more about being the first trial court judge for the court in Palmer and trying to make sure that the community gets what they want in the way of a judge so that (1) they don't resent having a judge and (2) they like it, and feel that the court services them well and not that the court is a pain in the neck. So, I think I feel more aware of being a new judge in the community, or being the first judge in that community more than I feel anything about being the first woman judge. I think if I were in Anchorage and I was one woman judge among nine male judges I would be more aware of being the only woman."

Judge Cutler is also aware that people may be concerned about her relative youth and points out that there have been several Superior Court judges that have been roughly her age at the time of their appointment.

"I'm somehow more aware of being young and being a new judge than being the woman judge. I think that being a woman makes for good headlines in the newspaper, but I hope that people are not thinking about that aspect of it too much. I do feel a heavy responsibility toward the image of women in the legal profession as well as in the judiciary because I believe that if, for whatever reasons, people don't like the way you do your job it will give us, meaning women, a bad name and if you do a good job it

will give us a good name."

Judge Cutler added that she felt that there were a number of qualified women who could apply for the present district court vacancies and hoped that some of the applicants and ultimate appointees would be women. A different way of looking at the situation, according to Judge Cutler, is that this is one of the first times although not the first that a judge has been appointed from district to superior court. "Again, you want to do a good job so that people won't be saying five years from now, 'well, the last time we appointed a judge from district to superior court it was a mistake.'"

The Task Ahead

I asked Judge Cutler how she feels about the task ahead of her, she responded:

"In many ways I'd like to have a crystal ball to look into and be committed to know that five years from now I'm at least doing an acceptable job, but there's no way to know that. The other thing I hope is true is that court is court and justice is justice and regardless of what court you sit in, your function is basically the same, which is to apply the law. There are unquestionably areas of law that I'll be getting into that I haven't had much exposure to in my five years in District Court, but your function as Judge, in addition to applying the law, is to be a good listener and a neutral and detached arbiter whether you like or dislike the lawyer or your like or dislike his clients."

When the question as to whether she thought her sex enhanced her chances for appointment, Judge Cutler responded: "In some ways it may have and many ways it may have stood in the way. People make such a big to-do about it. It was pointed out to me by somebody else that if I had been a man there probably would have been no question that I would have been appointed because of my ties to the Palmer community and my period of court experience." Pointing out that she ranked highest in the Bar poll, Judge Cutler remarked:

"I seriously doubt that members of the Valley Bar or even members of the Anchorage Bar would not want to see a person in the Palmer Judgeship job because of gender. There may be other reasons, or other experiences that people would have had with you as a judge or as a lawyer that might make them less than enthusiastic about the appointment, 'we all have our likes and dislikes and there may be some skepticism on the basis of my sex, but I feel that for most lawyers it is not an issue. I suppose there are some community people who may be skeptical

although I have personally felt no community resistance about being a woman. I've felt nothing but enthusiasm. Everyone from the Police Chief to members of local organizations are delighted to have a judge and hopefully upon meeting me, if we have pleasant dealings will be delighted that the person seems a nice person or a reasonable person someone they can approach and will disregard what sex that person is."

Domestic Cases

Judge Cutler agrees that most people will probably watch her closely in domestic cases. "I actually think that's one of the areas of Superior Court Jurisdiction that a woman is probably as good, if not better at, than men. I think it's largely a matter of interest. I think many judges are simply not interested in 'all those domestic cases' but for a woman I think it comes a little more easily. I have no aversion to domestic cases, and having been through one marriage prior to my present marriage I have some genuine interest in divorces and dissolutions in the sense that you realize that those are real live people with real live problems and there's nothing bad about a person because they are going through a divorce. I think your ability to feel compassion with those people is only increased if you've been through a similar circumstance and you've realized that (1) that it can happen to anybody and (2) you know that emotions are so high that nobody is rational, that nobody knows what the truth is, in a sense, and that everyone's emotions are so highly involved that they're almost incapable of distinguishing reality."

