

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 86/2

2569 HLC • HB 236 - HB 258 , 2529

Here, remand will do what the trial court should have done once the decision to invoke common law fraud was made. It will give Brown an opportunity to present evidence relevant to the common law fraud theory and thus eliminate the possibility of prejudice which would otherwise result from the court's reliance on that theory. That trial of the common law fraud issue may result in Brown being liable to pre-September 1977 purchasers, whereas under the statute he is not, is not the type of prejudice which precludes a remand. See Wright v. Vickaryous, 598 P.2d 490, 496-97 (Alaska 1979).

V. JURY TRIAL

The State correctly notes that Brown did not demand a jury trial until more than thirty days after he had answered the State's second amended complaint. Under Civil Rule 38, demand for a jury trial must be made not later than 10 days after the service of the last pleading directed at an issue for which the right to a jury trial is claimed. Alaska R. Civ. P. 38(b). The Rule further provides that the untimely filing of such a demand constitutes a waiver of the right Alaska R. Civ. P. 38(d); Hollembaeck v. Alaska Rural Rehabilitation Corp., 447 P.2d 67 68 (Alaska 1968). But, as Brown points out, the State twice amended its complaint after Brown's jury demand, each time adding additional parties and raising new issues. We need not decide, how-

ever, whether Brown's demand was timely, for, even if it was, it is clear that Brown had no right to a jury trial in this case.

Article I, section 16 of the Alaska Constitution provides in relevant part:

In civil cases where the amount in controversy exceeds two hundred and fifty dollars, the right of a trial by a jury of twelve is preserved to the same extent as it existed at common law.

At common law, the existence of a right to trial by jury depended upon whether the claim asserted was legal or equitable in nature. Ross v. Bernhard, 396 U.S. 531, 533, 24 L.Ed. 2d 729, 733 (1970). When only equitable relief is sought, there is no right to a jury trial. 5 Moore's Federal Practice ¶ 38.17 (2d ed. 1981); see Lomis Electronic Protection, Inc. v. Schaefer, 549 P.2d 1341, 1344 (Alaska 1976). In this case, the State sought injunctive and restitutory relief only.²⁸ Such relief being equitable, 5 Moore's Federal Practice ¶ 38.24 (2d ed. 1981), Brown was not entitled to a jury trial and the lower court thus did not err in refusing Brown's jury trial demand.

28. In its original complaint, the State sought civil penalties as well, but this claim was dropped prior to Brown's demand for a jury trial. We therefore need not decide whether a right to a trial by jury would exist had the State sought civil penalties under either ULSPA or the Consumer Protection Act. See State v. O'Neill Investigations, Inc., 609 P.2d 526, 538-39 (Alaska 1980) (Matthews, J., dissenting).

VI. VALIDITY OF THE INJUNCTION

As part of its final judgment, the lower court permanently enjoined Brown from engaging in certain practices prohibited by the administrative regulations promulgated under ULSPA, 3 AAC 20.010-20.390.²⁹ Brown claims that this part of the injunction is invalid because the regulations were not adopted in accord with statutory notice

29. Included among the practices enjoined are (1) using contracts which contain provisions that loss of the property can result without notice or a hearing in a court of competent jurisdiction (3 AAC 20.060(a)(7)); (2) using contracts that provide for acceleration of payments upon default (3 AAC 20.060(a)(6)); (3) representing to prospective purchasers that they must act quickly to purchase land at a savings because the price is about to increase, unless a decision has in fact been made to increase the price and the increased price remains in effect for at least 30 days (3 AAC 20.110(1)); (4) representing to purchasers that the seller will buy back or resell the purchased property unless this is true (3 AAC 20.120(1)); (5) failing to inform purchasers that any evidence of indebtedness can be assigned (3 AAC 20.130(3)); (6) advertising "homesites" as for sale when the land has not been approved for utilities (3 AAC 20.080(3)); and (7) failing to include on the face of any agreement that the purchaser has a right to rescind for any reason within five days (3 AAC 20.270(b)).

requirements.³⁰ We disagree.

30. Brown also claims that these regulations are inconsistent with legislative intent, and that application of them to him would be a denial of procedural due process. The basis for Brown's first argument is that since the regulations were promulgated prior to the effective date of the ULSPA amendments, the legislature could not have intended them to apply to in-state sellers of land. In effect, Brown argues that administrative regulations must be re-promulgated before they may be applied to enforce an amended statute that covers a new class of persons. We think that requiring such a procedure would be unduly burdensome to the administrative agency when, as here, the regulations are consistent with, and not rendered unreasonable or arbitrary by, the statute as amended. See *Kenai Peninsula Fisherman's Co-operative Ass'n v. State*, 628 P.2d 897, 906 (Alaska 1981)

Brown's due process argument is that since the regulations when promulgated applied only to out-of-state subdividers, he reasonably believed that he had no interest in them. Thus, he argues that application of the regulations to him without re-promulgating them denies him notice of and an opportunity to be heard in the administrative process. The only authority cited by Brown in support of his argument is *City of Homer v. State*, 566 P.2d 1314, 1319-20 (Alaska 1977). His reliance on that case is misplaced, however, since it involved due process requirements in connection with administrative action that is adjudicatory, rather than legislative, in nature. As Professor Davis notes, numerous regulations are promulgated without notice to or participation by those that might be affected. 1 K. Davis, *Administrative Law Treatise* § 6.01 (1958). In our judgment, Brown's due process argument is without merit.

AS 34.55.020(a)³¹ authorizes the Department of Commerce to prescribe regulations as are necessary to accomplish ULSPA's purpose, and states that such regulations shall be adopted in compliance with the Administrative Procedure Act, AS 44.62.010-44.62.650. AS 44.62.190 requires that notice of proposed agency action be given at least thirty days before regulations are adopted. The content of such notice is governed by AS 44.62.200, which, among other things, requires that the notice contain "an informative summary of the proposed subject of agency action." AS 44.62.200(a)(3). It is this requirement that Brown claims was not complied with here.

The challenged regulations were adopted after publication of the following notice:

31. AS 34.55.020(a) provides:

The department shall prescribe regulations which shall be adopted, amended, or repealed in compliance with the Administrative Procedure Act (AS 44.62). The regulations shall include but not be limited to provisions for advertising standards to assure fair and full disclosure; provisions for escrow or trust agreements or other means reasonably to assure that all improvements referred to in the application for registration and advertising will be completed and that purchasers will receive the interest in land contracted for; provisions for operating procedures; and other provisions as are necessary or proper to accomplish the purpose of this chapter.

NOTICE IS HEREBY GIVEN that the Department of Commerce . . . proposes to adopt regulations in Title 3 of the Administrative Code to implement AS 34.55 Uniform Land Sales Practices Act as follows:

- | | |
|------------|---------------------------------|
| Article 1. | General Provisions |
| Article 2. | Filing Procedures |
| Article 3. | Unfair Acts and Practices |
| Article 4. | Advertising and Promotion Plans |
| Article 5. | Protection of Purchasers |
| Article 6. | Severability |

Brown contends that this notice was insufficient to convey any meaningful description of the proposed agency action.

AS 44.62.100(a) establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied. When a regulation is challenged for failure to comply with these requirements, the violation must be "substantial" before the regulation will be declared invalid. AS 44.62.300; Kingery v. Chapple, 504 P.2d 831, 834 (Alaska 1972). We think that Brown has failed to show a violation of the informative summary requirement substantial enough to overcome the statutory presumption of validity. The contents of the above summary gave members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their views known

to the agency.³² Accordingly, that portion of the trial court's judgment permanently enjoining Brown from violating the administrative regulations implementing ULSPA is affirmed.

VII. FIRST NATIONAL BANK AS A DEFENDANT

The relief sought by the State against First National Bank of Anchorage was a declaratory judgment that the Bank was not a "holder in due course" of the Windsong lot purchasers' promissory notes. The Bank held these notes as security for its loans to Brown used to finance the Windsong Subdivision. Although when delivered the notes were unendorsed, the collateral and loan agreements between Brown and First National authorized the Bank to endorse the notes to itself on Brown's behalf. After a time it did so and

32. That this is all that AS 44.62.200(a)(3) requires finds support in its legislative history. The precursor to that section required that the notice of proposed agency action contain "[e]ither the express terms or an informative summary of the proposed agency action." Ch. 143, § 6(3), SLA 1959. In 1970, the legislature changed this language to that presently found in AS 44.62.200(a)(3). See ch. 185, § 1, SLA 1970. A report from the House Judiciary Committee reveals that the change came about because it was felt that under the prior version notice of proposed regulations had to be very detailed and specific; a requirement that the Judiciary Committee believed was too restrictive and hence undesirable. See 1970 House Journal 917-18. Thus, it is clear that the legislature intended that the "informative summary" requirement be liberally construed. Cf. AS 44.62.200(b) (a regulation may vary from the content specified in the summary if "the subject matter remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject").

then notified purchasers that they were obligated to make their payments to the Bank, despite the lower court's directive that those purchasers seeking restitution should make their payments to the court registry. It was at this point that the State amended its complaint to add First National as a defendant.

The lower court dismissed the State's action against the Bank, reasoning that the State was without standing to assert potential claims that individual lot purchasers might have against First National because the Bank had violated no law.³³ In our view, the lower court impermissibly substituted its own judgment for that of the executive official charged with bringing suit when, in his judgment, the public interest requires, and therefore erred in dismissing the State's action against First National.

We have already had occasion to discuss the Attorney General's broad common law powers. What we have said is equally applicable to the question of the State's authority to sue the Bank.

33. Subsequent to its decision to dismiss the Bank, the trial court expressed as a tentative opinion the view that the Bank was not a holder in due course and thus would be subject to the same defenses available to a purchaser in an action on the note by Brown. The court correctly pointed out, however, that this view was not an adjudication binding on the Bank.

Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest. . . .

Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975) (emphasis added).

And, subject to constitutional bounds, what is or is not in the public interest is a matter committed to the Attorney General's sound discretion. Id. That the State saw fit to try to prevent First National from collecting on notes executed by persons whom it had reason to believe may have been the victims of fraud, is not a decision subject to the control or review of the courts. The trial court's concern that allowing the State to sue First National in the absence of a specific statutory violation by the Bank would create a "horrendous risk of overreaching" by the State as litigant, is answered by the observation that "the fact that the exercise of power may be abused is no sufficient reason for denying its existence." United States v. San Jacinto Tin Co., 125 U.S. 273, 284, 31 L.Ed. 747, 751 (1888).

We conclude, therefore, that the trial court erred in dismissing the State's claim against First National. On remand, the State must be given the opportunity to show,

with respect to the individual purchasers represented,³⁴ that the Bank does not occupy the status of a "holder in due course" of the various purchasers' promissory notes.

The judgment is AFFIRMED in part and REVERSED in part and the case is REMANDED for further proceedings consistent with this opinion.³⁵

34. First National's argument that permitting the State to sue will require the Bank to engage in litigation which offers it no prospect of obtaining complete relief is disposed of by our earlier holding that those individuals electing to be represented by the State must first consent to be bound by the court's final judgment.

35. In light of our disposition of the case, the lower court's award to the State of costs and attorney's fees must be vacated. We do not address the State's claim that the lower court erred in denying its request for pre-judgment attachment under AS 09.40.010. Since the State has represented to the court that it has been unable to find significant assets other than Windsong lots on which to execute during the pendency of this appeal, and since the State will have a partial judgment on which to execute following remand, this issue is moot.

RABINOWITZ, Chief Justice, dissenting in part.

My only disagreement with the court's disposition of the various issues in this appeal concerns its holding that determination of Brown's liability to pre-September 21, 1977 purchasers on the basis of common law fraud must be remanded for a second trial. The court reaches its remand conclusion on the following rationale: "The state did not allege that Brown should be held liable on the basis of common law fraud." Agreeing that Brown's right to a fair trial was jeopardized by the trial court's adoption of a new theory of the case, and refusing to countenance the trial court's re-engineering of the case to hold Brown liable for common law fraud, the majority has concluded that the matter should be remanded for trial of the common law fraud question.

I do not believe that a remand to address the issue of common law fraud is appropriate. The case against Brown was tried solely on the theory that Brown was liable under the ULSPA, not on the basis of common law fraud. Further, it cannot be shown that the issue of common law fraud was tried with the express or implied consent of the parties. In short, I think it unfair to require Brown to go through a second trial in circumstances where the state never asserted a claim of common law fraud in the original proceedings.

Even if I was persuaded that the issue of common law fraud had been raised and tried, in my view the appropriate disposition of the case would be to reverse a significant portion of the superior court's judgment ordering restitution to purchasers. As to these fifty-odd pre-September 21, 1977 purchasers, there is no evidence in the record concerning what misrepresentations, if any, were made to them or whether a particular purchaser relied on any such misrepresentation.¹ In short, I fail to comprehend the justifica-

1. Although the superior court's order permits numerous purchasers to rescind their purchases and obtain a refund of their money on the ground that they were defrauded by Brown, there is no evidence in the record concerning most of these persons' dealings with Brown. A total of fifteen purchasers testified (several on Brown's behalf), and their testimony establishes that Brown or his agents told different things to different persons and that purchasers had varying amounts of knowledge about the condition of the property that they were purchasing. In other words, it is impossible to infer from the testimony of record that Brown defrauded dozens of purchasers, and thus the superior court's judgment lacks evidentiary support.

For example, on the issue of Brown's alleged failure to inform purchasers that their riverside parcels might flood, several of the state's witnesses testified that they knew the area was prone to flooding. Another two witnesses explained that they were told by Brown's representative of the subdivision's history of flooding. Many purchasers told stories much like that told by Thomas Doggett, who explained that he had bought his lot "more or less on impulse" within two hours of first seeing it and that he "didn't think about it, didn't research it, didn't ask any of the neighbors nothing." In other words, even if the testimony of some purchasers established that those persons were entitled to rescind their transactions, that testimony also establishes that it is impossible to infer that Brown is liable to other purchasers; the testimony of record does not establish that all purchasers were in the same position or that they all were told the same thing.

tion for the court's ordering a remand which will afford the state a second opportunity to attempt to present sufficient evidence to show that a particular purchaser is entitled to rescind his or her transaction with Brown.²

2. First, this is not a case in which the state is the victim of poor lawyering or inartful pleading. The state was permitted to amend its complaint four times over the course of almost a year. The state had ample opportunity, both before and after conducting extensive investigations, to tailor its pleadings and theories to fit its view of the facts.

Second, this is not a case in which defrauded consumers would be left without a remedy should the state be denied the remand opportunity to litigate the common law fraud issue on their behalf. Each and every landowner is free to maintain an individual suit should he or she wish to rescind the transaction or to recover damages.

Third, this is not a case in which significant judicial resources would be saved by litigating all purchasers' claims in a single class action type lawsuit. The state must prove its allegation of fraud as to each purchaser. On remand, the proceedings could become a confusing series of up to 53 mini-trials.

Fourth, this is not a case in which the state's objectives would be frustrated should individual purchasers be required to bring separate suits to vindicate their rights, if any. The state has repeatedly represented that its objective is not to redress individual purchasers' grievances but rather to vindicate its separate interest in "public law enforcement" by enjoining Brown from violating state law. Indeed, the state has already obtained precisely the relief that it claims to have been seeking, an injunction.

