

Tundra Times Exclusive Interviews:

Candidates for fourth judicial district judgeship in Bethel express views

The following are excerpts from interviews conducted with Gail Roy Fraites, Bryan Schuler, and Ben Hancock, nominees for the superior court vacancy in the fourth judicial district at Bethel. Interviews were conducted by Sylvia Carlsson and Jim Benedetto.

TUNDRA TIMES: *As a nominee for the bench in Bethel for the superior court, you've probably given some thought to some of the more pressing problems that would come to your attention should you be selected to sit on the bench. What do you believe are some of the more pressing problems in a judicial sense in Bethel right now?*

HANCOCK: The real pressing problem that I see in Bethel is alcoholism. It's got to be their number one problem. It creates the bulk of their family problems, the bulk of their children in need of aid problems, and the bulk of the criminal problems. It's not exclusively a Native problem, but alcoholism has got to be their number one problem.

SCHULER: Well at least in the time that I've been... needless to say I've seen most of the court cases that come before the court as District Attorney. In fact, I think over 90 percent of the caseload of the court's criminal cases (the) only thing that's been striking is that alcohol abuse has been involved in the overwhelming majority in one form or another. Often as not you'll find that the defendant either has an alcohol abuse problem or was abusing alcohol or other drugs at the time the offense occurred. I think it's almost universal that someone involved in the case had at the time an alcohol problem. Often I hear people in front of Judge Cook saying truthfully, "Judge, if I hadn't been drinking, it never would have happened." And it's true; if the defendant had not been drinking it wouldn't have happened.

FRAITES: Well, three things that I can think of that would be of interest to your readers: One of them is Native sovereignty; that's a pressing issue... (O)bviously the Native people were here first. It's not at all frightening to me that Native people for one reason or another might wish to express their independence and their sovereignty over their own affairs and the degree to which they can do that, of course, will depend on the rights and necessities of other Alaskans with which they are living. So I think that is going to be one of the pressing issues of the future.

Another problem... is alcohol. That, I would anticipate, will be a continu-

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ing problem for any sitting judge. The impact of alcohol on people's lives, the rights of the individual Native groups to forbid its exportation into their areas, which is where the laws are now being studied to see whether it can be made illegal to even possess the stuff. It's my belief that Native people, if they don't wish people to possess alcohol, should have the right to have laws that forbid possession of alcohol in their villages. They're the ones, after all that are suffering the impact.

TUNDRA TIMES: *Have you read the Bush Justice report that was published by the Alaska Federation of Natives?*

FRAITES: I'm in the process now; I realize that it sounds a bit like I'm overconfident or something but I'm doing what I can to acquaint myself with the problems out there in the event that I do get appointed. I have not read the whole (publication).

HANCOCK: The answer to that question is yes, I've got a copy of it right there on my desk.

SCHULER: Not cover-to-cover, but I've read it.

TUNDRA TIMES: *How do you view these statistics which are I think very disturbing to Alaska Natives as a whole, AFN and other organizations, that nearly 50 percent of the Alaska Native inmates now serving time are from the Bethel region?*

SCHULER: As a district attorney, one reason we have people from that area in prison, is that they commit crimes. Not just any crimes, but generally, crimes of violence. And our Supreme Court has said, and the Legislature has said,



Bryan Schuler

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while ordinarily property crimes should not result in prison terms, if it's necessary either to rehabilitate the person, or to deter them and others from that conduct, or... simply to isolate the person so they won't further crimes, then prison is appropriate. I, speaking again as a district attorney, can't think of anyone that is serving time that doesn't deserve it.

HANCOCK: This is a terrible statistic; it seems to roll right back to the alcohol problem.

FRAITES: Well, I wish that I'd had the opportunity to read the article before we had this interview but I will tell you this, that as an Alaskan, not only a person who wants to sit as the judge in Bethel, to see any one group of our people zeroed in on to be serving time in prison would be alarming to me and I would have to guess that a lot of that has to do with the incredible impact that alcohol has had on the Interior, which as I just said would be a major concern.

TUNDRA TIMES: *Incarceration sometimes seems to be an answer of first resort rather than last by Alaska's system of justice, when dealing with Alaska Native offenders. Can this be changed?*

FRAITES: ...I think it's really a matter of who's ox is being gored. If you're the victim's family, you often feel that death wouldn't be enough to deal with the offender. On the other hand, looking at from the other point of view from the defendant's family, no matter what you do the defendant's family who loves the defendant and sympathizes with him and knows him better than other people do are going to think often that you're too harsh, that you didn't look at their son or their daughter as you should have. So I would say that I can't predict on an individual case what I would do.

HANCOCK: Some of the time, that is the real problem with presumptive sentencing. I see no real reason for us to continue with it, quite frankly. I would like to see Alaska rethink the American Bar Association's model code. And basically, their concept was not incarceration for first-time felony offenders. Now, their classification of felony offenders was basically our class C felony — theft of a snomachine is a classic class C felony — and that's their basic feeling, that there shouldn't be incarceration the first time around.