Family Reaction

Judge Cutler says that her parents, and there have been lawyers on both

sides of her family for several generations, are very proud of her appointment although it is difficult for them to understand why she does not want to work in Washington, D.C. or New York. (Judge Cutler's father is a senior partner in the firm of Wilmer, Cutler and Pickering in Washington, D.C. and held the position of White House Counsel during the Administration of President Carter.) Judge Cutler says that she has tried to explain to them that there are certain joys that people experience living in Alaska and that most of the lawyers that she knows here are very satisfied with their professional lives and have probably gone further at a younger age than they would be able to in bigger urban centers. She feels that in Alaska people are living more in the present, and although it is necessary to have an eye to the future, lawyers are not always waiting for something better to happen to them next year and for that reason life is happier.

Motherhood

"The thing I like best about being a working mother is that basically Lucia is going to grow up in an atmosphere where optimism prevails. She will be able to see that her mother and her father are basically happy with what they do during the day. It's important to me that she have positive images around her and of course a positive female image and in that respect I'm really thrilled for her. We hope to have more than just one child eventually. I'm thrilled for her to grow up with what I hope a positive role model because there's so many of us that had mothers who became mothers in the immediate post-war generation when most self-respecting women stayed home and many of those mothers' daughters grew up thinking that they had no desire at all to be like their

[continued on page 12]

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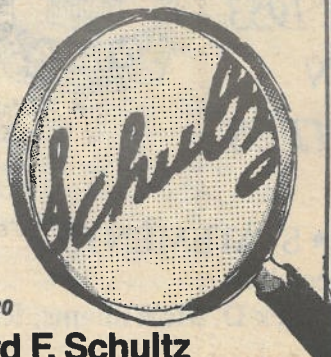
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The Zen of Discovery

Memorandum of Non-Opposition to Motions to Permit Attendance of Experts at Depositions

COMES NOW plaintiff Alaska Constructors, Inc. (ACI) and enters its non-opposition to the several motions to permit attendance of experts at depositions which have been filed by defendants International Engineering Company, R. W. Retherford Associates, Copper Valley Electric Association, Inc., and Shannon and Wilson. It must be noted for the record, however, that plaintiff ACI does not, by this non-objection, waive any rights it may have under the rules governing depositions and discovery.

The presence of additional individuals at the taking of depositions, adding to the already existing numerical advantage on the defense side of the table, can only increase the opportunity for intimidation and harassment of deponents, and notice is hereby served on the other parties in this action that such behavior will not be tolerated by counsel for ACI. In the event order and decorum is not maintained, or if the presence of such experts causes excessive delay or prolongation of a deposition, counsel for ACI expressly reserves its rights under Rule 30(d) to demand suspension of the deposition pending a motion for a protective order.

This non-objection is also conditioned on the following:

1. The motion, if granted, shall apply to all parties and depositions equally.

2. The name, address, and capacity of each individual attending a deposition shall be stated on the record.

3. Each expert attending shall provide opposing parties with a current resume or curriculum vitae stating their experience and qualifications.

DATED at Anchorage, Alaska, this 3d day of November, 1982.

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

Attorneys for Plaintiff
Alaska Constructors, Inc.

By James M. Seedorf

Jerry E. Melcher, Esquire
Hughes, Thorsness, Gantz,
Powell & Brundin
509 West Third Avenue
Anchorage, Alaska 99501

RE: ACI v. RETHERFORD, ET AL.

Dear Mr. Melcher:

I have dispatched a copy of your non-opposition to our motion to permit attendance of experts at depositions to John Gronlund of Global Con-

struction Services who I have retained as an expert advisor in connection with the above referenced case. I have admonished Mr. Gronlund to neither intimidate nor harass you or any deponent. I have expressed to Mr. Gronlund in the strongest possible words that the risk he will run should his behavior be of that quality which will not be tolerated by you. In order to be especially safe, I have advised Mr. Gronlund of certain basic and fundamental rules. They are enumerated below:

1. If chewing tobacco, do not spit on the floor.

2. Do not grimace, cheer, groan or otherwise display unseemly emotions no matter how incredible the contractor's testimony may obviously appear.

3. Furtive note writing is not permitted. Notes should be written in a slow and steady hand and slid gently to the addressee with the least possible intrusion.