Fifth, this is a case in which Brown will suffer significant prejudice should the case be remanded for a second trial. There is the obvious prejudice of forcing Brown to incur the expense of a second trial which would not have been necessary had the state raised the theory that it now wishes to rely upon, and the prejudice of possible liability to purchasers who would not have been entitled to recover under the state's statutory theory of liability.

In my view, the court's disposition of the common law fraud issue also raises basic considerations of fairness. Brown's engineer, Neil Hausam, moved for summary judgment on the ground that the ULSPA could not be applied to reach his activities. The superior court granted summary judgment on that ground. In response to Brown's inquiry at the outset of the trial, the superior court indicated that "implicit in what the court has already ruled with regard to Mr. Hausam is that any claim based upon anyone who relied - whose actions were motivated by acts that took place prior to the effective date of the amendment must fail." The record indicates that Brown obviously was proceeding under the assumption that, if Hausam was out of the case because the act could not be applied retroactively, so was he unless the state could prove some post-ULSPA misbehavior affecting a pre-ULSPA purchaser. In my view, inconsistent application of the law in this case has resulted in a basically unfair decision against Brown.

(footnote 2 continued)

Further, there is no assurance that Brown will not be faced with separate suits brought by individual purchasers after the state's suit comes to an end. The state's suit has no res judicata effect as to individual landowners, and landowners are not required to elect to participate in any judgment obtained by the state until after the lawsuit has drawn to a close. Thus, if the state loses, individual purchasers are free to ignore the state's suit and to file their own lawsuits; even if the state wins, no landowner is bound by the judgment, although it is plausible to assume that most landowners will elect to participate in the judgment rather than to bring separate suits.

REPRESENTATIVE BARBARA LACHER

FROM: STEVEN H. MORRISSETT
MAT-SU BOROUGH
BOX 8
PALMER 99645
PHONE 745 4801

Answer

MAR 21 1983

I WOULD LIKE TO TESTIFY IN SUPPORT OF HB236. THIS BILL AMENDS THE FAIR TRADE PRACTICE AND CONSUMER PROTECTION ACT TO PROVIDE A DEFINITION FOR TRADE OR COMMERCE. THE EFFECT OF THIS BILL IS TO ASSURE THAT CONSUMERS WILL HAVE THE SAME PROTECTION AGAINST FRAUDULENT SALES OF HOMES AND REAL PROPERTY AS THEY DO AGAINST FRAUDULENT SALES OF OTHER GOODS AND SERVICES.

A RECENT DECISION OF THE ALASKA SUPREME COURT THREW INTO DOUBT WHETHER A PERSON WHO BOUGHT A LOT OR A HOME BASED ON FRAUDULENT MISREPRESENTATIONS WOULD BE PROTECTED UNDER ALASKA'S CONSUMER PROTECTION ACT. THE LARGEST INVESTMENT MOST FAMILIES MAKE IS IN THE PURCHASE OF THEIR HOME. THE LEGISLATURE SHOULD CLARIFY THAT THE STATE'S POLICY OF PROTECTION FOR CONSUMERS AGAINST FRAUD EXTENDS TO THE PURCHASE OF HOMES.

*File
Bill*

HB 241

Josephson
5-13-83.

Original sponsor: Martin

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 241 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the creation of the Alaska Ath-
7 ^{BOXING}letic Commission and the regulation of professional
8 boxing and wrestling."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

11 (24) Alaska ^{BOXING}Athletic Commission (AS 08.15.010).

12 * Sec. 2. AS 08 is amended by adding a new chapter to read:

13 CHAPTER 15. BOXING AND WRESTLING.

14 Sec. 08.15.010. CREATION OF ^{BOXING}ATHLETIC COMMISSION. (a) There is
15 created in the Department of Commerce and Economic Development the
16 ^{BOXING}Athletic Commission.

17 (b) Members of the commission serve at the pleasure of the
18 governor and shall be selected on the basis of their knowledge of and
19 contribution to ^{PROFESSIONAL BOXING}athletics in the state.

20 Sec. 08.15.020. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The
21 commission consists of five members appointed by the governor for
22 staggered three year terms as follows:

23 (1) a licensed physician, preferably a specialist in sports
24 medicine;

25 (2) one member of the public;

26 (3) three members from the profession, one of whom shall be
27 a contestant licensed under this chapter.

28 (b) A vacancy shall be filled for the balance of the unexpired
29 term.

1 Sec. 08.15.030. GENERAL DUTIES AND ANNUAL REPORT. (a) The
2 commission shall report annually to the governor. The report shall
3 include the recommendations of the commission for the advancement and
4 improvement of professional ^{Boxing} athletic programs and activities in the
5 state, in addition to including the commission's findings.

6 (b) The commission shall recommend to the legislature statutory
7 changes that the commission considers desirable or necessary to pro-
8 mote and maintain a ^{level Boxing} ~~high standard of sportsmanship~~ in the state.

9 Sec. 08.15.040. POWER OF COMMISSION. (a) The commission shall
10 supervise all professional ^{Boxing} contests conducted in the state.

11 (b) The commission shall adopt regulations for the safe, organ-
12 ized, sportsmanlike and honest conduct of contests, including regula-
13 tions relating to

14 (1) licensing of persons under the personal license provi-
15 sions of this chapter;

16 (2) establishing the minimum fees payable to attending
17 physicians, referees, judges, and timekeepers; ^{OR OTHER MEDICAL PERSONNEL /} ~~FEES CAN BE~~
~~WAIVED~~

18 (3) qualifications and duties of all persons required to be
19 licensed under this chapter;

20 (4) conduct of contests, including their format and dura-
21 tion;

22 (5) approved equipment and facilities for the safety and
23 protection of contestants;

24 (6) any other provision of this chapter.

25 (c) The commission may subpoena witnesses, administer oaths,
26 take testimony and require the production or examination of any re-
27 cords concerning matters before the commission or under its investiga-
28 tion.

29 Sec. 08.15.050. DESIGNATED REPRESENTATIVES. (a) The commission

1 shall maintain a list of designated representatives.

2 (b) Whenever possible, a local designated representative shall
3 substitute for a commissioner unable to supervise a contest in the
4 commissioner's area. Commissioners and designated representatives
5 shall minimize travel from one area of the state to another.

6 Sec. 08.15.060. ATTENDANCE AT CONTESTS. A contest may not be
7 held without the attendance and supervision of a commissioner or a
8 designated representative.

9 Sec. 08.15.070. PROVISION OF OFFICIALS. If not provided by the
10 promoter, a commissioner supervising a contest shall provide for the
11 attending physician, ^{OR OTHER MEDICAL PERSONNEL} timekeepers, referees, and judges at all contests
12 in the state.

13 Sec. 08.15.080. MEETINGS AND COMPENSATION. (a) The commission
14 shall meet at least once a year at the call of the chairperson, at the
15 request of a majority of the commissioners, or at a regularly sched-
16 uled time determined by the commission. Commissioners serve without
17 compensation but are entitled to per diem and travel expenses autho-
18 rized by law for boards and commissions under AS 39.20.180.

19 (b) The commissioners shall elect a chairperson and a vice-
20 chairperson from among their membership. The affirmative vote of a
21 majority of the commissioners is required to exercise the powers of
22 the commission.

23 (c) Meetings may be held by teleconference or other electronic
24 means. Commissioners participating in a meeting from a location out
25 of state may not vote at that meeting.

26 (d) The commission shall keep full and accurate minutes of its
27 proceedings and records of its transactions.

28 Sec. 08.15.090. LICENSES REQUIRED. (a) A person may not act as
29 a promoter, contestant, manager, attending physician, trainer,

1 referee, or judge in or for a contest unless that person has been
2 issued the appropriate personal license by the commission.

3 (b) Application procedures and qualifications for the licenses
4 required under this section shall be set out in regulations adopted by
5 the commission.

6 (c) Licenses are biennial and shall expire on December 31.

7 Sec. 08.15.100. LICENSE FEES. The fees for licenses under this
8 chapter are as follows:

- 9 (1) promoters.....\$100;
- 10 (2) managers.....50;
- 11 (3) all other licensees except
12 attending physicians.....~~10~~ *OTHER MEDICAL PERSONNEL 10*

A. TEARDON
PERMIT →

13 Sec. 08.15.110. PROMOTER'S BOND. A promoter shall file a bond
14 in the amount of \$5,000 with the department upon approval of the
15 application for a license and before the license is issued. The bond
16 shall be conditioned on the faithful performance by the licensee of
17 the provisions of this chapter, the payment of the contestants, and
18 the good faith effort to conduct each contest for which tickets have
19 been sold.

20 Sec. 08.15.120. CONTESTANT RESTRICTIONS. (a) A person may not
21 participate as a contestant who

- 22 (1) was intoxicated or under the influence of a controlled
23 substance at the time the person agreed to participate;
- 24 (2) did not agree to participate in writing;
- 25 (3) except as provided in (b) of this section, has used
26 alcohol or a controlled substance within eight hours preceding the
27 contest or is under the influence of alcohol or a controlled substance
28 at the time of the contest; and
- 29 (4) is not at least 18 years of age or has not obtained a

1 waiver from the commission.

*OR DESIGNATED
REP.*

2 (b) A contestant may participate in a contest if

3 (1) the attending physician is aware that the contestant is
4 using a prescription drug; and

5 (2) in the opinion of the attending physician, the safety of
6 the contestant is not jeopardized and the prescription drug offers the
7 contestant no advantage over the opponent in the contest.

8 Sec. 08.15.130. EXAMINATION OF CONTESTANTS. (a) Every con-
9 testant shall be examined no more than 24 hours, but no less than
10 eight hours, before the contest by a practicing physician. The
11 examining physician may disqualify a contestant considered physically
12 unfit to participate.

PHYSICIAN
BEFORE A PRACTICING
AT JURY LICENSE - SIMPLE PENCIL + PAPER
CONTESTANTS

13 (b) A contestant shall obtain a CAT scan of the head, or an
14 equivalent examination, every 150 contest rounds or less and promptly
15 supply the most recent CAT scan, or its equivalent, to the commission.
16 If the contestant has been knocked out since the contestant's last CAT
17 scan, a CAT scan taken after the last knockout shall be supplied to
18 the commission before the contestant's next contest.

19 Sec. 08.15.140. ATTENDING PHYSICIAN REQUIRED. An attending
20 physician currently licensed to practice medicine and surgery in the
21 state must be on duty throughout a contest. The attending physician
22 has the authority and duty to stop a contest when it is the physi-
23 cian's opinion that it would be dangerous to a contestant to continue.

24 Sec. 08.15.150. NOTICE OF CANCELLATION. (a) When it has been
25 determined by means other than a physician's examination that a sched-
26 uled contestant will be unable to appear, the scheduled contestant's
27 manager and the promoter of the contest shall notify the commissioner
28 or the designated representative supervising the contest of the can-
29 cellation of the contest. When the cancellation is the result of an

1 examining physician's examination, the examining physician shall
 2 notify the commissioner supervising the contest in writing, stating
 3 the medical reason for, and the duration of, the cancellation.

4 (b) Upon receipt of notice of the cancellation of a contest for
 5 any reason, the commissioner or the designated representative super-
 6 vising the contest, shall report the cancellation promptly to the
 7 chairperson of the commission and immediately to the public. If the
 8 commission, rather than the commissioner or the designated representa-
 9 tive supervising the contest, is notified of a cancellation, the
 10 commission shall notify the public immediately.

11 Sec. 08.15.160. PAYMENT OF FEES. Failure of a promoter to pay
 12 the fees ^{OR COMPENSATION} of the referee, attending physician, ^{CONTESTANT} judges, and timekeeper
 13 is grounds for the suspension of the promoter's license.

14 Sec. 08.15.170. STATEMENT OF CONTEST. (a) Before a contest, a
 15 promoter shall file with the commission a statement setting out the
 16 name of ~~each~~ contestant, the managers' names and other information the
 17 commission may require.

18 (b) Failure to file the statement required under (a) of this
 19 section is grounds for suspension of the promoter's license.

20 Sec. 08.15.180. PARTICIPATION IN PURSE. (a) A person who acts
 21 as a promoter for a contest may not participate directly or indirectly
 22 in the purse or fee of a contestant or a contestant's manager.

23 (b) A person who violates (a) of this section forfeits any
 24 license held under this chapter.

25 (c) An unlicensed person who violates (a) of this section is
 26 guilty of a class B misdemeanor.

27 Sec. 08.15.190. ACTING WITHOUT A LICENSE. A person who violates
 28 AS 08.15.090(a) is guilty of a class B misdemeanor.

29 Sec. 08.15.200. ~~ENJOINING UNLICENSED CONTEST.~~ The attorney

1 ~~general, the commission, a commissioner or a concerned person may seek~~
2 ~~an injunction to prevent the conduct of a contest for which the neces-~~
3 ~~sary license has not been obtained.~~

4 Sec. 08.15.210. SHAM CONTEST. (a) A person may not conduct or
5 participate in a sham or false contest.

6 (b) A licensee who violates (a) of this section shall be penal-
7 ized by the commission as follows:

8 (1) for a first offense, a license shall be suspended for a
9 minimum of three months, beginning from the date of the suspension
10 order;

11 (2) for a second offense, a license shall be revoked perma-
12 nently.

13 (c) The commission shall institute action to enforce (a) of this
14 section within 10 days of receipt of notice of a possible violation.

15 (d) An unlicensed person who violates (a) of this section is
16 guilty of a class B misdemeanor.

17 Sec. 08.15.220. EFFECT OF LICENSE SUSPENSION. (a) A licensee
18 may not promote or participate in a contest when the licensee's li-
19 cense is suspended.

20 (b) A licensee who violates (a) of this section forfeits the
21 license.

22 Sec. 08.15.230. EFFECT OF LICENSE FORFEITURE. A license for-
23 feited under this chapter is cancelled and void. The licensee is
24 forever ineligible for any of the licenses issued by the commission.

25 Sec. 08.15.240. GENERAL PENALTY. A person violating a provision
26 of this chapter or a regulation of the commission for which no penalty
27 is provided is guilty of a class B misdemeanor.

28 Sec. 08.15.250. INAPPLICABILITY OF CHAPTER. Nothing in this
29 chapter gives the commission jurisdiction over the athletic programs

1 of any school, college or university or any other nonprofessional
2 athletic events.

3 Sec. 08.15.260. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE
4 ACT. The Administrative Procedure Act (AS 44.62) applies to regula-
5 tions and proceedings under this chapter.

6 Sec. 08.15.900. DEFINITIONS. In this title

7 (1) "CAT scan" means a rotating three dimensional computer-
8 enhanced X-ray image;

9 (2) "commission" means the athletic commission created in
10 AS 08.15.010;

11 (3) "commissioner" means a member of the athletic commis-
12 sion;

13 (4) "contest" includes a professional boxing or wrestling
14 exhibition, ~~sparring match~~ or contest or fight, match, bout or fight;

15 (5) "contestant" means a person who competes in a profes-
16 sional contest;

17 (6) "designated representative" means a person knowledge-
18 able about boxing or wrestling and qualified under the regulations
19 adopted by the commission for designated representatives;

20 (7) "personal license" means the license issued to a pro-
21 moter, contestant, manager, attending physician, referee, judge,
22 ~~second~~, or trainer;

23 (8) "professional" means a person receiving money or other
24 thing of value other than a trophy, plaque, or medal for participation
25 in a contest, and also means the contest itself;

26 (9) "promoter" means the person primarily responsible for
27 the sponsorship, organization or furtherance of a contest.