Of course, you can't say that about murder; we can't say everybody's entitled to one murder!

And the other crime (that incarceration for first time offenders might be appropriate) that's now coming to the light so much is child abuse. A person may be a first-time offender, as far as the system, but he has been molesting little children for five years and the village just finally got fed up with it.

TUNDRA TIMES: *What about presumptive sentencing?*

SCHULER: Well, of course, presumptive sentencing is the law; and I think when people talk about presumptive sentencing, sometimes they lump two different things together. The idea of presumptive sentencing for second or repeat offenders is not really very controversial, as far as I can tell. People are pretty much in agreement, that if a person continues to commit felonies, that there should be serious consequences for it.

The people who are subject to first-felony presumptive sentences, are peo-

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ple who have committed unclassified felonies, or class A felonies. What that means, by-and-large, is that we're dealing with homicides, sexual assaults, (and) child sexual assaults...

HANCOCK: I will say that I am basically opposed to it. I think it takes away the latitude of the trial judge. When they had the public hearing in Bethel, somebody asked for everybody who was opposed to presumptive sentencing (to hold up their hand), and I had no qualms about holding my hand (up) in front of everybody. I think it leads to some excessive sentences, and probably, the Native population is getting more than their unfair portion of these excessive sentences. That's the way I see it.

FRAITES: Well, I think speaking as a potential judge I'd give the same answer that I can give right now, I have always been concerned about presumptive sentencing because it does not give the judge enough leeway. I have always concerned myself that what started out as an instrument to ensure uniformity of sentencing across the state which in essence said it was an effort to be fair that everybody would be sentenced the same in that sense it's fair but the sentences are far too harsh in some cases from my personal point of view. And I have always felt that, I think I join every judge in the state on this, that presumptive removes from the judge an important element of flexibility.

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Gail Roy Fraites

“Anything that could be conducted at the village level should be done as often as possible...”

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I think personally, that it was a response by the Legislature to a perceived leniency by judges (in other words they didn't think that judges were doing their jobs right so they said that here are certain guidelines that you have to follow). My answer to that is if you don't like your judiciary, change your judiciary but don't change the laws to make it impossible for a judge to be flexible. I'm not saying that presumptive sentencing hasn't been a good idea in a lot of respects, because it has.

TUNDRA TIMES: *How about moving hearings to the villages?*

HANCOCK: One's first thought is that it would be very nice if we could actually conduct more of our trials (in the villages). I think we should be thinking about, and this is one of the issues mentioned in the Bush Justice (report),

"Presumptive sentencing removes from the judge an important element of flexibility..."

is getting the sentencing procedure closer to the villages. In every place now, in Alaska, where you have a village, you have an adequate place to do it. I've had trials in schoolrooms. You can conduct business. Everything has to be on the record, but (indicating the tape recorder) look how small that tape recorder is. That's a perfectly adequate record.

FRAITES: I would be in favor of that. There are some of them that, I have already discussed this with friends of mine who are in the judiciary and also who are prosecutors and defense attorneys. It would seem to me that in many cases it's very very difficult for example to get a jury trial in a village setting; that's simply because juries are, (you have to call in a panel of 30 or 40 people and then you know how the system works) 12 jurors are picked, and in a felony case the defense has 10 challenges the prosecution has six... You'd have to bring in an awful lot of people to get a jury. But I would say where you're dealing with evidentiary hearings, sentencing hearings, and court tried cases, anything that could be conducted at the village level I think should be done as often as possible.

SCHULER: I think so; I'll just go right out and say yes... During the time I've been in Bethel, we've had most kinds of hearings that are possible in one village or another. And those fall into different categories: arraignments often occur in front of village magistrates, even for the most serious kinds of cases. We've had people charged with everything from disorderly conduct to murder in front of the magistrates. Almost as a matter of necessity, more serious cases are transferred into Bethel, so that they can be presented to the grand jury.

But it is possible, at least in some cases, for trials, even in felony cases, to be held in the villages.

...One of the best kinds of hearings that we can conduct in the village is a sentencing hearing. Because often as not, the people in the village know whether the defendant did it or not. They're not interested in that question... what concerns the village is what's to be done about it. For the village to have effective input into that, it's entirely reasonable to have a sentencing hearing... to the village and to solicit people's thoughts.

TUNDRA TIMES: *How about villages that want magistrates are you going to press for getting magistrates for those villages that want them?*

SCHULER: What we find is that villages do want magistrates. Here we get into a cost factor, because if we had 57 magistrates, that wouldn't be a very effective use of our resources; it would cost a lot of money. So what the court system has done, and I think this is appropriate, is to scatter the magistrates so that they can cover our region.

