

Interviewee: Clifford Groh  
Interviewer: Pamela Cravez  
Date: April 30, 1982

Session 3, Side A

- 000 Convention in Nome - meeting of BOG. Judge Von der Heydt, Parrish, McNealey, Stump, all at the meeting.
- 019 Primary philosophical differences: criminal defense field - whether judges hard in that area; other is plaintiffs injury versus insurance defense work. Might be divided into conservative or liberal.
- 042 Herald Stringer withdrawn from nominees.
- 060 First Supreme Court - geographic distribution.
- 078 Egan influenced in his selection of judges by his attorney general, John Rader.
- 084 Rader had a hand in getting Nesbett as Chief Justice - b/c Nesbett was more liberal than Dimond and Arend; Rader and Nesbett had practiced together.
- 101 We used to meet every Saturday.
- 119 Parrish - Lobbying. Anchorage - there was division. Plummer, Delaney, Wiles and Davis Renfrew and Hughes - Insurance defense.
- 136 Bar was pleased that they could now get a case heard.
- 144 Court bar fight - it became an argument over who ultimately had control over the bar.
- 164 Mackay case - his efforts to get back in the bar spurred the fight.

215 Joe Ball hired.

225 Ask Mr. Cremo about what happened at bank during court bar fight.

232 Arend just happened to get caught up.

260 Different people on court; different attitude of bench and of bar made things cool down.

270 End.

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PC: I wanted to first start out with the convention that was held in Nome, I guess it was at the beginning of Statehood to determine who the Bar was going to the Judicial Council. Can you tell me the surrounding events to that convention? What was happening with the Bar?

CG: I don't remember it very well, and I'm not sure that there was a convention in Nome. I think there was just a meeting of the Board of Governors. I was on the Board of Governors at that time. I can't remember all of the members, but I know Judge von der Heydt was on it, I remember Bob Parrish, I think, was on it. I think Bob McNealy from Fairbanks.

PC: Bill Stump?

CG: Bill Stump. I can't remember who the other Anchorage members were, I was obviously one of them. If Stump was on it Jernberg wouldn't have been on it. Maybe Jernberg was on it, but I'm not certain of that. Basically we were trying to figure out who should go on the Judicial Council. There were some, obviously necessarily, philosophical differences.

PC: What were some of those?

CG: Basically the primary philosophical differences that have affected the Anchorage Bar are in two fields, one is the criminal defense field, whether people would be hard, judges would be hard or difficult in that area, and the second major philosophical difference dealt with plaintiffs negligence work as opposed to insurance defense work. I suppose to a certain extent you can divide the categorization

into conservative or liberal, but they are the really major philosophical issues. I know that Mr. Parrish, for example at that time, was doing a great deal of tort work on behalf of plaintiffs. A gentleman from Southeastern who had traditionally been very conservative. I don't know that we came to any necessary judgments, at least I can't recall any. I know that the arguments went on for some period of time and I suppose if you look at the first Judicial Council, you might be able to determine whether we came to that agreement or not. But I don't remember now who was on the first Judicial Council.

PC: I think Ernie Bailey was on it.

CG: He would have been the Southeastern guy.

PC: Herald Stringer was first nominated from Anchorage, I think, and then he was withdrawn. Maybe you can tell me why.

CG: That would have been after the Stringer disbarment proceeding, and maybe there was some residual opposition because of that. But I don't specifically recall that.

PC: But weren't most people in favor, not in favor of Stringer's disbarment, they would have felt he was unjustly disbarred so it wouldn't have been a reason.

CG: Well, of course the proceeding had long been over by then because the proceeding was in '54 and this would have been five years later. But I don't know if there was any residual dissatisfaction with that. Mr. Stringer, in his capacity as Republican National Committeeman, had participated in putting Judge McCarrey on the bench and perhaps it was as a result of that. There was some substantial opposition to McCarrey. But Stringer, in my recollection, left the State soon after that. But I can't specifically recall what the opposition to Mr. Stringer was. If I had to guess, I would guess it was the result of McCarrey.

PC: From the results of the Judicial Council, looking at the first nominees to the court system, do you think they turned out conservative

or liberal?

CG: That is a long drawn out process. The first Supreme Court, I guess, was Nesbett, Arend, and Dimond. That's a geographical distribution which is something we always endeavor to achieve, both in the judicial system and in the Legislature. Geographic distribution obviously doesn't work if half the people live in Anchorage, but we always endeavor to achieve it. Southeastern, Dimond, Nesbett, Arend. Arend in my experience is relatively conservative, Dimond is certainly conservative. Nesbett, he'd been a great liberal. In retrospect, I think there are persons other than the Judicial Council, although they submitted the names, who really made the determination as to the composition of the first court system. Obviously, Governor Egan made the selections and he was influenced to a certain extent by people around him, including the first Attorney General, who was John Rader. But the Council, of course, submitted the names. I think in those days when we first started, they always submitted a whole buch of names to give the Governor a wide choice. That's all I can say about that. I haven't studied the first Superior Court judges, but I know, for example, that Rader talked to Governor Egan about making Nesbett Chief Justice. Rader and I were partners at the time.