28 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

29 (52) Alaska Athletic Commission.

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* Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:
(12) Alaska Athletic Commission (AS 08.15) -- June 30, 1986.

* Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

* Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial terms of the Alaska Athletic Commission shall be one year for two members, two years for two members, and three years for one member. The governor shall specify the initial term for each appointee.

* Sec. 7. REGULATIONS. The commission shall compile an initial list of designated representatives and also shall adopt comprehensive regulations under AS 08.15.040 within one year after the effective date of this Act.

Josephson
5-9-83

Original sponsor: Martin

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 241 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the creation of the Alaska Ath-
7 letic Commission and the regulation of professional
8 boxing and wrestling."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:
11 (24) regulation of boxing under AS 08.15.

12 * Sec. 2. AS 08 is amended by adding a new chapter to read:

13 CHAPTER 15. BOXING AND WRESTLING.

14 Sec. 08.15.010. CREATION OF ATHLETIC COMMISSION. (a) There is
15 created in the Department of Commerce and Economic Development the
16 Athletic Commission.

17 (b) Members of the commission serve at the pleasure of the
18 governor and shall be selected on the basis of their knowledge of and
19 contribution to athletics in the state.

20 Sec. 08.15.020. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The
21 commission consists of five members appointed by the governor for
22 staggered three year terms as follows:

23 (1) a licensed physician, preferably a specialist in sports
24 medicine;

25 (2) one member of the public;

26 (3) three members from the profession, one of whom shall be
27 a contestant licensed under this chapter.

28 (b) A vacancy shall be filled for the balance of the unexpired
29 term.

1 Sec. 08.15.030. GENERAL DUTIES AND ANNUAL REPORT. (a) The
2 commission shall ~~study the amateur and professional athletic programs~~
3 ~~of the state and~~ shall report annually to the governor. The report
4 shall include the recommendations of the commission for the advance-
5 ment and improvement of athletic programs and activities in the state,
6 in addition to including the commission's findings.

7 (b) The commission shall recommend to the legislature statutory
8 changes that the commission considers desirable or necessary to pro-
9 mote and maintain a high standard of sportsmanship in the state.

10 Sec. 08.15.040. POWER OF COMMISSION. (a) The commission shall
11 supervise all professional contests conducted in the state.

12 (b) The commission shall adopt regulations for the safe, organ-
13 ized, sportsmanlike and honest conduct of contests, including regula-
14 tions relating to

15 (1) licensing of persons under the personal license provi-
16 sions of this chapter;

17 (2) establishing the minimum fees payable to attending
18 physicians, referees, judges, and timekeepers;

19 (3) qualifications and duties of all persons required to be
20 licensed under this chapter;

21 (4) conduct of contests, including their format and dura-
22 tion;

23 (5) approved equipment and facilities for the safety and
24 protection of contestants;

25 (6) any other provision of this chapter.

26 (c) The commission may subpoena witnesses, administer oaths,
27 take testimony and require the production or examination of any re-
28 cords concerning matters before the commission or under its investiga-
29 tion.

1 Sec. 08.15.050. DESIGNATED REPRESENTATIVES. (a) The commission
2 shall maintain a list of designated representatives.

3 (b) Whenever possible, a local designated representative shall
4 substitute for a commissioner unable to supervise a contest in the
5 commissioner's area. Commissioners and designated representatives
6 shall minimize travel from one area of the state to another.

7 Sec. 08.15.060. ATTENDANCE AT CONTESTS. A contest may not be
8 held without the attendance and supervision of a commissioner or a
9 designated representative.

10 Sec. 08.15.070. PROVISION OF OFFICIALS. If not provided by the
11 promoter, a commissioner supervising a contest shall provide for the
12 attending physician, timekeepers, referees, judges and ~~umpires~~ at all
13 contests in the state.

14 Sec. 08.15.080. MEETINGS AND COMPENSATION. (a) The commission
15 shall meet at least once a year at the call of the chairperson, at the
16 request of a majority of the commissioners, or at a regularly sched-
17 uled time determined by the commission. Commissioners serve without
18 compensation but are entitled to per diem and travel expenses autho-
19 rized by law for boards and commissions under AS 39.20.180.

20 (b) The commissioners shall elect a chairperson and a vice-
21 chairperson from among their membership. The affirmative vote of a
22 majority of the commissioners is required to exercise the powers of
23 the commission.

24 (c) Meetings may be held by teleconference or other electronic
25 means. Commissioners participating in a meeting from a location out
26 of state may not vote at that meeting.

27 (d) The commission shall keep full and accurate minutes of its
28 proceedings and records of its transactions.

29 Sec. 08.15.090. LICENSES REQUIRED. (a) A person may not act as

1 a promoter, contestant, manager, attending physician, second, trainer,
2 referee, or judge in or for a contest unless that person has been
3 issued the appropriate personal license by the commission.

4 (b) Application procedures and qualifications for the licenses
5 required under this section shall be set out in regulations adopted by
6 the commission.

7 (c) Licenses are biennial and shall expire on December 31.

8 Sec. 08.15.100. LICENSE FEES. The fees for licenses under this
9 chapter are as follows:

- 10 (1) promoters.....\$100;
- 11 (2) managers.....50;
- 12 (3) all other licensees.....10.

13 (4) *ATTENDING PHYSICIAN*
14 Sec. 08.15.110. PROMOTER'S BOND. A promoter shall file a bond
15 in the amount of \$5,000 with the department upon approval of the
16 application for a license and before the license is issued. The bond
17 shall be conditioned on the faithful performance by the licensee of
18 the provisions of this chapter, the payment of the contestants, and
19 the good faith effort to conduct each contest for which tickets have
20 been sold.

21 Sec. 08.15.120. CONTESTANT RESTRICTIONS. (a) A person may not
22 participate as a contestant who

- 23 (1) was intoxicated or under the influence of a controlled
24 substance at the time the person agreed to participate;
- 25 (2) did not agree to participate in writing;
- 26 (3) except as provided in (b) of this section, has used
27 alcohol or a controlled substance within eight hours preceding the
28 contest or is under the influence of alcohol or a controlled substance
29 at the time of the contest; and
- (4) is not at least 18 years of age or has not obtained a

1 waiver from the commission.

2 (b) A contestant may participate in a contest if

3 (1) the attending physician is aware that the contestant is
4 using a prescription drug; and

5 (2) in the opinion of the attending physician, the safety of
6 the contestant is not jeopardized and the prescription drug offers the
7 contestant no advantage over the opponent in the contest.

8 Sec. 08.15.130. EXAMINATION OF CONTESTANTS. (a) Every con-
9 testant shall be examined no more than 24 hours, but no less than
10 eight hours, before the contest by a practicing physician. The
11 examining physician may disqualify a contestant considered physically
12 unfit to participate.

13 (b) A contestant shall obtain a CAT scan of the head, or an
14 equivalent examination, every 150 contest rounds or less and promptly
15 supply the most recent CAT scan, or its equivalent, to the commission.
16 If the contestant has been knocked out since the contestant's last CAT
17 scan, a CAT scan taken after the last knockout shall be supplied to
18 the commission before the contestant's next contest.

19 Sec. 08.15.140. ATTENDING PHYSICIAN REQUIRED. An attending
20 physician currently licensed to practice medicine and surgery in the
21 state must be on duty throughout a contest. The attending physician
22 has the authority and duty to stop a contest when it is the physi-
23 cian's opinion that it would be ^{DAUGHTEROUS} ~~life-threatening~~ to a contestant to
24 continue.

25 Sec. 08.15.150. NOTICE OF CANCELLATION. (a) When it has been
26 determined by means other than a physician's examination that a sched-
27 uled contestant will be unable to appear, the scheduled contestant's
28 manager and the promoter of the contest shall notify the commissioner
29 or the designated representative supervising the contest of the

1 cancellation of the contest. When the cancellation is the result of
2 an examining physician's examination, the examining physician shall
3 notify the commissioner supervising the contest in writing, stating
4 the medical reason for, and the duration of, the cancellation.

5 (b) Upon receipt of notice of the cancellation of a contest for
6 any reason, the commissioner or the designated representative super-
7 vising the contest, shall report the cancellation promptly to the
8 chairperson of the commission and immediately to the public. If the
9 commission, rather than the commissioner or the designated representa-
10 tive supervising the contest, is notified of a cancellation, the
11 commission shall notify the public immediately.

12 Sec. 08.15.160. PAYMENT OF FEES. Failure of a promoter to pay
13 the fees of the referee, attending physician, judges, and timekeeper
14 is grounds for the suspension of the promoter's license.

15 Sec. 08.15.170. STATEMENT OF CONTEST. (a) Before a contest, a
16 promoter shall file with the commission a statement setting out the
17 name of each contestant, the managers' names and other information the
18 commission may require.

19 (b) Failure to file the statement required under (a) of this
20 section is grounds for suspension of the promoter's license.

21 Sec. 08.15.180. PARTICIPATION IN PURSE. (a) A person who acts
22 as a promoter for a contest may not participate directly or indirectly
23 in the purse or fee of a contestant or a contestant's manager.

24 (b) A person who violates (a) of this section forfeits any
25 license held under this chapter.

26 (c) An unlicensed person who violates (a) of this section is
27 guilty of a class B misdemeanor.

28 Sec. 08.15.190. ACTING WITHOUT A LICENSE. A person who violates
29 AS 08.15.090(a) is guilty of a class B misdemeanor.

1 Sec. 08.15.200. ENJOINING UNLICENSED CONTEST. The attorney
2 general, the commission, a commissioner or a concerned person may seek
3 an injunction to prevent the conduct of a contest for which the neces-
4 sary license has not been obtained.

5 Sec. 08.15.210. SHAM CONTEST. (a) A person may not conduct or
6 participate in a sham or false contest.

7 (b) A licensee who violates (a) of this section shall be penal-
8 ized by the commission as follows:

9 (1) for a first offense, a license shall be suspended for a
10 minimum of three months, beginning from the date of the suspension
11 order;

12 (2) for a second offense, a license shall be revoked perma-
13 nently.

14 (c) The commission shall institute action to enforce (a) of this
15 section within 10 days of receipt of notice of a possible violation.

16 (d) An unlicensed person who violates (a) of this section is
17 guilty of a class B misdemeanor.

18 Sec. 08.15.220. EFFECT OF LICENSE SUSPENSION. (a) A licensee
19 may not promote or participate in a contest when the licensee's li-
20 cense is suspended.

21 (b) A licensee who violates (a) of this section forfeits the
22 license.

23 Sec. 08.15.230. EFFECT OF LICENSE FORFEITURE. A license for-
24 feited under this chapter is cancelled and void. The licensee is
25 forever ineligible for any of the licenses issued by the commission.

26 Sec. 08.15.240. GENERAL PENALTY. A person violating a provision
27 of this chapter or a regulation of the commission for which no penalty
28 is provided is guilty of a class B misdemeanor.

29 Sec. 08.15.250. INAPPLICABILITY OF CHAPTER. Nothing in this

1 chapter gives the commission jurisdiction over the athletic programs
2 of any school, college or university or any other nonprofessional
3 athletic events.

4 Sec. 08.15.260. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE
5 ACT. The Administrative Procedure Act (AS 44.62) applies to regula-
6 tions and proceedings under this chapter.

7 Sec. 08.15.900. DEFINITIONS. In this title

8 (1) "CAT scan" means a rotating three dimensional computer-
9 enhanced X-ray image;

10 (2) "commission" means the athletic commission created in
11 AS 08.15.010;

12 (3) "commissioner" means a member of the athletic commis-
13 sion;

14 (4) "contest" includes a professional boxing or wrestling
15 exhibition, sparring match or contest or fight, match, bout or fight;

16 (5) "contestant" means a person who competes in a profes-
17 sional contest;

18 (6) "designated representative" means a person knowledge-
19 able about boxing or wrestling and qualified under the regulations
20 adopted by the commission for designated representatives;

21 (7) "personal license" means the license issued to a pro-
22 moter, contestant, manager, attending physician, referee, judge,
23 second, or trainer;

24 (8) "professional" means a person receiving money or other
25 thing of value other than a trophy, plaque, or medal for participation
26 in a contest, and also means the contest itself;

27 (9) "promoter" means the person primarily responsible for
28 the sponsorship, organization or furtherance of a contest.

29 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

1 (52) Alaska Athletic Commission.

2 * Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

3 (12) Alaska Athletic Commission (AS 08.15) -- June 30, 1986.

4 * Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

5 * Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial
6 terms of the Alaska Athletic Commission shall be one year for two members,
7 two years for two members, and three years for one member. The governor
8 shall specify the initial term for each appointee.

9 * Sec. 7. REGULATIONS. The commission shall compile an initial list of
10 designated representatives and also shall adopt comprehensive regulations
11 under AS 08.15.040 within one year after the effective date of this Act.
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Concerns on HB241:

page 1 - line 17: seven member commission is too unworkable. Most of the states that I have had the pleasure of dealing with has five or less members. Ideally, for Alaska it should remain as is: four members from the judicial districts and a chairman appointed by the Governor for a five-year term.

page 1 - line 19: The public's interest is served by a sizeable performance bond put up by the promoter.

page 1 -- line 22: some states, Michigan for instance, has in their statutes: "No person interested in any way, financially or otherwise, in any club, organization or corporation the main object of which is the holding or giving of boxing, sparring or wrestling exhibitions, shall be eligible to appointment on such board."

page 1 - line 23: Since this legislation does not govern amateur boxing, there is no need to mandate a seat on the commission.

page 1 - line 29: semiprofessional does not belong on this legislation. You are a professional if you receive compensation for putting on a performance. The definition of a semiprofessional on page 11, line 13 is too unworkable. In my past experiences with boxing in the state, your preliminary bouts are often times compensated differently. One boxer may receive \$150 to \$300 and the other \$350 to \$600. Would this mean that one boxer would be a professional and the other a semi-pro? Would one boxer have to wear protective headgear and a 16 ounce glove and the other can wear a 10 ounce glove?

If this was designed to protect or regulate roughhouse boxing, this should not be ~~the~~ forum for it. Roughhouse boxing is not boxing and if I had some say on the matter I would eliminate the words "professional boxing" in their advertisements.

page 3 - line 14 Are other boards and commissions paying a surety bond? The bond is payable to the state but in essence is being paid by the state with the reimbursement clause on line 20. Why would it be needed?

page 4 - line 27 This section can be strengthened by a higher bond. I would assume that this is no more than a performance bond. While I was the commissioner, legally or not, I was asking and getting cash only bonds and would return the cash 10 days after the event. This took care of any spectator that felt they did not get their money's worth. Needless to say, no problem was ever encountered during any matches which I licensed during my term on the commission.

page 6 - line 10 while a physician has the duty to voice an opinion that it
line 11 would be dangerous to a contestant to continue fighting, it
is solely the authority and responsibility for a referee
to stop a fight. The control of a fight, once the bell
rings, rest solely on the third man in the ring.

page 6 - line 20 fees should be based on gross receipts. Fees should be
thru line 27 paid to the referees; judges, time keeper, announcer and
the ringside physician. No fee should be paid an inspector
since he is acting in the absence of a commissioner. The
examining physician (line 23) should be paid as if the
person being examined went on a doctor's office visit.
During my term as a commissioner, all judges, timekeepers,
referees and announcers were paid with complimentary tickets.
However, there is no reason that they could not be paid
by the commission with money collected from the promoters.