4. Whispering is to be discouraged; however, will be permitted if compelling reasons exist to request a recess.

5. All persons attending the deposition who the expert knows or suspects may be a lawyer, shall be treated with the utmost respect. While an obsequious posture should at all times be assumed by the expert, grovelling is not required except under special circumstances which will be discussed later.

Sincerely yours,
JENSEN, HARRIS & ROTH
Kenneth D. Jensen

Interview with Cutler

[continued from page 11]
mothers, and I hope my daughter will not grow up thinking that she hopes she is not like her mother."

Childhood

Beverly Cutler was born in Washington and lived there until she went to a girl's boarding school in the tenth, eleventh and twelfth grades in Connecticut. She then attended college at Stanford University in California and returned to the East Coast to attend law school at Yale. She cannot remember when she decided to go to law school, but she was the first child in her family, she came from a family of generations of lawyers on both sides, and like many of her compatriots in the late sixties believed that if you went to law school it would open many doors. "I had no idea you spent three years reading cases! Before I went to law school I didn't really know what people did in law school." Beverly Cutler's immediate family turned out to be half lawyers, of out of four children two went to law school. Her sister, Luanne Cutler, moved to Alaska several years after Beverly and is very actively involved in state government now working for House Finance Committee. "She's the sort of sibling who is so generous and loving and people are always saying to her, 'oh, are you Beverly Cutler's sister?' I grew up with people saying oh, are you Lloyd Cutler's daughter and it just irritated the hell out of me."

Last Words

When asked if there were any last words in particular that she wanted to add to the interview, Judge Cutler said: "I think it's very important that there are increasing numbers of fe-

males in the legal profession in the judiciary and in legal government positions and that a network is beginning to develop. Men in the profession have always had a kind of network or brotherhood. It makes me happy to realize that there are increasing numbers of women lawyers all the time and that we can be supportive of each other and have a good rapport with each other, not that we shouldn't have a good rapport with male members of the Bar also. At the cocktail party that was held by the Anchorage Women Lawyers Association I really felt that we were all celebrating together the fact that a woman had been appointed to the Superior Court and I felt that it was a celebration without jealousy. That it was just a genuine occasion to celebrate. And I think that you do have to recognize the fact that there is a higher standard for women and that women should pat themselves on the back occasionally because it can be tough and while we have to acknowledge that we cannot all be super-women, as most of us are not just full-time professionals but are still doing a certain amount of homemaking, because we want to, that we are under an extra strain and when that strain occasionally sets in it's nice to know that there are a few other people who are also going through that. I think the women in the profession must have been a lot lonelier twenty, thirty, fifty years ago."

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Donna Gets Chair

SAN FRANCISCO, August 11 — Donna Morris Willard, a partner in the Anchorage law firm of Willoughby & Willard since 1981, today was appointed to chair the American Bar Association Standing Committee on Unauthorized Practice of the Law.

Willard was appointed at the conclusion of the 1982 ABA Annual Meeting in San Francisco by incoming ABA President Morris Harrell of Dallas. With more than 280,000 members, the ABA is the largest voluntary professional association in the world.

Willard has practiced law since 1970, with her current firm and its predecessors, becoming a partner in Gruenberg, Willard & Smith in 1974. She was a partner with Richmond, Willoughby & Willard from 1976 to 1981.

An active member of the legal profession, Willard has been the Alaska Bar Association Delegate to the ABA House of Delegates since 1980, and a member of the Standing Committee since that same year. She also has been a member since 1975 and vice chairman since 1977 of the Committee on Significant Current Decisions of the Section of Real Property, Probate and Trust Law, and a member since 1975 of the committees on Significant Current Legislation and State Death Tax of the same section. She was a member of the Young Lawyers Division in 1971-80.

Willard served the Alaska Bar as president in 1979-80; president-elect, 1978-79; secretary, 1977-78; member of the Board of Governors, 1977-80; member of the Special Committee on Criminal Conflicts Appointments (1979) and member of the Special Committee on Errors and Omissions Insurance, (1978-1979). She also has been copy editor for the *Alaska Bar Rag* since 1979, and is a former chairman of the Statutes, Bylaws and Rules Committee and former member of the Admiralty Law Committee.