PC: Because he was from Anchorage, because there were a greater number of lawyers in Anchorage?

CG: I think the choice was made primarily on philosophical bent more than on a geographic distribution.

PC: What was the philosophical bent that you thought Nesbett had, or that it was thought Nesbett had?

CG: He was certainly more liberal than either Arend or Dimond. And Rader had been a great friend of Nesbett's, they practiced law together at one time. We certainly knew him in Anchorage. We probably knew him better than the others did.

PC: In 1959 the Bar had an opportunity to influence the court, or influence who was going to be on the court, I would think. In prior years to the '50's, you didn't have McCarrey here and you didn't have Nesbett.

CG: We had no control over it at all in the past because it was a Presidential appointment, and it was often done on the, well it was done on a straight political basis, just like all U.S. District Judges.

PC: Was there an effort to have more input, the Bar have more input into who the judges were? Were there any kinds of campaigns?

CG: The Bar was so small that we used to meet every Saturday and the newest member had to bring a jug of booze. We had meetings on whether we wanted McCarrey in or not, and we voted that we didn't want him, but it didn't make any difference.

PC: Did the Bar have meetings on who they wanted as their first Supreme Court? People they wanted to be judges?

CG: There was certainly a certain amount of lobbying activity, there always is, and I'm sure that people called Governor gan and I'm sure that people called the members of the Judicial Council. If you know everything that's happening, (unintelligible).

PC: I know, I just want to identify who the factions were.

CG: I've indicated them to you.

PC: The conservatives vs. the liberals.

CG: In a broad sense.

PC: For each city? Could you geographically say that Juneau, that the people in southeastern were conservatives and the people in Anchorage and Fairbanks were more liberal?

CG: Well I think that's true, sure. But you also had what I consider to be that faction which was active in criminal defense work, and that faction which was active in insurance defense work. And both of them were operating.

PC: Who were some of the people who were operating, who were lobbying?

CG: It depended on what kind of practice you had. Parrish would do some criminal defense work and he'd do some negligence plaintiff's work. In Anchorage, because it was a bigger community, it was a lot more apparent, but if you went into Ketchikan where you had ten lawyers, it's pretty tough. They were all conservative. It's only the new kid on the block that takes on any plaintiff's negligence cases. But in Anchorage there was a relative division, Hughes, Thorsness/Davis, Renfrew & Hughes had been big insurance defense lawyers, they were then, they are now. The old Plummer, Delaney (unintelligible) firm was the same thing. They were probably the ones that were the biggest ones on that side of the fence. The plaintiff's lawyers, they're varied. When the new guys came in they'd file the big plaintiff negligence cases. They weren't experts in the field like, theoretically, Bernie Kelly and Ames Luce are now. We all did some negligence work and we all did some criminal defense work, but the difference was mainly between those firms that represented the big insurance defense work, and so did the rest of the Bar.

PC: When the new Supreme Court came in, did the Bar feel that they had the kind of court they wanted?

CG: I think they were more pleased with the fact that they can get a case heard as opposed to having to wait 4, 5 or 6 years. You could go in and there was a substantial amount of testing the court in various cases, and constant conversation about whether they were in fact liberal or conservative, but in any event, I think that the Bar as a whole was happy as a result.

PC: What precipitated the Court-Bar fight?

CG: I'm sure there are all kinds of different perceptions of that. My own perception, as in most things, is slightly different from others. In the beginning it became an argument as to who ultimately had the control of the Bar. In other words, did the court system have control

of the Bar or was the Bar an independent body which operated with rule. The court's control over it was relatively small. That's what started the fight. There were numerous efforts to reconcile it. It's like the Falklands dispute, there were all kinds of efforts, but it's a question of sovereignty. I think Justice Nesbett, whom I had known and respected, became somewhat arrogant about his treatment of the Bar. Some of that was perhaps perceived and some of it was real, but in any event he just in substance told them that as far as their disciplinary proceedings are concerned, not only was the court going to run them but the court could overrule the Bar and the court was going to make the rules and the Bar could go to heck. So that was the beginning of the fight. It subsequently became a cause celebre because of the MacKay decision under the terms of which MacKay was disbarred. MacKay had a lot of money and so he then organized the fight and it was really his effort to get back into the Bar that created the fight. Once he decided to spend the money to show the court that they shouldn't have done what they did, he organized a group and ran ads, and defeated Arend in his bid for re-election, and soon thereafter passed away. But it was MacKay's money and effort that did it, and of course in a sense, this increased the bitterness between the Bar and the bench very substantially. The sentiment of the Bar was saying, we're going to be able to control the public vote on whether you're retained or not. There had been very few successful fights to remove a judge since then. Every once in a while a political candidate will attack the court, as they did in the last election. As a matter of fact, if the lawyers recommend the removal of a judge, and this happened in South-eastern, the people would get up in arms and retain him.