Perhaps I missed it but there should be a clause in the bill that requires some form of insurance. The wording could go something like this:

THE PROMOTER OR PROMOTERS OF ANY PROFESSIONAL BOXING CONTEST OR CONTESTS SHALL INSURE EACH CONTESTANT PARTICIPATING IN SUCH BOXING CONTEST FOR NOT LESS THAN \$1,000.00 FOR MEDICAL AND HOSPITAL EXPENSES TO BE PAID TO THE CONTESTANT TO COVER INJURIES SUSTAINED IN SUCH CONTEST, AND FOR NOT LESS THAN \$5,000.00 TO BE PAID IN ACCORDANCE WITH THE STATUTES OF DESCENT AND DISTRIBUTION OF PERSONAL PROPERTY IN SUCH CASE MADE AND PROVIDED TO PERSONS THEREUNDER ENTITLED, IN THE EVENT THE CONTESTANT SHOULD DIE AS A RESULT OF INJURIES RECEIVED IN A BOXING CONTEST.

We had a case in Alaska in 1974 where a female boxer was hospitalized and later died in Illinois. Since no insurance was in force at the time of the injury, the hospital ended up writing off her medical bill.

There are undoubtedly other changes in the legislation that I would like to see, however, in the interest of getting this to you, I will sign off right here. I will send a copy of this to Sen Josephson.

Original sponsor: Josephson

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 166 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the creation of the Alaska Ath-
7 letic Commission and the regulation of professional
8 boxing and wrestling."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. AS 05.05 is amended by adding new sections to read:

11 Sec. 05.05.050. CREATION OF ATHLETIC COMMISSION. (a) There is
12 created in the Office of the Governor ^{DEPT. OF COMMERCE} the Athletic Commission.

13 (b) Members of the commission serve at the pleasure of the
14 governor and shall be selected on the basis of their knowledge of and
15 contribution to athletics in the state.

16 Sec. 05.05.060. COMPOSITION AND TERMS OF MEMBERSHIP. (a) The
17 ⁵⁺ commission consists of seven members appointed by the governor for
18 staggered three year terms as follows:

19 (1) a licensed physician, preferably a specialist in sports
20 medicine;

21 (2) ~~six members-at-large, including one from each judicial~~
22 ~~district~~

23 (b) The ~~six~~ ⁵ members-at-large ^{may} ~~shall~~ include representatives of
24 professional boxing managers and amateur boxing interests.

25 (c) A vacancy shall be filled for the balance of the unexpired
26 term.

27 Sec. 05.05.070. GENERAL DUTIES AND ANNUAL REPORT. (a) The
28 commission shall study the ~~amateur~~ and professional athletic programs
29 of the state and shall report annually to the governor. The report

wrestling coming

1 shall include the recommendations of the commission for the advance-
2 ment and improvement of athletic programs and activities in the state,
3 in addition to including the commission's findings. ...

4 (b) The commission shall recommend to the legislature statutory
5 changes that the commission considers desirable or necessary to pro-
6 mote and maintain a high standard of sportsmanship in the state.

7 Sec. 05.05.080. POWER OF COMMISSION. (a) The commission shall
8 supervise ^P all contests conducted in the state.

9 (b) The commission shall adopt regulations for the safe, organ-
10 ized, sportsmanlike and honest conduct of contests, including regula-
11 tions relating to

12 (1) licensing of persons under the telecast and personal
13 license provisions of this chapter;

14 (2) establishing the fees to be charged for licenses re-
15 quired under this chapter;

16 (3) establishing the minimum fees payable to examining
17 physicians, attending physicians, inspectors, referees, judges, um-
18 pires, scorekeepers, and timekeepers;

19 (4) qualifications and duties of all persons required to be
20 licensed under this chapter;

21 (5) conduct of contests, including their format and dura-
22 tion;

23 (6) approved coaching, managing, training, equipment and
24 facilities for the safety and protection of contestants;

25 (7) any other provision of this chapter.

26 ~~(c) The commission may contract for professional services and~~
27 ~~shall employ an executive director. It may employ a staff.~~ A member
28 of the commission may not serve as the executive director or on the
29 staff.

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(d) The commission may subpoena witnesses administer oaths, take testimony and require the production or examination of any records concerning matters before the commission or under its investigation.

10 TAKE THE APPROPRIATE ACTION IN ACCORDANCE W/PPA

Sec. 05.05.090. ATTENDANCE AT CONTESTS. (a) ~~Except as provided in (c) of this section, the executive director, or in the director's absence a commissioner or inspector, shall attend and supervise all contests.~~

(b) ~~The executive director or a commissioner appointed by the executive director shall provide for the attending or examining physician, inspectors, scorekeepers and timekeepers at all contests in the state. If not provided by the promoters, the executive director or the appointed commissioner shall also provide referees, judges and umpires.~~ ^{The Designated Representative}

(c) A contest may not be held without the attendance and supervision of the executive director, a commissioner or ^{designated Representative} an inspector. In the event that the executive director is unable to attend and supervise a contest, arrangement shall be made with a local commissioner to attend the contest. In the event that a local commissioner is unable to attend and supervise a contest in that commissioner's area, that commissioner shall appoint an inspector licensed under this chapter to attend and supervise the contest. If no local inspector is available, a commissioner from the area in which the contest is to be held may appoint a commissioner or inspector from another area to attend and supervise the contest as a substitute.

(d) When a commissioner or inspector from one region of the state attends a contest in another area as a substitute under (c) of this section, the substitute is entitled to receive per diem and reasonable travel expense compensation authorized by law.

1 Sec. 05.05.100. COMMISSIONERS' BONDS. Before entering the
2 duties of office, a commissioner shall enter into a surety bond,
3 executed by a surety company authorized to do business in the state,
4 payable to the state, and approved by the attorney general. The bond
5 shall be in the penal sum of \$2,000, conditioned on the faithful and
6 unbiased performance of the commissioner's duties. The bond shall be
7 filed with the governor. A commissioner shall be reimbursed for the
8 cost of the bond.

9 Sec. 05.05.110. MEETINGS AND COMPENSATION. (a) The commission
10 shall meet at least once a year at the ~~call of the governor~~ or the
11 chairperson, at the request of a majority of the commissioners, or at
12 a regularly scheduled time determined by the commission. Commis-
13 sioners serve without compensation but are entitled to per diem and
14 travel expenses authorized by law for boards and commissions under
15 39.20.180.

16 (b) The commissioners shall elect a chairperson and a vice-
17 chairperson from among their membership. The affirmative vote of a
18 majority of the commissioners is required to exercise the powers of
19 the commission.

20 (c) Meetings may be held by teleconference or other electronic
21 means. Commissioners participating in a meeting from a location out
22 of state may not vote at that meeting.

23 (d) The commission shall keep full and accurate minutes of its
24 proceedings and records of its transactions. ~~A copy of each financial~~
25 ~~report, the minutes of all meetings, and a copy of each report filed~~
26 with the commission under this chapter shall be sent to the governor's
27 office within 10 days after the record or report is completed or
28 received.

29 Sec. 05.05.120. LICENSES REQUIRED. (a) A person may not act as

1 a promoter, contestant, manager, ~~examining or attending~~ ^{Attending physician} physician,
2 ~~second, sparring partner,~~ trainer, ~~booking agent,~~ referee, judge, or
3 ~~umpire~~ in or for a contest unless that person has been issued the
4 appropriate personal license by the commission.

5 (b) A person may not telecast a contest unless that person has
6 been issued a telecast license by the commission.

7 (c) Application procedures, ^{and} qualifications, ~~and fees~~ for the
8 licenses required under this section shall be set out in regulations
9 adopted by the commission.

10 (d) Licenses are annual and shall expire on December 31 of each
11 year.

12 Sec. 05.05.130. CONTEST LICENSEE BOND. Every promoter shall
13 file a bond in the amount of \$1,000 with the commission for each
14 contest held in a city of less than 10,000 inhabitants and a bond in
15 the amount of ~~\$3,000~~ ^{\$10,000} for each contest held in a city of more than
16 10,000 inhabitants. The bond shall be conditioned on the faithful and
17 unbiased performance by the promoter of the provisions of this chap-
18 ter, the payment of the taxes under this chapter and the compliance
19 with all regulations of the commission. The bond shall be subject to
20 the approval of the attorney general.

21 Sec. 05.05.140. CONTESTANT RESTRICTIONS. (a) A person may not
22 participate as a contestant who

23 (1) was intoxicated or under the influence of a controlled
24 substance at the time the person agreed to participate;

25 (2) did not agree in writing to participate; at least 72
26 hours before a contest;

27 (3) except as provided in (b) of this section, has used
28 alcohol or a controlled substance within eight hours preceding the
29 contest or is under the influence of alcohol or a controlled substance

1 at the time of the contest; and

2 (4) is not at least 18 years of age,

OR HAS RECEIVED A WAIVER.

3 (b) A contestant may participate in a contest if

4 (1) the attending physician is aware that the contestant is
5 using a prescription drug; and

6 (2) in the opinion of the attending physician, the safety of
7 the contestant is not jeopardized and the prescription drug offers the
8 contestant no advantage over the opponent in the contest.

9 Sec. 05.05.150. EXAMINATION OF CONTESTANTS. (a) Every con-
10 testant shall be examined at least 24 hours, but no less than eight
11 hours, before the contest by a practicing physician. The examining
12 physician may disqualify a contestant considered physically unfit to
13 participate.

14 (b) A contestant shall obtain a CAT scan of the head every ¹⁵⁰~~75~~
15 contest rounds or less and supply the most recent CAT scan to the
16 ~~examining physician for review during the pre-contest examination.~~ If
17 the contestant has been knocked out since the contestant's last CAT
18 scan, a CAT scan taken after the last knockout shall be supplied to
19 the examining physician for review.

20 Sec. 05.05.160. ATTENDING PHYSICIAN REQUIRED. An attending
21 physician currently licensed to practice medicine and surgery in the
22 state must be on duty throughout a contest. The attending physician
23 has the authority and duty to stop a contest when it is the physi-
24 cian's opinion that it would be ^{dangerous}~~life-threatening~~ to a contestant to
25 continue.

26 ? Sec. 05.05.170. ~~SMOKING PROHIBITED.~~ Notwithstanding the provi-
27 sions of AS 18.35.310, ~~smoking~~ is not permitted at a contest held
28 under the provisions of this chapter.

29 Sec. 05.05.180. NOTICE OF CANCELLATION. (a) When it has been

1 determined by means other than a physician's examination that a sched-
2 uled contestant will be unable to appear, the scheduled contestant's
3 manager and the promoter of the contest shall notify the ~~executive~~
4 ~~director~~, or the commissioner or inspector supervising the contest, of
5 the cancellation of the contest. When the cancellation is the result
6 of an examining physician's examination, the examining physician shall
7 notify the commissioner supervising the contest, *IN WRITING AND*
8 *STATING THE MEDICAL REASON AND DURATION OF THE CANCELLATION*

9 (b) Upon receipt of notice of the cancellation of a contest for
10 any reason, the executive director, or the commissioner or inspector
11 supervising the contest, shall report the cancellation promptly to the
12 chairperson of the commission and immediately to the public. If the
13 commission, rather than the executive director or the commissioner or
14 the inspector supervising the contest, is notified of a cancellation,
15 the commission shall notify the public immediately.

16 Sec. 05.05.190. PAYMENT OF FEES. (a) At least 10 days before a
17 contest, the promoter shall pay to the commission an amount sufficient
18 to pay the fees of the referee, the inspector and the examining physi-
19 cian.

20 (b) The commission shall pay the fees in (a) of this section to
21 the persons entitled to them and furnish the governor with a record of
22 the receipt of the amount paid under (a) of this section and of the
23 payment of the fees.

24 (c) Failure of a promoter to pay the amount in (a) of this
25 section is grounds for the suspension of the promoter's license.

26 Sec. 05.05.200. STATEMENT AND REPORT OF CONTEST. (a) A pro-
27 moter shall, at least 10 days before a contest, file with the commis-
28 sion a statement setting forth the name of each contestant, the manag-
29 ers' names and other information the commission may require.

(b) Within 72 hours after a contest, the promoter shall file

1 with the Department of Revenue and the commission a written report
2 showing the number of tickets sold for the contest, the price charged
3 for them, the gross proceeds from the sale, and other information the
4 commission may require.

5 (c) Failure to file the statement or report required under this
6 section is grounds for suspension of the promoter's license.

7 Sec. 05.05.210. REPORT OF TELECAST. (a) A telecast licensee
8 shall, within 72 hours after the telecast, file with the commission a
9 written report showing the number of tickets issued or sold and the
10 amount of the gross receipts.

11 (b) Failure to file the report required by this section is
12 grounds for suspension of a telecast license.

13 Sec. 05.05.220. FAILURE TO PAY GROSS RECEIPTS TAX. (a) In
14 addition to any other penalty provided by law, a licensee who fails to
15 pay the gross receipts taxes under AS 43.77 shall be penalized by the
16 commission as follows:

17 (1) for a first offense, a license shall be suspended for a
18 minimum of three months, beginning from the date of the suspension
19 order;

20 (2) for a second offense, a license shall be revoked perma-
21 nently.

22 (b) The commission shall institute action to enforce (a) of this
23 section within 10 days of receipt of notice of a possible violation.

24 Sec. 05.05.230. PARTICIPATION IN PURSE. (a) A person who acts
25 as a promoter for a contest may not participate directly or indirectly
26 in the purse or fee of a contestant or a contestant's manager.

27 (b) A person who violates (a) of this section forfeits any
28 license held under this chapter.

29 (c) An unlicensed person who violates (a) of this section is

1 guilty of a class B misdemeanor.

2 Sec. 05.05.240. ACTING WITHOUT A LICENSE. A person who violates
3 AS 05.05.120(a) or (b) is guilty of a class B misdemeanor.

4 Sec. 05.05.250. ENJOINING UNLICENSED CONTEST. The attorney
5 general, the commission, a commissioner, the executive director or a
6 concerned person may seek an injunction to prevent the conduct of a
7 contest for which the necessary license has not been obtained.

8 Sec. 05.05.260. SHAM CONTEST. (a) A person may not conduct or
9 participate in a sham or false contest.

10 (b) A licensee who violates (a) of this section shall be penal-
11 ized by the commission as follows:

12 (1) for a first offense, a license shall be suspended for a
13 minimum of three months, beginning from the date of the suspension
14 order;

15 (2) for a second offense, a license shall be revoked perma-
16 nently.

17 (c) An unlicensed person who violates (a) of this section is
18 guilty of a class B misdemeanor.

19 (d) The commission shall institute action to enforce (a) of this
20 section within 10 days of receipt of notice of a possible violation.

21 Sec. 05.05.270. EFFECT OF LICENSE SUSPENSION. (a) A licensee
22 may not promote or participate in a contest when the licensee's li-
23 cense is suspended.

24 (b) A licensee who violates (a) of this section forfeits the
25 license.

26 Sec. 05.05.280. EFFECT OF LICENSE FORFEITURE. A license for-
27 feited under this chapter is cancelled and void. The licensee is
28 forever ineligible for any of the licenses issued by the commission.

29 Sec. 05.05.290. GENERAL PENALTY. A person violating a provision

1 of this chapter or a regulation of the commission for which no penalty
2 is provided is guilty of a class B misdemeanor.