Also, Willard is a member of the National Conference of Bar Presidents, the Western State Bar Conference, the

Ninth Circuit Judicial Conference, the Bankruptcy Judge Merit Screening Committee, the American Judicature Society and the American Trial Lawyers Association. With the Western States conference, she is president-elect for 1982-83.

She has served on the board of directors of Alaska Legal Services Corporation, the Anchorage Advisory Council to the American Arbitration Association and the Alaska Commercial Arbitration Panel. Also, she has been on the board of trustees of Alaska Indian Arts, Inc., and a member and vice-chairman of the Alaska Code Revision Commission, and since 1965 has been a Chilkat Dancer of Alaska.

A native of Calgary, Alberta, Canada, Willard was graduated from the University of Oregon in 1970 with a law degree, and was fourth in her class. She attended her first year of law school at the University of British Columbia, and received her bachelor's degree in 1965 from the University of British Columbia, graduating with second class honours.

Poetry Contest Reminder by Susan Hallock

We regret to report that, although the deadline of November 1 has come and gone, we have received very few poems for our contest. In fact, the entries to date are so sparse that, if we were to have our judging now, they would both be winners.

Come one, all you reluctant poets, get inspired and come forth with a pearl, or at least a few scattered lines.

In case some of you have forgotten, the prizes are as follows: First Prize: three nights in a barroom. Second Prize: a stuffed Polish fighting chicken. Third Prize: a "stripogram" at a time when least expected.

Since the announced deadline method doesn't seem to get results, we're going to try a new tack: We have set a new deadline, but we're not going to tell you what it is—we're going to keep you guessing in the hope that this will spur you on.

Bankruptcy Appellate Panels Expanded

Chief Judge James R. Browning of the U.S. Court of Appeals has announced the expansion of the United States Bankruptcy Appellate Panels of the Ninth Circuit to all districts of the Ninth Circuit Court of Appeals, effective December 1, 1982. Bankruptcy appeals filed on or after that date will be processed to the appellate panels.

The Bankruptcy Appellate Panels, first authorized in late 1979, have been

operating in all districts of California as well as the districts of Arizona and Nevada. Five bankruptcy judges form the pool from which three-judge panels are appointed to decide the appeals.

Information on the U.S. Bankruptcy Appellate Panels of the Ninth Circuit can be obtained from the Office of the Clerk, U.S. Bankruptcy Appellate Panels, P.O. Box 350, Los Angeles, California 90053, telephone number (213) 688-6861.

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Young Lawyers Need Alaska Rep

The Young Lawyers Division of the American Bar Association is seeking an attorney to serve as State Membership Chairman for Alaska.

The responsibilities of the position include the recruitment of members for the ABA, as well as assisting the senior bar chair in that endeavor. Bart Rozell is Alaska's senior representative.

Further activities include speaking at induction ceremonies, organizing membership functions and distributing materials. Some funds are available to assist the chairman in these endeavors.

The chairman is kept informed of activities in other states by way of the Membership Newsletter. Also, the Membership Department staff of the American Bar is available to render assistance.

The term of office is for one year, but more than one term can be served.

Anyone interested in the position should contact Pauline Weaver, Regional Vice-Chairman, Area IV. Her address is 5425 Borgia Road, Fremont, California 94538. She can be reached, in the evenings, at (415) 656-0622.

Manders Foundation Donates \$4,000 to Alaska Bar Scholarship Fund

The John E. Manders Foundation recently contributed \$4,000 to the Alaska Bar Association's Scholarship Fund. The Manders Foundation has contributed \$15,000 to Alaska Bar scholarships over the last three years, making the Manders Foundation the most substantial contributor to the State Bar's scholarship program. In 1982, the Bar Association awarded \$8,000 in scholarships to worthy Alaska residents who were enrolled in law school and demonstrated a commitment to return to Alaska for the practice of law.

The Manders Foundation was established in 1977 in memory of John E. Manders, a former mayor of Anchor-

age and a practicing Alaska attorney for over 35 years prior to his death in 1972. The Foundation's purpose is to provide for the advancement of law, particularly in the State of Alaska. In addition to scholarships, the Manders Foundation, consistent with its purpose, is able to provide financial assistance to legal education seminars and other worthwhile projects contributing to the advancement of the practice of law. The Foundation is a private, tax-exempt organization and all donations to it are tax-deductible. Inquiries about the Foundation should be addressed to John M. Woodley, Esq.; Trustee, John E. Manders Foundation; P.O. Box 5024, Bellevue, Washington 98009.