FRAITES: Absolutely! And training them because I think if you're going to have justice at all you have to have it right where you can deal with it. I think that in a remote area you can't just be sending for the troopers all the time. You have to have a village constable and a local magistrate that has a

"Speaking as a district attorney, (I) can't think of anyone serving time that doesn't deserve it..."

certain amount of authority so that you can deal with the problems. If someone is drunk and disorderly and frightening people in the village you got to be able to deal with it immediately.

HANCOCK: Ideally, we should have a magistrate in every village. Yes, I'm in favor of it. The bulk of the thing is that your magistrates are going to be non-lawyers, they're going to be local people... The problem is training. You can generally find people, but to bring them up to speed, and to provide them with the training, it's a problem... Yes, I would push for it.

TUNDRA TIMES: *How about tribal courts? Should that whole system ever be established?*

HANCOCK: I have no problems with that. I'm one of these people who have been bringing himself up to speed on this issue. I've talked with the attorney general's office, I've talked with Spud Williams, Lare Aschenbrenner...

The first thing, when you start talking about tribal courts, it runs up a red flag, about some kind of independent nations within the state of Alaska; but if you call them "local rule," or "home courts," designed to solve local problems, I can see they have a real function.

SCHULER: As an employee of the state of Alaska, I can't give the Department of Law view on the issues of tribal sovereignty; if you need to know about those, you'd have to talk to the attorney general. And as to tribal courts, very much the same. (Mr. Schuler followed with some of his personal observations about tribal courts. We regret that this, and the rest of Mr. Schuler's interview, were lost due to a defect in our taping procedure.)

FRAITES: Well, if it does, I will have very little to do with it because I will be on the (district) level; that will be things that the Legislature and the Supreme Court are deciding. That level that I personally — one of the men that went to the university with, (Bobby Amos) is on the tribal court of the Hopi nation, and he is their chief judge — so I would say that on a personal and emotional viewpoint I think it's a wonderful idea.

TUNDRA TIMES: *Problem resolution boards have been moderately successful in some areas. Do you believe such a mechanism can be established in the Bethel area?*

FRAITES: I would like to see more of that particularly at a village level. It all goes together with my thinking, that the more problems that are solved at the local level, by people that can be made to understand that they are part of a larger process, that this is Alaska law that's being administered, the happier I'm going to be and I think the happier we'll all be.

HANCOCK: If they're going to establish tribal courts, I'd rather see them concentrate their efforts on tribal courts as the authority. I think problem resolution boards are a mediation concept, more of an urban concept than they are a rural concept... I can't see trying to graft one more urban concept on to these rural people.

TUNDRA TIMES: *Most community newspapers in Alaska and elsewhere as a matter of policy publish a court blotter or the names of people who run into problems with the law and it's viewed somewhat differently in the Native community than it would be here in the city. How do you feel about the practice?*



L. Ben Hancock

"Natives are getting more than their unfair portion of these excessive sentences..."

HANCOCK: I guess it comes within our great tradition of open courts. I feel that it should be published. I don't think we should operate in secrecy.

FRAITES: Well, let me answer it this way, since my life changed so dramatically for the positive as a result of my being arrested for driving while intoxicated in December, — there is no sense in trying to make it a secret anyway, nor do I try to do it — but the fact remains that I am a person who is uniquely in a position to dislike the publicity that I got at that time because it made headlines in the newspapers and it was put on television all the way across the state. And I really didn't think that I was that important that they had to do that to me, it seemed to me that they were selling newspapers, so I can sympathize with anybody who doesn't like to see their name in the newspaper.

TUNDRA TIMES: *The final question is there are some obvious advantages and disadvantages for any person not from the community going into a community like Bethel. How do you view that situation?*

FRAITES: I came to Alaska for the adventure 18 years ago. I was fortunate enough to live in Southeastern Alaska for 8 years and there, of course, we have the Tlingit and the Haida, and I always appreciated their culture and had friends. Here in Anchorage I've been a little bit lonely because this isn't really like Alaska to me... I've lived abroad and I've lived in three foreign countries and it's not to say that Interior Alaska is a foreign country but it's a helluva lot more fun, I would think, than the Lower 48 and it is the fact that there is a different culture out there that there are 56 villages up and down the Yukon and Kuskokwim. The fact that there are Native sovereignty problems, that there are subsistence problems, that there are language problems, makes that a fascinating area. I think that a person with my life experience could make a contribution; that's why I want to go there.

HANCOCK: I noticed there was some feeling that anybody up there would be too closely associated with whatever group they had been working with... I don't think that should be a major issue. That may have some merit, but, gosh, I'm from the "outside" and I have an open mind.

I don't know if there would really be any disadvantages. It doesn't take long to quickly get acquainted with people, especially if you make a little effort. I (garbled) to the bingo hall and got acquainted with about 50 people in about an hour; you'd meet a lot of people at the church; and of course, the people that come in front of you, you quickly become acquainted with them.

And one of the things, the people... that showed up at that public hearing, they would like to see a public hearing along those lines in about six villages... Then people could come and tell you their problems. And that's probably how it should be done.