3 Sec. 05.05.300. INAPPLICABILITY OF CHAPTER. Nothing in this
4 chapter gives the commission jurisdiction over the athletic programs
5 of any school, college or university or any other nonprofessional
6 athletic events.

7 Sec. 05.05.310. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE
8 ACT. The Administrative Procedure Act (AS 44.62) applies to regula-
9 tions and proceedings under this chapter.

10 Sec. 05.05.900. DEFINITIONS. In this title

11 (1) "CAT scan" means a rotating three dimensional computer-
12 enhanced X-ray image;

13 (2) "commission" means the athletic commission created in
14 AS 05.05.050;

15 (3) "commissioner" means a member of the athletic commis-
16 sion;

17 (4) "contest" includes a professional boxing or wrestling
18 exhibition, sparring match or contest or fight, match, bout or fight;

19 (5) "contestant" means a person who competes in a profes-
20 sional contest;

21 (6) "executive director" means the executive director of
22 the Athletic Commission created in AS 05.05.050;

23 (7) "^{designated Representative}inspector" means a person knowledgeable about boxing
24 or wrestling and qualified under the regulations adopted by the com-
25 mission for inspectors;

26 (8) "personal license" means the license issued to a pro-
27 moter, contestant, manager, examining physician, attending physician,
28 referee, judge, umpire, booking agent, inspector, sparring partner,
29 second, or trainer;

1 (9) "professional" means a person receiving money or other
2 thing of value other than a trophy, plaque, or medal for participation
3 in a contest, and also means the contest itself;

4 (10) "promoter" means the person primarily responsible for
5 the sponsorship, organization or furtherance of a contest;

6 (11) "telecast" means the television broadcast of a live or
7 current contest on a closed circuit, whether originating in this state
8 or not, for admission fees;

9 (12) "telecast license" means the license issued under this
10 chapter for a telecast.

11 * Sec. 2. AS 43 is amended by adding a new chapter to read:

12 CHAPTER 77. SPORTS TAX.

13 Sec. 43.77.010. CONTEST AND TELECAST GROSS RECEIPTS TAX. (a) A
14 tax of five percent is imposed upon the gross receipts from a com-
15 bative sports contest and from the telecast of a contest.

16 (b) The minimum tax obligation under (a) of this section is
17 \$25.00 for each contest or telecast.

18 Sec. 43.77.020. DEPARTMENT OF REVENUE AUTHORITY. The Department
19 of Revenue shall:

20 (1) collect the tax in this chapter;

21 (2) adopt regulations necessary to carry out the purposes
22 of this chapter.

23 Sec. 43.77.030. PAYMENT OF TAX. (a) Within 72 hours after a
24 combative sports contest or telecast, the licensee under AS 05.05.120
25 or the person conducting the contest or telecast shall

26 (1) file with the Department of Revenue the written report
27 required by AS 05.05.200 or AS 05.05.210 showing the number of tickets
28 sold for the contest or telecast, as appropriate, the price charged,
29 the gross proceeds from the sale, and other information the Department

1 of Revenue may require;

2 (2) pay to the Department of Revenue the tax under AS 43.-
3 77.010.

4 Sec. 43.77.040. FAILURE TO MAKE REPORT AND TAX PAYMENT. (a)
5 The commissioner of revenue shall examine the books and records of the
6 promoter or the telecast licensee when

7 (1) a promoter or a telecast licensee fails to make a
8 report under AS 43.77.030;

9 (2) the report is unsatisfactory to the commission or to
10 the Department of Revenue; or

11 (3) a promoter or a telecast licensee fails to pay the full
12 amount of the taxes due with the report.

13 (b) The commissioner of revenue may subpoena and examine under
14 oath a licensee and any other person considered necessary to determine
15 the total gross receipts of a contest or telecast and the amount of
16 tax due.

17 (c) If, upon the completion of the examination, it is determined
18 that some or all of the tax owed to the state is unpaid, notice shall
19 be served upon the promoter or the telecast licensee stating the
20 amount of the tax owed. The taxes shall be paid within 20 days of
21 receipt of the notice.

22 Sec. 43.77.050. PENALTY. A person who violates AS 43.77.030 or
23 AS 43.77.040 is guilty of a class B misdemeanor.

24 Sec. 43.77.060. DEFINITIONS. For purposes of this chapter, the
25 terms "commission", "contest", "promoter", "telecast", and "telecast
26 licensee" have the meanings set out in AS 05.05.900.

27 * Sec. 3. AS 44.62.330(a) is amended by adding a new paragraph to read:

28 (52) Alaska Athletic Commission.

29 * Sec. 4. AS 44.66.010(a) is amended by adding a new paragraph to read:

1 (12) Alaska Athletic Commission (AS 05.10) -- June 30, 1986.

2 * Sec. 5. AS 05.05.010 - 05.05.040 and AS 05.10 are repealed.

3 * Sec. 6. INITIAL TERMS OF ALASKA ATHLETIC COMMISSION MEMBERS. Initial
4 terms of the Alaska Athletic Commission shall be one year for two members,
5 two years for two members, and three years for three members. The governor
6 shall specify the initial term for each appointee.

7 * Sec. 7. FIRST MEETING. The governor shall call the first meeting of
8 the Alaska Athletic Commission within 15 days after appointment of the
9 members.

10 * Sec. 8. REGULATIONS. Comprehensive regulations shall be adopted by
11 the commission under AS 05.05.080 within one year after the enactment of
12 this Act.

shall be maintained

Alaska State Legislature

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HOUSE MAJORITY WHIP

CHAIRMAN
STATE AFFAIRS

MEMBER
TRANSPORTATION
LEGISLATIVE COUNCIL

Representative Mitch Abood
HOUSE DISTRICT 11

MEMORANDUM

TO: Rep. Joe Hayes, Speaker
House of Representatives

FROM: Rep. Mitch Abood, Chairman *mr/rlp*
House Committee on State Affairs

DATE: April 13, 1983

SUBJECT: Athletic Commission

In response to your request to me as Chairman of the House Committee on State Affairs concerning the Athletic Commission, would you please find attached a memo dated July 30, 1980 from then Governor Jay Hammond to Commissioner Webber of the Department of Commerce and Economic Development.

I specifically direct your attention to paragraphs 2,3, and 4. After exhaustive investigation, my findings do indeed show there has never been an Executive Order generated by the Governor's Office to change the Athletic Commission from the Governor's Office to the administration of the Department of Commerce and Economic Development; nor have there been any official transfers made by the 12th Legislature.

In addition, no statutory revisions have been prepared on this by the past or current Legislatures.

Finally, it would appear that the transferring of the Athletic Commission from the Governor's Office to the Department of Commerce and Economic Development without legislative approval is an illegal act.

cc: Representative Terry Martin
Joe Montgomery

Enclosure
M'/rlp

Based on follow-up information we obtained from Katie Wallen, this is not ~~true~~, true. They did try to pass a bill, as you know.

MEMORANDUM

State of Alaska

TO: Charles R. Webber
Commissioner
Department of Commerce and
Economic Development

DATE: July 30, 1980

FILE NO:

TELEPHONE NO:

FROM: Jay S. Hammond
Governor

SUBJECT: Athletic Commission

Alaska Statutes 05.05.010 - .040 created the Athletic Commission within the Office of the Governor. The statute assigns the Commission the authority to promulgate rules and regulations governing athletic programs and contests in Alaska. Further, AS 05.10.010 - 014 provides for licensing by the Athletic Commission of participants in boxing contests, sparring or wrestling matches and for licensing of groups or individuals to conduct boxing contests, sparring or wrestling matches. These statutory provisions originated at Statehood and have remained intact since that time.

The Athletic Commission has not been funded since FY 77. The Commission has never promulgated rules or regulations governing athletic programs or contests. There are no records of previous licenses issued by the Commission. Portions of the statutes are outdated and in need of revision.

The members of the Athletic Commission are anxious to comply with their statutory responsibilities and are interested in evaluating their program to define their role in Alaskan athletics. Temporary licensing forms and procedures have been developed by my staff with the assistance of the Department of Law. These forms should be sufficient for the Commission to use over the next few months.

Adequate staff is necessary to assist the Commission in recommending revisions to the statutes, promulgating regulations, and performing their licensing responsibilities. The Division of Occupational Licensing is the most appropriate location for the Athletic Commission. Although official transfer cannot be made without legislative approval, I am requesting that Occupational Licensing assume the staff responsibility to assist the Commission in evaluating and revising their program and in performing their licensing and regulatory responsibilities. Official transfer will be made during the first session of the Twelfth State Legislature by Executive Order or, if statute revisions are prepared, by legislation.

Appointments to fill the two vacancies on the Commission will be made as soon as possible.

AUG 5 1980

STATE OF ALASKA
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT

Charles R. Webber
Commissioner

-2-

July 30, 1980

Should you find that additional funds are necessary for the Athletic Commission for travel, per diem, or other expenses, contingency funds may be available for the remainder of FY 81. Occupational Licensing should include the Athletic Commission in preparation of their FY 82 budget request.

Thank you for your assistance and cooperation.

cc: Vicki Clayman, Special Assistant
Boards and Commissions
Office of the Governor

Keith Specking, Legislative Assistant
Office of the Governor

Rod Maurant, Director of Administrative Services
Office of the Governor

Harry Traeger, Director
Division of Occupational Licensing
Division of Commerce and Economic Development

Too Many Punches, Too Little Concern

With boxing's ills under fresh public scrutiny, new research on brain damage in experienced fighters suggests a road to medical reform
by **Robert H. Boyle and Wilmer Ames**

... See, all the brains are in a sort of cup, and after you get hit a few times it shakes them out of that cup. When they give you smelling salts it pulls them back into the cup. It's when the brains get shook up and run together that you get punch-drunk.

—SONNY LISTON

... I don't want to be one of them old [retired] fighters with a flat nose saying 'duh-duh-duh' before a fight.

—MUHAMMAD ALI, announcing his withdrawal from boxing on Dec. 12, '81

If a boxer ever went as batty as Nijinsky, all the howlers in the world would be screaming "punch-drunk." Well, who hit Nijinsky? And why isn't there a campaign against ballet?

—A.J. LIEBLING, "The Sweet Science"

The death of Korean boxer Duk Koo Kim last fall aroused yet another cry for the reform or abolition of prizefighting in the U.S. Half a dozen times over the past 50 years a fatality has prompted a like reaction—in editorials or in Congressional hearings—but the result has been nil. Certainly reform is needed, but no amount of it will eliminate death in the ring. As long as there's boxing, there will be fatalities. Boxers die from acute brain trauma, caused either by a blow (or blows) to the head or, sometimes, a heavy fall to the canvas. The brain is like so much jelly suspended in a bucket, and when you strike the bucket sharply, the

brain inside accelerates, twists and bumps around. In a knockout, which is technically a concussion, the force of a punch, transmitted to the brainstem, causes the fighter to lose consciousness. A KO is considered an acute injury, but it's relatively mild compared to what happens if the jarred brain ruptures the blood vessels that surround it. Then a hematoma (a massive buildup of blood) occurs in the narrow space between the rigid skull and the soft brain. As it expands, the hematoma simply squeezes the brain to death. There has been no dispute about that for 50 years.

But no one can predict when a punch will cause a knockout or a killing hematoma.

continued

Mark Pucheco gets a brain scan. Below, he gets belted in a flyweight bout in Las Vegas in '81.



Boxing *continues*

weight named Mark Pacheco were brought together by SI for neurological examinations at Quarry's rural training camp north of Los Angeles. Quarry, 37, retired in 1977 after 63 professional fights. Beaten by Ali in 1970 and '72, he was the last white heavyweight to make a serious championship bid until Gerry Cooney challenged Larry Holmes last year. But Quarry wants to come out of retirement; he has reportedly agreed to fight again in June. Cobb, 28, has a record of 20-3. Last year he earned a measure of fame when, courageous but incompetent, he lost to Holmes in a WBC title bout. He took such a bad drubbing that a dismayed Howard Cosell, who announced the fight for ABC-TV, declared he'd never broadcast a professional boxing match again. Pacheco, 23, isn't a celebrated fighter. With a record of 11-11-1, he's one of those unsung battlers who hit and get hit on undercards in cities like Portland, Ore. and Sacramento. But Pacheco has become a minor notable because of two defeats. He was TKO'd in Portland in May 1982 and denied a license, on medical grounds, to fight in Oregon again for 45 days. But he had a bout 43 days later in New York, and he was again TKO'd. In the current round of Congressional hearings on boxing, which began after Kim's death and the *JAMA* editorials and reports, the Pacheco case has been cited as evidence of the sport's inadequate medical supervision.

All three men signed releases waiving their rights to medical privacy, and Quarry and Cobb were confident that nothing would be found amiss. The three were

examined by Dr. Ira Casson of New York, a board-certified neurologist at Long Island Jewish Medical Center who was acting as a consultant to SPORTS ILLUSTRATED. Admittedly, this trio doesn't constitute a scientific sample. But recent research published by Casson and others indicates that the degree of a boxer's brain impairment can, as a rule, be related to the number of bouts he has fought. This indeed proved to be the case with two of our subjects, as will be shown. But none of the three are at this point in their lives punch-drunk.

In May 1928, Dr. Harrison Martland, a New Jersey pathologist, delivered a landmark paper at the New York Academy of Medicine. Using punch-drunk as a formal term for the first time, Martland said that its early signs were well recognized by the fans and promoters. They also referred to these boxers, he said, as "goofy," "cuckoo," "slug nutty" and "cutting paper dolls."

"Punch drunk most often affects boxers of the slugging type, who are usually poor boxers and who take considerable head punishment, seeking only to land a knockout blow," Martland reported. "It is also common in second-rate fighters used for training purposes, who may be knocked down several times a day." Early symptoms, he said, usually appeared in the extremities, for example, as a slight



Losses like this, to Frazier in '74, may affect Quarry later.

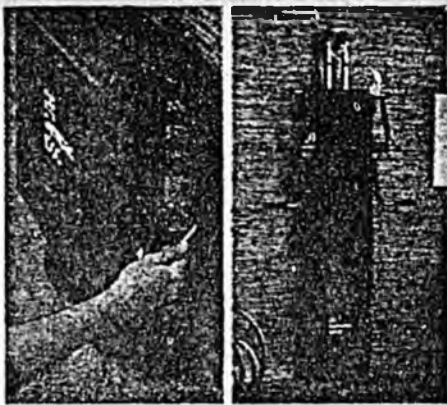
unsteadiness in gait, and in some cases periods of slight mental confusion occurred. In more advanced cases, there was a general slowing down in muscular movement, "a peculiar mental attitude characterized by hesitancy in speech, tremors of the hands and nodding movements of the head." In severe cases, symptoms included a peculiar tilting of the head, a staggering gait, "the facial characteristics of the Parkinson's syndrome," backward swaying of the body, tremors and "marked mental deterioration" that sometimes required commitment to an asylum. Martland estimated that almost 50% of veteran professional boxers had the condition in either severe or mild forms.

Martland said, "I am of the opinion that in punch drunk there is a very definite brain injury due to a single or repeated blows on the head or jaw which cause multiple concussion hemorrhages in the deeper portions of the cerebrum." About this pathology he was wrong, because he had no scientific data and could only speculate on the basis of his study of people who had died from random head injuries. He admitted that his theory couldn't then be proved, yet he felt compelled to report it because "the condition

continued



Dr. Casson used a rubber hammer to show that Quarry's reflexes—and his chin—are still sound.