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Crisis in the Justice System

First part of a two-part article

A Report to the Criminal Law Section, Alaska Bar Association, in Convention at Anchorage, May 21, 1982 by John Havelock, Director of Legal Studies, UAA.

Since this is billed as a report on the Courts of Appeals, I will devote a few moments to a discussion of the little I know of it, but I will confess that (with due deference to the incumbents and the appellate judges generally) after working on gathering information about the court, it came to me that in the larger framework of the administration of criminal justice in Alaska, what the court does or says is not terribly important and that the addition of a new court to handle part of the appellate workload has had very little impact on the administration of criminal justice relative to a number of other changes or events occurring in the past two or three years which I will mention and which give me considerable reason for concern to the point where I feel justified in departing from an assigned topic to raise them with you.

Now, in a way, I arrived at these conclusions, which I think can fairly be described as a pending crisis in the administration of criminal justice in Alaska, from a look at the rising caseload of the court of appeals, so I will start with that.

You will recall that the court was created as a response to the rise in the appellate caseload of the Supreme Court. It appears that the symptom was not a temporary one in that the number of filings continue to increase rapidly on the criminal side. In the first couple of months after the court was established, new filings ran at a rate of about 16-18

per month. Now they are up to about one a day while in April of this year 60 criminal appeals or petitions were filed.

What will be the effect of this increased caseload?

One result is already apparent and that is increased backlog. The Court of Appeals has already passed the Supreme Court in terms of the size of its backlog, now 139 matters under advisement with 57 of them over 90 days. In comparison, the Supreme Court now has only 77 matters under advisement with 34 over 90 days, though I noticed it took them over a year to write the opinion in the Beaufort Sea leasing litigation. In fairness to the Court of Appeals, it should be noted that the Supreme Court sat on its criminal appeals a couple of years ago, anticipating the creation of the new court and handed over a ready made backlog of 180 cases.

Are we to hear a request for an expansion of the court to five? Not for some years, I imagine, since the court has several other options to relieve pressure which it is already beginning to use. The court will become more systematic in its case management. That means more per curiams and memorandum opinions, more unpublished opinions. In fact the court is already issuing about two unpublished opinions or per curiams for every one published.

Criminal appellate case outcomes, in an era when appeals are next to automatic, are usually fairly obvious. What takes time is the crafting of written opinions that are circulated to meet less literary value in the future and more flat statements of result. The Court of Appeals is short on well rounded phrases, apt metaphors and tongue in cheek humor around the gallows, but that good stuff comes at a price.

If you were like I was a few days ago and do not know what the meaning of an unpublished opinion is, let me now pass on my new knowledge. An unpublished opinion is just for the information

of the litigants and their counsel. It may not be cited as precedent and, if cited, will be ignored. This is partly in fairness to counsel who may not collect unpublished opinions which are not indexed by a publisher and partly because an unpublished opinion can be written in a kind of shorthand without recitation of the background facts (since they are known to the parties), which would be important to state, as the context to the application of legal rules, if the opinions were to be used as precedent.

I commend the Court of Appeals for this approach, not only for its efficiency and economy of time but for its modest recognition that everything an appellate court says is not worth perpetuating. While I have not taken the time to do a textual analysis, my impression is that the Court of Appeals is much more concerned with brevity than the Supreme Court who might be advised to follow the suit of their junior brethren, particularly if the civil docket starts to grow again.

One of the criticisms voiced with the threat of establishment of a court of appeals was that it would just add another appellate layer since everyone would go on to the Supreme Court. This fear has not materialized. The Supreme Court has only agreed to hear four or five cases out of all of the couple of hundred or so which the court has decided—none of which has yet produced an opinion.

With respect to any change in philosophy that may result from the creation of the court, it is still far too early to say, except to say that the change, if measurable at all, will be slight. We are dealing, after all, with an intermediate court of appeals that has a substantial body of criminal precedent to deal with, established by a court which still sits in review of it and whose basic composition has not radically changed over the years, as contrasted, for example, to the Warren-Burger, et al, transition in the Supreme Court of the United States.