PC: Why does that happen?

CG: Because they don't like lawyers. But in the big Bar fight, and I

can't remember which year it was.

PC: 1963-5.

CG: In that fight feelings ran extraordinarily high, the Bar got together to oppose Arend's retention and he did lose the election.

Ads ran, which in some instances were untrue but nevertheless

PC: Did the Bar run the ads or did MacKay run the ads?

CG: The Bar didn't run the ads. MacKay ran the ads through a variety of sources.

PC: What were some of the sources?

CG: Clients, people on the street, the barber at the Westward, it didn't make any difference.

PC: Did the Bar ever take ads?

CG: I don't believe so. I think the Bar passed resolutions and I think that the Bar acted in that fashion, but it's not my recollection that they ever ran any ads as such.

PC: How did MacKay get the Bar from (unintelligible)? I never heard before that MacKay was behind, I've heard the case, that it was MacKay

CG: He was fighting for his life and he had been disbarred by the court and he was going to. How did he do it? Money, effort and time.

PC: But wasn't the Bar behind him, wasn't the Board of Governors behind MacKay? Didn't they also agree that the court shouldn't be writing the rules of the Bar for them?

CG: Yes, but the focus of the fight was MacKay. He became the focus of the fight in my perception. Now others may disagree, but that's my perception. I went to his office one time and he showed me where he had gotten ten lawyers to write 15 letters each, I mean to 15 clients. He had the tally cards as to who had been written to and who had participated in writing (unintelligible).

PC: So he coordinated that. What about Joe Ball? How does Joe Ball get involved?

CG: In this process, did we end up hiring Joe Ball? Okay, Nesbett hired some big lawyer from D.C. so we hired a big lawyer from D.C. I can't remember who Nesbett hired but it was some big wheel. That's how Ball got involved.

PC: So (unintelligible) the big confrontation between the court and the Bar, and not between MacKay and the court.

CG: Yes, we're talking about the outward confrontation. The surface confrontation was between the Bar and the court. The reason for the continuance of the confrontation and the start of the confrontation, in my opinion, was MacKay. But once you get into the fight, everybody's into the fight.

PC: What were the circumstances surrounding the taking of funds from the bank with a gun?

CG: Well, ask Mr. Cremo about that. He was the attorney for the bank.

PC: He won't be taped.

CG: He won't? I don't really know.

PC: Did the Bar think that Harry Arend was to blame for what was happening? What was your perception of Harry Arend?

CG: I always thought that Harry Arend was just a nice guy. I don't think that the Bar thought that Harry Arend was the cause of what was happening. The Bar thought that Nesbett was the cause of what was happening, and the fight was between Nesbett and the Bar. But Arend is the guy who happened to get caught up in having an election come up. Like Ford getting caught up in Watergate. So he takes the rap for it.

PC: What finally made conditions cool down between the court and the Bar, or have they?

CG: Well, a long time has passed, different people, different approaches. Somehow or other MacKay got readmitted through the Federal court, I don't know how he finally did that but he did. But it was really basically different personalities plus an obvious

recognition that rather than the court and the Bar fight, the bench and the Bar fight, they ought to get together. They've got enough problems otherwise than to have to fight each other. They've got the Legislative fights, they've got the Executive Branch, and the great public out there who really doesn't think a hell of a lot of them anyway, and if they continue to fight they'd lose what little ground they have. And that's my views as to what happened.

PC: Did it help to get Arend off? Did the Bar feel like they'd been vindicated?

CG: No, I don't think so, that was one of the battles in the war and as Arend got beaten, the Bar won that fight, but there were a lot of wars after that, primarily in name calling, resolution passing, and endeavoring to influence the public. Of course, whether you were (unintelligible) admitted or not, the expansion of the court from three to five probably helped in that. And then new people on the court.

PC: Buell Nesbett coming down?

CG: Yes, and Rabinowitz going on, Boney going on, different Attorney General, different approaches, the Attorney General I don't think was into the Bar fight very much, I think the State Executive Branch stayed out of it. But in any event, a different attitude by the bench and a different attitude by the Bar.