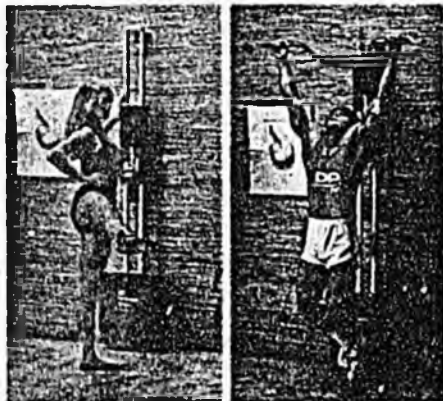


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Boxing *continued*

can no longer be ignored by the medical profession or the public." Accordingly, he called it "the duty of our profession to establish the existence or nonexistence of punch drunk by preparing accurate statistical data as to its incidence, careful neurologic examinations of fighters thought to be punch drunk and careful histologic examinations of brains of those who have died with symptoms."

Martland ended his paper by quoting Gene Tunney on his retirement after his second heavyweight championship fight with Jack Dempsey the year before. While training for the fight, Tunney had been hit hard by a sparring partner and suffered amnesia. Tunney said later that he didn't know who he was for 48 hours and that it was not until the seventh round of the Dempsey fight that he felt entirely normal. Martland quoted Tunney as concluding, "From that incident was born my desire to quit the ring forever, the first opportunity that presented itself. . . . But most of all I wanted to leave the game that had threatened my sanity before I met with an accident in a real fight with six-ounce gloves that would permanently injure my brain."

Though it made further study of the punch-drunken condition respectable among medical researchers, Martland's technical paper did little to alter the perception of the condition in the public mind, the sport or the press. Most promoters, writers and ringside physicians continued to discount it. Yes, they agreed, there was such a thing as a boxer becoming punchy, and it probably happened to more than a few, but it could not be accurately diagnosed and therefore was not a matter of serious concern.

Besides, it was not unusual for boxers, especially aging former fighters, to drink too much, to take pills, to eat poorly and generally not to take care of themselves. Some were said to have contracted syphilis, which in advanced cases can attack the brain. In any case, most people in the fight business attributed punch-drunken symptoms solely to causes unrelated to boxing. To do otherwise was to launch an attack on the sweet science. As for the boxers themselves, the ones who seemed punch-drunken denied it; the others didn't care to talk about it. One fighter, Slapsie Maxie Rosenbloom, had it both ways: He made a career in show business spoofing the punch-drunken myth (*box, page 56*).

For 50 years after Martland, the best medical research on the punch-drunken syndrome was done in England, which has a rich prizefighting tradition. In the heyday of the sport early in this century, novice boxers and fading pros used to fight in booths at fairs, taking on all comers in unsupervised bouts and receiving all kinds of punishment for little money. There were a great many organized fights as well. Thirty-year careers in the ring were not uncommon.

In 1957 an eminent neurologist named MacDonald Critchley reported in the *British Medical Journal* that he had examined 69 cases of chronic neurological disease in boxers and that "many of these—perhaps the great majority—should be looked upon as examples of punch-drunkenness, either early or well established." Like Martland, he found the symptoms more common among professionals than amateurs, in sluggers than in more stylish boxers and "in the second-rate or third-rate performers than in the intelligent scientific exponent with a championship title." He also concluded that "the sum total of contests is important, as well as the number of occasions upon which the boxers have been rendered unconscious."

Focusing on 21 patients, Critchley found that on the average punch-drunkenness developed 16 years after a boxer began his career. "Of great interest, pathological as well as practical, is the fact that this traumatic encephalopathy is a progressive condition," he wrote. "Once established, it not only does not permit reversibility, but it ordinarily advances steadily. This is the case even though the boxer has retired from the ring and repeated cranial traumas are at an end." Critchley went on to note that a victim usually showed little insight into his deteriorating condition even though his speech and thought became progressively slower and his memory lapsed. "There may be mood-swings, intense irritability, and sometimes truculence leading to uninhibited violent behavior. Simple fatuous cheerfulness is, however, the commonest prevailing mood, though sometimes there is depression with a paranoid coloring."

In 1959 an editorial in the British medical journal *The Lancet* concluded, "The medical case against boxing is now so strong that we have a clear duty to fight

continued



and he was the only man to examine Mohr's brain.

In 1962 the professional boxing world was shocked by the death of Benny (Kid) Paret in a welterweight title bout with Emile Griffith. Paret had been knocked out twice in the previous year -- demonstrating, in the view of some observers, a

Cobb would rather forget his shellacking by Holmes last fall, but in this test he showed he could draw geometric shapes from memory.

Boxing *continued*

for its total abolition." But in the U.S. medical opinion was divided, and appeals for the banning of the sport were considered ill-founded and fanatical. A study released by Drs. Harry A. Kaplan and Jefferson Browder in 1954 had taken the steam out of the reform movement. The researchers had given 1,043 boxers electroencephalograms (EEGs), a test that records patterns of electrical activity in the surface aspects of the brain. Kaplan and Browder could find nothing wrong in the EEGs of boxers. Sluggers who were hit often tested no worse than skillful fighters, although those with lower ring ratings tended to have "disorganized" EEGs more frequently. The study noted that derogatory remarks about punch-drunk boxers were prevalent, but that this was only "popular theory." Martland, they said, had no documentary evidence such as theirs. The punch-drunk probably would have suffered the same fate had he never boxed at all. Kaplan said that he had served as a ringside physician for three years and that his slow-motion films showed that most blows in the ring missed their mark. Not surprisingly, defenders of boxing still cite this study, though subsequent research has proved that the EEG doesn't reliably measure the type of brain damage that would result in punch-drunkenness.

The consensus of American medical opinion in the late '50s, at the time of *The Lancet* editorial, could be summed up in the words of Dr. Ira McCown, medical director of the New York Athletic Commission, who wrote in a research paper in 1959 that the notion of punch-drunk was a "medical cliché with which to label any



boxer whose performance and behavior in or out of the ring is unsatisfactory or abnormal."

A series of conspicuous fight deaths in the early '60s brought renewed medical attention to boxing. In the spring of 1960 Charlie Mohr, a middleweight from the University of Wisconsin, died of a hematoma he suffered while defending his NCAA championship in Madison, Wis. Mohr was wearing headgear. An overhand right to his padded left temple literally propelled his brain against the other side of his skull, where the fatal damage occurred. His death led to the banning of boxing as an intercollegiate sport, but the controversy over the circumstances continues. The editor of *Ring* magazine claimed earlier this year that Mohr had gone into the ring with an aneurysm, a cerebral blood vessel waiting to burst. But this charge is hotly disputed by the neurosurgeon who operated on Mohr,

serious inability to defend himself. That wasn't a big consideration; Paret was known for being able to absorb punishment. Significantly, he had taken a pre-fight EEG and had been found normal.

Davey Moore, a former flyweight champ, was killed in a Los Angeles bout in 1963. Moore, too, had taken and passed an EEG, but he apparently lied to the California authorities about other health problems. It was clear that the medical supervision of boxing was superficial and, thanks to disparate standards among state commissions, gravely inconsistent. Some boxers were fighting in different states under different names; commissions had little knowledge of medical histories. But the very lack of data and the paucity of long-term research dissuaded most doctors from pressing for reform. Boxing, after all, was a popular and powerful industry.

A 1962 *JAMA* report asked for up-

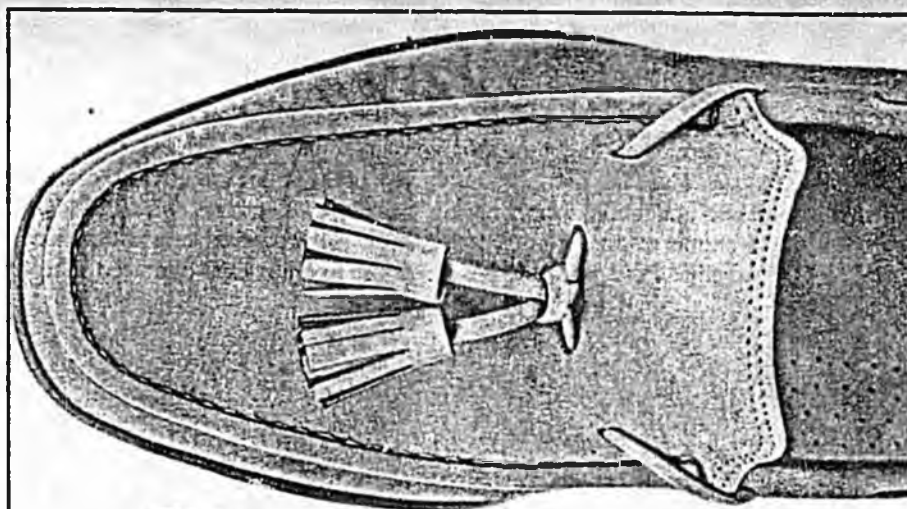
graded safety standards and more thorough medical exams in boxing. It also called for experimentation with "less padding in the gloves so that the threat of damage to the hands will inhibit the power of blows." At the time, eight-ounce gloves were in general use, as they are today. Compared with the six-ounce gloves used early in this century, they reduced hand injuries and facial cuts, but they allowed boxers to punch each other harder in the head.

Meanwhile, in Britain, research on the punch-drunk syndrome continued. A book-length study completed by Dr. A.H. Roberts in 1969 established the condition as a statistical reality. Roberts examined 224 men randomly selected from among 16,781 who had registered as pro fighters. All were retired. Seventeen percent had hard evidence of brain damage, in the form of drooling, slurring, unsteady gait and/or memory loss. An unspecified number of others showed "disturbed neurological function." Roberts' statistics also indicated that the longer a boxer's career had been, the more likely he was to have conspicuous punch-drunk symptoms.

In the same year a psychiatrist named John Johnson reported on the psychological problem of former fighters in the *British Journal of Psychiatry*. Johnson found that 16 of the 17 subjects he examined were suffering from one or more of the following clinical conditions: chronic amnesia, morbid jealousy, undue rage reactions or outright psychosis. Using air encephalography, a technique that produces an X ray after air is injected into the brain, Johnson also found a pattern of cerebral atrophy in 10 of the 17. It had long been known that brain tissue doesn't regenerate, that damaged brain cells are lost forever. More than half the men in the sample, in other words, were missing brain tissue. Johnson was interested in the charge that punch-drunk fighters had drinking problems. Alcoholism, like senility, can cause loss of brain cells and evoke psychological disturbances similar to the ones he studied, but Johnson maintained that the patterns of damage in his air encephalograms of boxers were never seen in alcoholics.

In 1973 came the most important study to date, when the brains of punch-drunk fighters were examined in physical detail. Dr. J.A.N. Corsellis, a neuropathologist, and his colleagues in England

continued




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performed autopsies on the brains of 15 former fighters who had died of natural causes. Friends and family members had provided accounts of the boxers' conditions in later life, from which Corsellis had determined that they had been punch-drunk. The autopsies revealed a striking pattern of cerebral atrophy in 14 of the 15. Though the researchers said that medical controls in boxing had probably improved since their fighters were active, they warned: "... there is still the danger that, at an unpredictable moment and for an unknown reason, one or more blows will leave their mark. The destruction of cerebral tissue will have then begun and although this will usually be slight enough in the early stage to be undetectable, it may build up, if the boxing continues, until it becomes clinically evident. At this point, however, it could already be too late. . . ."

The abnormalities and atrophy Cor-

sellis found were located deep in the middle of the brain, around the septum pellucidum (*illustrations, pages 62-63*), and also in the cerebellum, the outer section close to the back of the head. The cerebellar structures regulate muscular coordination and balance. A person with damage here may slur his speech or may appear to stagger—"walk on his heels," in ring parlance. The deep midline regions help regulate short-term memory. Forgetfulness may occur if a person has lost tissue here. The conspicuous hallmarks of this damage are abnormally enlarged ventricles, the ventricles being the brain vessels filled with spinal fluid. They expand to fill the space left by the tissue atrophying around them. A more critical finding is a cavum septum pellucidum—literally, a cave in the septum. The jarring from cumulative punches may eventually cause the septum to pull apart, leaving a tunnel-like hole two to eight

millimeters wide between the ventricles.

In the 1970s came the introduction of the tool that has revolutionized the medical literature on boxing. This is the CAT scan (computerized axial tomography), a highly advanced form of X ray. With it, abnormalities in the brain can now be observed as they develop and before they result in symptoms. Within the past year three independent studies utilizing CAT scans have come to similar conclusions about chronic brain impairment among boxers.

The first was published in February 1982, in the *British Journal of Neurology, Neurosurgery and Psychiatry*. In this study Casson and other specialists performed detailed neurological examinations, EEGs and CAT scans on nine professional boxers in New York shortly after they'd been knocked out in a bout and on a 10th boxer who had been stopped on a TKO. The 10 boxers, who

continued



Maxie couldn't cuff Olin around in this '34 title fight.

How Punchy Was Slapsie Maxie?

The most frequently cited defense of boxing is that it gives poor kids an opportunity to better themselves, to fight their way out of the ghetto. In the U.S. today that applies primarily to blacks and Hispanics, but in the old days the disadvantaged young fighters tended to be European immigrants' sons—Irish, Italian, Jewish. They were the scrappers reared in the tenements of the turn of the century. Slapsie Maxie Rosenbloom, a light-heavyweight

champion in the early 1930s, was one. Born in New York in 1904, Maxie started boxing at the age of 12, not long after being released from the Hawthorne Reform Home for Jewish Boys. He'd been parked there for 13 months for hitting a teacher and knocking out two of her teeth. Soon thereafter his mother enrolled him in ballet school, but that only made him more pugnacious because the other kids on the street called him a ballerina. Maxie later claimed that it was George Raft, the future Hollywood actor but then just another neighborhood pal, who steered him from ballet to a better use of his skills in the ring.

From the beginning Rosenbloom was an eccentric fighter. He never trained very much. He gambled and ran around, and he would get into shape by "dancing" in the gym. But he became an excellent defensive boxer—hard to hit. His offense consisted of open-handed cuffs, delivered in startling flurries, and crazy-legged footwork. He confused his opponents and wore them down. Rosenbloom had several hundred fights as an amateur, winning the New York State light-heavyweight crown in 1930. Damon Runyon, then a sportswriter, dubbed him Slapsie Maxie soon after he turned pro in 1923. On June 25, 1930, the 25-year-old Rosenbloom won the world light-heavyweight title by outpointing Jimmy Slattery in 15 bloody rounds. By then he'd discovered he could make people laugh with his parody of the punch-drunk boxer, the happy-sad staggering figure that fight fans knew so well. That Maxie, they'd say as they watched

him prance and joke in the gym, what a card.

Rosenbloom's reign as light-heavyweight champ ended in November 1934 when he lost to Bob Olin, but he continued to fight until 1939. He can't be said to have been a great champion. In 289 professional bouts—a stupendous number—he scored only 18 knockouts. He utterly lacked a killer instinct. Once a referee was about to award him a TKO because his opponent had a badly cut ear, but Rosenbloom told the ref no, don't stop it, I just won't hit the guy in the head anymore. He always liked to go the distance.

The Hollywood film crowd fell in love with Maxie. In 1933, while still champion, he appeared in his first feature, and for the next 25 years he was as active as a character actor as he'd been as a fighter. In more than 60 movies he usually played one of two parts—if he wasn't a boxer, he was invariably the comic tough guy, the B-movie gangster, saying "dese," "dem" and "dose" in his heavy New York accent and getting into trouble with his punchy foolishness.