This intermediate appellate court, particularly in its early years, is bound to have, as I think I have indicated, a very businesslike approach to its work—a caseload management approach rather than a philosophical outlook. Further, not every case that comes along is a suitable vehicle for staking out philosophical positions. Accordingly, I do not think that the content or directional concern which preceded the establishment of the court can be evaluated until several years have passed and a more extensive opus is available for analysis.

The big question, of course, is not so much whether the Court of Appeals takes on a distinct philosophical coloring from the Alaska Supreme Court but the extent to which appellate review in Alaska generally will opt for more ex-

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Bench, Bar Bid Farewell to Custody Investigator Stevens

Maidenform Lady Makes Guest Appearance

by William D. Hitchcock

A large and convivial group of friends, family and co-workers gathered amidst the rustic surroundings of the Rabbit Creek Inn October 22 to "roast" and pay tribute to Francis Stevens, Court Custody Investigator, on the occasion of his retirement. The witty and irreverent Harry Branson served as emcee for the affair, summoning up a roster of distinguished judges and outspoken attorneys, the latter group having always wanted to tell Stevens what they thought of his custody recommendations but heretofore having been afraid to try.

Stars of the Podium

Stars of the podium included their Honors Chief Justice Burke and Judge Moody who set a tone of genial humor that was to continue throughout the evening. The first of two surprise guests to appear was Judge Harold J. Butcher who brought up remembrances of treasured days from the old Family Court era.

In view of the rich ethnic diversity of the group, the honorary Italian Counsel Vince Vitale led off with tales of smoldering clients and smoking revolvers. Ben Walters provided an insightful view of the little known Francis Stevens Scientific Method of custody investigation.

Mystery Guest Bares All

Then came the real mystery guest of the evening. The program commit-

tee reached into their back pocket for this one (literally) in finding a successful case from Francis Stevens' earlier days as court system marriage counselor. Certainly few clients have ever emerged from Stevens' office as well put together as this lady (literally again). In a spontaneous outpouring of raw emotion, she stripped down to the bare essentials of her presentation in a manner that was brief and to the point (or points). Ultimately good taste prevailed as witnessed by the fact that Justice Burke's eyebrows did not lift off from his forehead nor did Judge Carlson's neck become permanently craned in his effort to gawk from a seated position behind four rows of tables.

The Reverend John

After a respectful sermonette by "the Reverend" John Reese, the grand finale came in the personage of Wayne Anthony Ross who fittingly flayed the guest of honor over the slowly reddening coals of the evening fire.

Steve, as he is known to his many friends and associates, had the last word, however. In a serious vein, he exhorted his audience to be vigorous in guarding the welfare of children torn by divorce. That was an appropriate charge for him to give to judges, lawyers, and others involved in family court matters, for it can truly be said without hesitation that throughout his ten years as Custody Investigator, Francis Stevens always put the children first.

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Crisis in Justice System

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tensive use of independent state grounds as the Burger Court continues its shift towards a narrower construction of the Bill of Rights. One might guess that with the Alaska Supreme Court more involved with civil litigation and the Court of Appeals more concerned with following established decisions and keeping the caseload moving, that judicial activism will be modest but that is still speculation at this point.

Maybe the point I can use to return to my original call of alarm, is that doubling of the appellate caseload for April that I mentioned. Is the doubling of new filings in one month a fluke? It is bound to fluctuate a little bit, new filings for May already exceed 60 so in general, I don't think it is a fluke and here's why.

I think what we are seeing is the front edge of the growth in new felony filings that took place in 1980-81. In about a year we have experienced about a 50% increase in felony filings. In 1979, 691 felony cases were filed in all Alaska Courts. In Fiscal 1980-81, 1,194 cases were filed. Already this year, there have been more felonies set for trial than in all of 1981. This growth is sudden and is essentially a statewide phenomenon. Thus, it is not readily explicable in terms of changes in the economy or cultural pattern which is to say, we have not suddenly become a more criminal people. What has been changing, and continues to change, are the policies which we are applying to the administration of criminal justice, policies which have far greater impact on us as citizens, as taxpayers and as lawyers than any criminal appellate decisions, with all due respect to the sagacity of the court of appeals.