For a while he had his own nightclub in Los Angeles, Slapsie-Maxie's. When he got up on stage, rocking back on his heels, he'd slur his trademark opening line—"I never liked to hit very hard"—and the audience would break up. He had a gift for the added malapropism: "Waitress, I'll have a steak sandwich."

"How would you like it?"

"Well-to-do, please."

He used gag writers, but he could ad-lib, too. Countless columnists, knowing Maxie to be a reliable source of funny material, inter-

continued

Boxing *continued*

came from all weight divisions, were from 20 to 31 years old. CAT scans showed that five of the boxers had cerebral atrophy. "We were surprised by [these] findings [in] active boxers," Casson and colleagues reported. Three fighters who had become champions all showed signs of brain damage. A fourth boxer, who was top-ranked, had a normal scan, but he was the only boxer in the series with an organic mental syndrome—memory loss and confusion. Further analysis revealed that the number of bouts was probably of critical importance. Of the five fighters with 20 or more fights, four had cerebral atrophy; of the five fighters with fewer than 12 fights, only one did. The CAT scan of one fighter, whom Casson characterized as a "slugger," showed a cavum septum pellucidum, and he'd had more fights than any of the others. "Since none of the boxers had been knocked out more than two

times in their careers," the researchers concluded, "a cumulative effect of multiple subconcussive head blows is the most likely culprit."

Last November in *The Lancet*, Dr. M. Kaste and a team of physicians at the University of Helsinki reported on 14 boxers (six professionals and eight amateurs) who had been Finnish, Scandinavian or European champions. Using EEGs and CAT scans, the physicians found brain injury in four of six professionals and in four of eight amateurs.

Finally, in the controversial *JAMA* issue of last January, Dr. Ronald J. Ross, a Cleveland radiologist, and colleagues published a paper that agreed with the key finding of Casson and Kaste: the more bouts, the worse the CAT scan. Their study involved 40 boxers, only two of them still active. Thirty-eight had CAT scans, and 24 had a complete neurological examination. "The number of

bouts fought was significantly related to the presence or absence of ventricular enlargement," wrote the researchers. Moreover, "Patients with abnormal findings on CAT examination did have more frequent neurological symptoms and abnormal neurological findings."

In the same issue with the Ross study was a report by a scientific council formed by the AMA to summarize what was known about brain injuries and deaths in boxing. (Although the report cited the literature on chronic injuries, the council was formed primarily as a reaction to Classen's death. Classen, a middleweight, had been knocked out twice in the eight months before his fatal fight, proving that little had changed in the medical regulation of boxing since Parret's death 17 years before. Kim's death occurred as the council was completing its work.) The council did not recommend a ban on boxing, although two pas-

continued

SLAPSIE MAXIE *continued*

viewed him to find out which sweet thing he wanted to marry next or how much he'd lost at the track.

Maxie was always "on," always in character, whether he was performing or not. A few people began to suspect that it was more than an act. If you didn't know Maxie, you'd have certified him as punch-drunk, because he so looked the part. He had a swollen left ear and a splayed nose. He was jealous of Max Baer, another fighter-actor who did a routine with him, because Baer had bushy eyebrows while Maxie had only adhesions where stitches had been. His slurring and unsteadiness grew more pronounced, though his friends maintained until the end that it was all an exaggeration, as it had been in the beginning.

Though he was out of show business by the late '50s, Maxie was still a minor celebrity at the corner of Hollywood and Vine, not far from the residential hotel where he lived for 25 years, mostly alone. In 1968, while leaving the hotel one night, he was mugged and apparently hit on the head with a pipe. Though he recovered after being hospitalized, within a year he lost his bearings altogether.

In January 1972, with Maxie's relatives nowhere to be seen, a Los Angeles court appointed the executive director of the Motion Picture Fund to be his guardian. Two weeks earlier, the court papers show, "the alleged incompetent," then 67 years old, had been committed to the Braewood Sanitarium in South Pasadena. His friends from show business and sports would come to visit Maxie, at least for

the first few years, until he began failing to recognize them. Even so, he was able to get off one more good line: A friend brought in a former boxer to see Maxie—the two had fought exhibitions in the Pacific during the war. Maxie didn't know who the man was. "Maxie," the fighter protested, "you remember New Caledonia, don't you?" Maxie still looked blank but shot back, "I don't even remember *old* Caledonia." According to his death certificate, he expired on March 6, 1976 of heart failure abetted by influenza and Paget's disease, a degenerative bone condition—none of which, presumably, disturbed his twilight of demented contentment.

Although the obituaries reported Rosenbloom's doctor's assertion that Maxie's decline was attributable to the head blows from his numerous fights, sports columnists disputed this. John Hall in *The Los Angeles Times*: "The doctors said he took too many punches and there was 'a good deal of damage to his brain.' That's got to be a lie. Nobody ever hit Maxie. He slapped and slipped and danced. But he looked as if he'd been hit. The twisted nose was smashed all over his magnificent face."

Red Smith in *The New York Times*: "The obituarist said his condition was the result of taking too many punches. Nonsense. Plenty of wives take more punches than Max ever did, and bury several husbands."

To this day most of the people who knew Rosenbloom are vehement on this subject. "Are you crazy?" says Everett Sanders, a former California boxing commissioner, now 88. "I knew Maxie like a son. Maxie Rosenbloom



Maxie, sporting square-barreled guns, appeared with Baer in "Skipalong Rosenbloom" in 1951.

was never punch-drunk. Not at all." Sanders and others maintain that he showed only the effects of premature aging and that the rest was a gag. "He went *senile*, not punchy," says Sammy Lewis, a nightclub partner of Maxie's. "But later in life," Lewis adds, "if you take those punches, something's got to give."

Dr. Robert Kerlan, a sports physician who knew Rosenbloom slightly, has perhaps a more balanced opinion. "He had the classic slurring, the cauliflower ears, the scar tissue," Kerlan says. "He was the prototype of the punch-drunk fighter. But the real punch-drunk boxers are a far cry from what Maxie was. Believe me, I've seen them and they're far worse. But Maxie just exaggerated whatever tendencies he had in that direction."

—JEFF WHEELWRIGHT

Boxing *continued*

sionate editorials in the front of the journal did so. Instead the council called for a national registry of boxers' records and medical histories, more training for ring personnel and standardized safety regulations among state and local commissions. Responding to the *JAMA* initiative, Congress has once more held hearings and proposed legislation to create a federal boxing commission.

Casson, meanwhile, says that he has now seen examples of cavum septum pellucidum on the CAT scans of eight pro boxers. It's disquieting that five of the eight are former world champions and two others were top-ranked. Champion fighters stay on their feet in the ring; they can take a punch. The question is, how much will they have to pay for that durability later in life?

Ali has a cavum septum pellucidum, *SPORTS ILLUSTRATED* has learned. The abnormality shows up clearly on his CAT scan, along with other indicators of damage or atrophy, such as an enlarged third ventricle. The scan was performed at New York University Medical Center in July 1981, five months before Ali's final fight, with Trevor Berbick. In the radiologist's written report, these two findings are noted, but the conclusion is that the scan is "negative," meaning normal. It's a question of interpretation. In reviewing CAT scans of the general population, neuroradiologists occasionally see a cavum or a widened third ventricle. This atrophy is more often characteristic of older people. But most neuroradiologists aren't familiar with the scans of boxers. They don't know that the atrophy like

that found on Ali's scan shows up in 50% of boxers with more than 20 bouts—a percentage far higher than in the general population, and that, by other criteria, these same boxers often show evidence of brain impairment. The cavum abnormality is found four times as frequently in boxers as in non-boxers.

As far back as 1976, Dr. Ferdie Pacheco, a general practitioner who has known Ali since 1962, warned him that he should retire from the ring to avoid brain and kidney damage. In 1977, Pacheco quit working Ali's corner. "If you spent 20 years in boxing and an equal amount of time in medicine, you could see brain injury coming up," Pacheco says. "He took some mammoth beatings. There were the fights with Frazier, Foreman and Norton, to say nothing of all the sparring with Larry Holmes and Michael Dokes. Holmes and Dokes were not ordinary sparring partners. They're now heavyweight champions of the world. A moron could add up the picture of impending brain damage, and I urged him to quit because I didn't think it would be wonderful to have the most joyful, talented guy in the world stumbling around and mumbling to himself. But he was the one who wanted to stay on stage. The only role he knew was being champion. I'd just as soon have been wrong."

At the time of his first warnings, Pacheco was unheeded—understandably, perhaps, because he had no data, no hard proof. But in April of 1980, after Ali an-

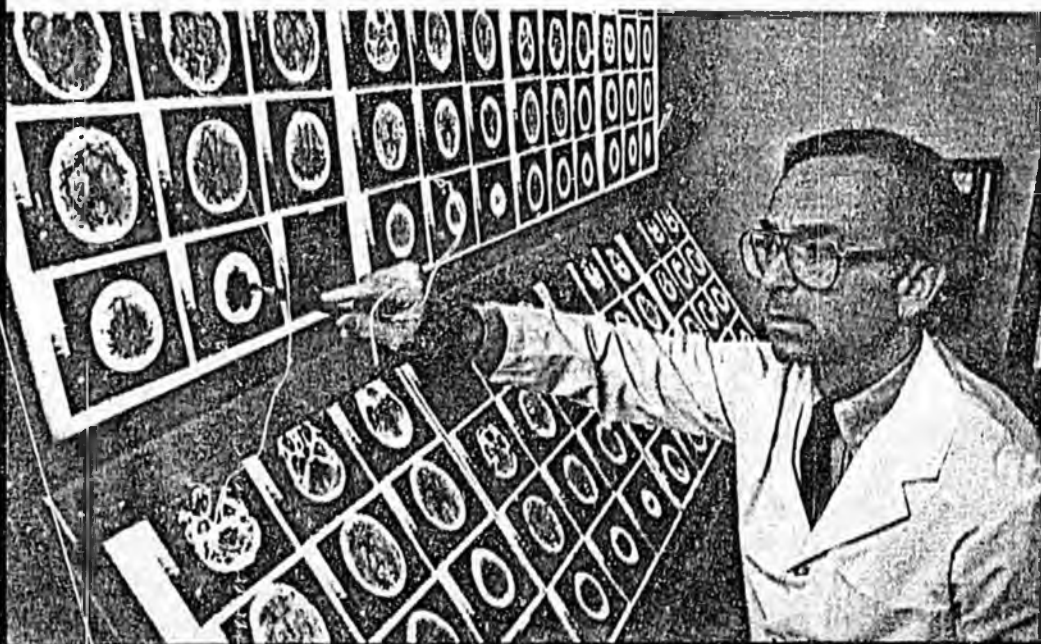


Boxing M.D. Campbell calls CAT-scan findings "shadows."

nounced that he was returning to the ring after a 10-month "retirement" to fight Holmes, his father, Cassius Clay Sr., publicly expressed concern. "I thought he wasn't walking good," he said. "I thought maybe his hip was bothering him. I wasn't sure of his speech, either, but the way I look at it, that boy has been fighting since he was 12 years old. A man can only stand so many licks to the head."

Ali went to the Mayo Clinic in July of that year for a series of tests. The Mayo report, attesting that he was normal, reassured Nevada authorities that he was fit to fight Holmes in October. But after his poor showing—Holmes was awarded a TKO when Ali didn't come out for the 11th round—Ali consulted Dr. Dennis Cope, a specialist in endocrinology at the UCLA Medical Center. Ali revealed that he'd been taking excessive amounts of medication for a thyroid condition while training for the Holmes bout. One of the drug's effects had been to help Ali lose weight, but it also left him drained for the fight. However, Cope's report released in December 1981 declared Ali's thyroid gland normal. Cope also wrote that a neurological examination, which included an EEG and a CAT scan, had found no abnormalities except for a partial or complete loss of smell. The report stated, "The patient tended to talk softly and to almost mumble his speech at times; but when he was questioned about this, he was able to speak appropriately without any evidence of a speech disorder. He was evaluated by a neurosurgeon and neurologist who felt that his speech pat-

continued



Radiologist Ross, who has done 30,000 CAT scans, sees patterns of damage in veteran fighters.

Boxing *continued*

tern was not pathologic." The report concluded, "The patient's health status is excellent and there is no evidence from a health standpoint that he should be limited whatsoever in his activities."

Two weeks later Ali visited England. Interviewed on BBC radio, he slurred his speech, and when he recited a poem on how he would beat Holmes in a rematch, listeners found most of it incomprehen-

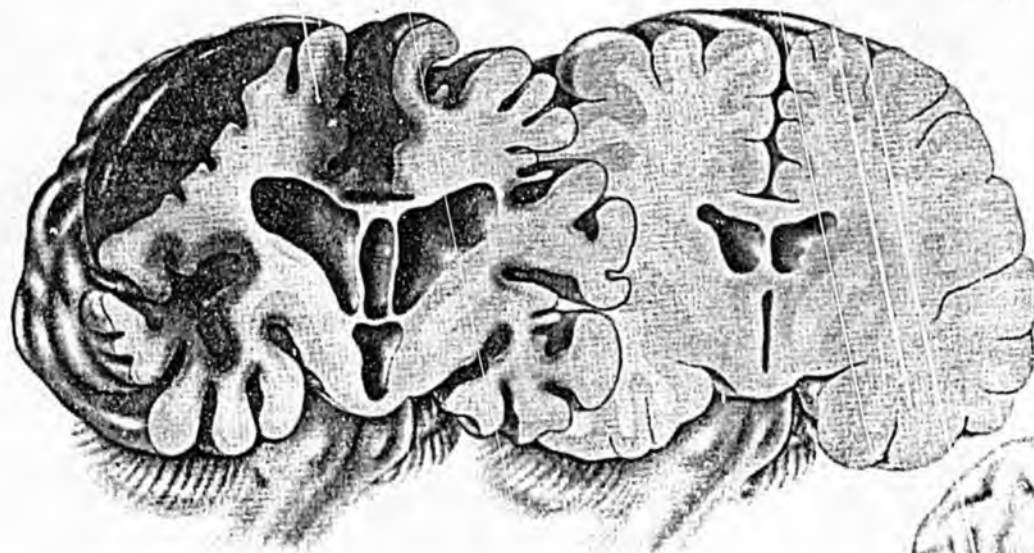
sive. "The report encouraged him to go back into the ring. We did encourage him to get back into shape, though. Because he had gotten fat, eating crap, laying around the house. We didn't think that was good for him. So we sort of convinced him that he ought to go through a full battery of tests to see if he could go back into training."

The tests included an EEG, a neurological exam and a CAT scan. Then, be-

fore the Berbick fight, Demopoulos has a cavum septum pellucidum." Demopoulos stood by the NYU specialists' negative findings.

In the course of the discussion that followed, Casson made the point that many boxers with enlarged ventricles and a cavum have neurological problems. He said that given what Ali's CAT scan showed, additional testing—particularly exams that identify shortcomings in memory—might have been in order. Such testing

was not done at NYU. Demopoulos said that Ali probably would not agree to these tests now because "he's depressed" and because "everybody is telling him there's something dreadfully wrong with him, that, in essence, 'You're no good anymore.'"