The changes that have taken place are several and it is not easy to point the finger at any one cause and say conclusively that it is the source of our exploding caseload and prison population. Indeed, it is most likely that several of these factors are operating in combination.

While not directly responsible for caseload increases, a number of other factors in changing justice administration policy need mentioning because they appear to reflect the same social or ideological trends and because they point to a graver problem than increased appellate caseloads: an increase in the proportion (already extraordinarily high) of our population behind bars and overcrowded prisons.

These additional policy changes, existing or in the offing, include adoption of a new drug bill with a new penalty structure; a tripling of the appropriation to drug law enforcement, the tightening up of bail, both administratively and by statute, the drastic curtailing of parole, the commitment to new prison capacity, the collapse of the effort to deinstitutionalize children, the retreat from use of citation in lieu of arrest, and last and probably least, the frantic effort to adopt a new definition of insanity in the closing hours of one of the longest, the worst-managed and least rational legislature in the 23-year history of the state.

But Havelock, you may retort, all you are saying is that the judges and the justice administrators and the legislature are just waking up to what the people have been asking for for years. My answer to that is that the people are responding as one would expect them to respond to the torrent of misinformation

and untruths which the leadership of the justice system passes on to them about what the justice system does and what's wrong with it.

The biggest slice of baloney which we have been feeding the public for years is that all these policies will eliminate or drastically reduce crime. We are loathe to admit that we do not prevent crime, we merely minister to its

consequences. Though this state is likely to rise to the top of the United States and, accordingly, the western world, in the proportion of its citizens which it keeps in prison, it will not measurably affect the crime rate in this state. In fact, I would wager that our crime rate will rise higher.

Let me disclaim any suggestion that
[continued on page 16]

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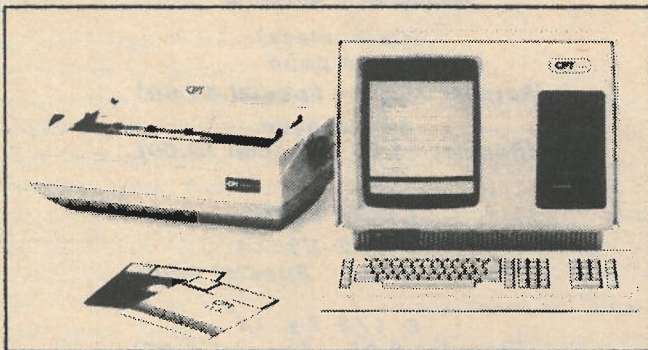
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Crisis

[continued from page 15]

a conspiracy exists. This is basically an ideological phenomenon with a lot of justice administrators acting like sheep. It would be better if there was some central direction, responsibility and accountability.

It is a conspicuous characteristic of the criminal justice system that despite 15 years of pointing out that it is a system that is not run as a system, we have only retreated from any idea that there should be central planning or coor-

dination of it. Law enforcement, prosecution, the judiciary, corrections, each is an empire unto itself and each regularly adopts or changes policies or alters resource allocations which impact the other components without notice and in defiance of research information, experience or both. Neither the Governor's Commission on the Administration of Justice, which is virtually collapsed, nor the Judicial Council, seems to have had any but peripheral effect on the administration of justice and usually with unintended results as with the Council's sentencing survey which prompted the

judges to enhance the sentences of Caucasians.

The rush on the insanity rule is perhaps symptomatic of the panicky reaction of the justice system and ideological roots to the new management policy styles. A judge who had the temerity to suggest some time was necessary to look it over found himself treated to the unwelcome attention of banner headlines. No one has bothered to collect any evidence on how administration of the ex-

isting rule on insanity has worked or on how other rules work in other jurisdictions. That Meach would likely have been released even absent the insanity plea doesn't seem to bother advocates of the rush to do something, a rush that seems destined to punish the mentally ill across the board. No one seems to care about the two policies which might realistically have had some chance of preventing the tragedy—providing

[continued next issue]



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