This illustration compares a boxer's brain that has been severely damaged with a normal one. In each case the brain is sectioned as at right. The red mass of blood at upper left is a hematoma, which usually causes death. The signs of chronic

injury are indicated by color coding: Enlarged ventricles (the three green pockets) show cerebral atrophy, as do the deep spaces (orange) on the brain's surface. The pink cavity at center is a cavum septum pellucidum.



ILLUSTRATIONS BY KIRK MOLDOFF

ble. The BBC canceled the broadcast of a taped interview for another program because Ali's speech was too slurred to be understood. A BBC spokesman said, "It was very sad that so much of what history's most celebrated fighter said was unintelligible." When a London reporter asked him if he could possibly be punch-drunk, Ali replied, "I have heard about people being punch-drunk, but I do not feel drunk." He added, "When you get as great as me, people always look for some type of downfall."

The series of tests that Ali underwent at the NYU Medical Center in the summer of 1981 was supervised by Dr. Harry Demopoulos, a professor of pathology. Ali had met Demopoulos through Clint Eastwood, the actor, and Demopoulos says, "He [Ali] came here to NYU because he was contemplating going back into the ring, or at least trying to get in shape, to think about it. I don't think any

fore the Berbick fight, Demopoulos was quoted as saying that the Mayo Clinic, UCLA and NYU tests, which involved 30 doctors, all showed "absolutely no evidence that Muhammad had sustained any injury to any vital organ. . . . His blood tests indicate he has the vessels of a young man." He attributed the slurring to "a psychosocial response" and added, "If the slurring were due to permanent damage, it would be there all the time."

Last February, Casson and SI reporters visited Demopoulos at NYU to re-view Ali's CAT scan. "They read this as normal?" Casson asked, referring to the NYU neuroradiologists who had approved the report. Demopoulos assented. "I wouldn't have read this as normal," said Casson, looking closely at the sequence of X-rays. "I don't see how you can say in a 39-year-old man that these ventricles aren't too big. His third ventricle's big. His lateral ventricles are big. He

Casson asked, "What do you base this diagnosis of depression on if a psychiatrist hasn't examined him? Does he have any of the vegetative symptoms of depression? Loss of appetite, changing sleep patterns?"

Demopoulos: "He has changes in sleeping patterns. But I'll tell you what tips you off that it's not an organic problem. The man perks up sometimes under favorable circumstances, and he's just like the Ali of old."

Casson: "Well, that doesn't mean it's not organic. I've seen many patients, especially the early dementias, who one day seem fine, the next day seem terrible, the next day seem fine. . . . Do you think slurring of speech is from depression?"

Demopoulos: "I think in his case, yes. You have to see the man. You have to meet him, you have to know him, and you have to talk to him."

The testing methods employed by contemporary researchers such as Casson, Ross and Kaste have centered on CAT scans, neurological exams and neuropsychological testing. A formal neurological exam consists of a battery of tests measuring muscle tone and strength, reflexes, coordination and balance (the subject is asked to walk and then hop in a straight line), eye movement, heart and lung function and basic cognitive exercises. In the cognitive tests, the subject is asked to spell some simple words backward or to name the year and day of the week. Casson stresses that in the case of Ali one cannot make a judgment on the basis of the scan alone; one must also test Ali neurologically. Ali's previous neurological results have all been reported as normal, although *SPORTS ILLUSTRATED* has learned that one of those exams nevertheless revealed a mild organic mental syndrome, i.e., failure to perform normally on the cognitive tests.

In their unpublished, ongoing research, Casson and his colleague, Dr. Ozzie Siegel, chief psychologist at the Queens Hospital Center in New York, have introduced a third test to their study of boxers, the neuropsychological battery. These are standardized probes of perception and short-term memory. The subject is asked to recall the details of a paragraph that is read to him. He also uses a pencil to connect dots and to draw simple geometric designs, once from memory and once with the design in front of him. His performance is timed as well as analyzed. To a layman, how somebody draws a squiggle may not seem like a sophisticated test of brain damage. But Siegel points out that this battery had been used for years to measure damage in victims of head injuries, from such things as car crashes or falls, and it had been found reliable. When neuropsychological tests are given to boxers, say Casson and Siegel, the results tend to correlate with the findings of the CAT scans and, to a lesser extent, the neurological exams.

Which brings us back to SI's tests of Quarry, Cobb and Pacheco, who is not related to Ali's former doctor. All three



From top to bottom are CAT scans of Cobb, Pacheco and Quarry. The illustration beneath them shows where this X-ray "slice" was taken. Yellow circles were added to point out the septum pellucidum, a membrane between the ventricles. Cobb's normal septum is the light vertical line between the dark curving ventricles. But on the scans of Pacheco and Quarry there's a double line with a dark band in between, showing the septum is divided to form a cavum septum pellucidum.

men had CAT scans. At Quarry's camp, all three were given neurological exams by Casson and underwent neuropsychological tests, administered by Casson and evaluated by Siegel, who wasn't present. The CAT scans were reviewed and the results confirmed by specialists other than Casson—Ross and the two radiologists who collaborated on his *JAMA* paper, and Dr. John Bentson of UCLA, where Quarry and Pacheco underwent their scans. Ross and his colleagues did not know the subjects' identities.

First, Cobb. His neurological exam was normal. His CAT scan (left) was normal. His neuropsychological results were also normal. In other words, Cobb shows no evidence of brain damage. Is this surprising, considering the beating he took from Holmes and given that he fits the "slugger" mold? The key fact about Cobb is that he has had only 23 professional bouts, most of them victories by knockout, and no amateur fights at all. (He had been trained in karate.) It can be concluded that the cumulative effects of his short career in the ring have not made a mark:—not yet, maybe never.

Next, Pacheco. His neurological exam was normal. But his CAT scan showed a cavum septum pellucidum and a mildly enlarged third ventricle. He performed badly on the neuropsychological tests, says Siegel, who guessed—accurately—that his scan would reveal some damage. But Pacheco is only 23, five years younger than Cobb. "I'll bet this guy had a lot of fights," Siegel had predicted to Casson.

Pacheco says he has been boxing since he was four. He estimates that he has had "over a couple hundred" amateur bouts. In his 11 losses as a pro, he has sometimes been hurt, particularly in the back-to-back TKOs in Portland and New York, and since then in a defeat in California in which the ref stopped the fight in the first

continued

round. "The way his record was going," says Dr. Jack Battaglia, who lifted Pacheco's licence after the Portland loss, "he didn't need a CAT scan, he should have just been stopped."

Pacheco himself is disgusted with his career in boxing and won't continue it. "It's not worth it," he says. "The officials are getting worse. I can't give it 100 percent anymore. I'm just tired of it. So I

At 16, he had had 105 amateur bouts. His amateur record was 170-13-4, and his pro record 51-8-4. One of his early losses occurred 10 days after he broke an ankle. His trainer, Harold Taber, went to Quarry's father, who was then the boy's co-manager, and told him that Jerry couldn't fight because his ankle was broken. "He's got to fight," Quarry's father said. "We've got to have the money." Be-

man, he is mindful of the need for medical reform in boxing, yet personally philosophical, not bothered by the threat of brain damage. "You step into the ring," he says, "and you know there's a chance of getting knocked out, of getting hurt, but you figure your abilities are good enough that you can handle yourself appropriately." But he hopes that federal legislation will result in uniform

Significant Squiggles

In their neuropsychological exam, Quarry, Cobb and Pacheco each took a test of visual motor perception, which measures ability to reproduce simple designs like those in the top row. Cobb's figures were normal. Errors by Pacheco and Quarry, even subtle tilting or overlapping, show brain injury.



QUARRY

PACHECO

COBB

PACHECO

QUARRY

might as well get out before I get hurt." Upon hearing the results of SI's tests, Pacheco reconfirmed his decision to retire.

Finally, Quarry. Like the others', his neurological exam was normal. But his CAT scan was slightly worse than Pacheco's—it showed a cavum, enlarged lateral and third ventricles and a suggestion of cortical atrophy. And his neuropsychological results were poor. Says Casson: "He did poorly on the test of visual motor perception. He did poorly on that test of connecting the dots. The only one he did well on was the digit symbol test. The psychologist and I are not saying that Quarry is punch-drunk where he can't walk straight, that kind of thing. What we're saying is that he has problems with certain cognitive functions—short-term memory and perceptual motor ability."

Quarry had his first formal fight at the age of five, a junior Golden Gloves event.

fore the fight, father and trainer took Quarry to "a Mexican witch doctor," says Taber, "who put fire on his ankle and everything, but they still stuck him in there."

Quarry says, "I fought a lot of fights I shouldn't have fought—one with a broken hand, one with hepatitis and another one with a broken back. I was 22 years old. I was so naive and young I didn't have the intelligence. If I had the intelligence I have now, there's no way in hell I would have gotten in the ring like that. I figured I had some people behind me, especially my father being my manager, that they would have pulled me out. But no, they needed the money, so they sent me to the wolves. 'Prostitute him'—that's exactly what they did."

As Quarry says these words, he doesn't sound bitter, and he doesn't sound punchy. A thoughtful, animated

medical standards and that these in turn will protect fighters from ruthless managers. "The manager is the one putting a fighter back into the ring one week after he's been knocked out," he says. "But if they have strict enforcement of physicals, then the manager won't have a damn thing to do with it." Quarry's scenario for himself, which apparently wasn't altered by learning the results of the tests, is to get in shape and, if all goes well, mount a challenge for the cruiser-weight title.

Although Casson was troubled by the prospect of Quarry's return to the ring—he urged Quarry against it—he emphasizes that his research has not convinced him that boxing should be banned. Casson describes himself as a sports fan; he will watch a fight on TV. "No matter what anybody says, boxing will continue," he says. But he thinks that young boxers could reduce their chances of in-

continued

jury by passing up unnecessary bouts at the lower levels and fighting only to advance their careers. "Even bums hit you in the head," he observes.

But to become a champion, wouldn't a boxer have to withstand a sufficient number of punches, 20 or 30 fights' worth, to affect his CAT scan, even if those punches didn't result in neurological or punch-drunk symptoms? Just when his work was beginning to pay off, would a doctor tell him he should stop? A real dilemma, Casson concedes. Still, he says, "A boxer ought to know what he's getting into if he wants to go on and be a champion. He should know what he may be sacrificing. A doctor has to tell the boxer if he thinks the fighter should stop, but in the end it's not really a medical decision. Society has to decide what we're going to do about boxing."

Just how bad is the brain damage that shows up on CAT scans and neuropsychological tests? For Quarry and Pacheco and perhaps Ali, it's not bad, not a disability. Minor memory failures aren't crippling. But aging certainly compounds whatever deterioration may exist, as all the research shows.

Physicians who disagree with the implications of Casson's work and that of researchers like Ross point out that there are no *prospective* studies; that is, studies that track a younger boxer with alleged abnormalities over a period of 10 or 20 years.

"I think we're jumping the gun," says Dr. Edwin Campbell, medical director for pro boxing in New York. Campbell helped enlist the fighters for Casson's studies and was a co-author, but says, "We just haven't done enough work yet. And we don't know how boxers compare with athletes in other sports, like football, who get frequent concussions."

Casson and Ross are the first to admit that more detailed, long-term work should be done. "But let's start now," Casson says, "before another generation of fighters comes through." Though Ross's work received considerable publicity, three months later he's frustrated by the lack of follow-up concern. "The big people in boxing haven't commented," he says. "Who's going to pay for these longer studies? What's being done? I'm afraid everything's going to die down."

The new legislation being discussed in

A Conversation With The Greatest

I'd been trying to reach him for weeks, but I was still surprised—unprepared, in fact—when I picked up the ringing phone one night and there was Muhammad Ali. He was in fine fettle, charged up, and what ensued was not an interview so much as a vintage Ali monologue:

"Why do you want to check my brain? How about white boxers—Jerry Quarry, George Chuvalo, are you going to show their brains? No, it's me, a leader of the black people, they want to say I have a brain injury, that I'm crazy. I won't be no guinea pig, it's an embarrassment, a humiliation. What about my reputation, my family, my children—they're worth more to me than anything. For me to take that gamble, even to show nothing's wrong, I'd have to have \$10 million. . . .

"Why don't you do a test on Richard Nixon's brain? Get the top whites and let them submit to it. I'll tell you what. You get the wisest of the whites, you get William F. Buckley and some others, the brainiest. I'll pay 'em \$25,000 to go on TV with me and let 'em try and trip me up, ask me any questions they like, any subject they want. Then we'll all do the brain show afterwards, for everyone, on TV, I want an hour and a half. . . .

"Do you think, talking to you, that I sound crazy? Do I? Do you have this on tape? You don't? Well there's something



wrong with *your* brain. . . . Why are they picking on boxing? It's because the black men are so superior in boxing that they want to stop it. Well, the black man's so hungry, he's got to fight. Yes, I think it's racial, the whole thing. . . ."

Ali talked for half an hour. I got in a few sheepish words edgewise. But as he went on, he began to wind down and repeat himself. He was not interested in my questions. It has always been his pattern, even when he was in his early 20s, to grow tired of declaiming. Now his fatigue was obvious. He began to mumble and speak more and more softly. The angry tape in his head, what he wanted to say, was running out, or going onto a loop. At the end he was talking as if in a trance of self-hypnosis. He didn't hang up, he just dropped the phone. —J.W.

Congress would create a commission to institute national standards among state commissions for all pro fights. There would be rigorous physical screenings and a "passport" for each boxer that would certify his medical history from past bouts. But CAT scans and full neurological exams before and after fights aren't practical—nor, at \$300 apiece, cost-efficient, given what the average boxer earns. Casson and Siegel suggest that their neuropsychological tests, which are easy and cheap to administer, might serve as a first screen for possible brain damage. They have developed an "impairment index." If a fighter scores abnormally on at least half their tests, they have found, his CAT scan and/or EEG will also show abnormalities. Of course, no legislation is a substitute for vigilance and care within boxing itself. Dr. Battaglia of Oregon points to the

ringside physicians. "If you've got problems on a CAT scan, you're too darn late," he says. "You've got to pick up the signs in these kids way before then. If I see a kid taking three licks now to put one in, as far as I'm concerned school's out—then you do the scan."

Will there be real reform? Cobb's reaction to the brain injury controversy may give a clue, even though he might be described as a boxing anarchist. "Damn it, I'm a grown man," he says heatedly. "If a man doesn't want to fight, then lay down, sucker. I'm not going to have someone run my life for me. If you get a federal commission involved, all you're going to have is a bunch of political appointees. A lot of flurry, a lot of fluff, all show and no go.

"I'm a whore who sells his blood instead of his ass. But that comes with the sport." END

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 13, 1983

SUBJECT: Boxing regulation
 (Work Order No. 13-1161)

TO: Representative Walt Furnace

FROM:  Russ Josephson
 Legislative Counsel

While drafting your bill concerning the regulation of boxing, Steve Levi and I have discussed several aspects of the approach taken in this bill. He asked me to indicate to you some of the areas of difference between your bill and HB 241, introduced by Representative Martin.

First, a number of provisions relating to the athletic commission have been omitted, as your approach calls for regulation of boxing by the Department of Commerce and Economic Development, without a board.

Another difference between the bills is that your bill will license only promoters, referees, and boxers, while HB 241 licenses several other classes of persons involved in boxing. I have provided regulatory authority to the department to license others should the need arise in the future.

Your bill has none of the restrictions of HB 241 concerning contestants, such as age limitations and restrictions on the use of alcohol or drugs. Your bill contains none of the provisions of HB 241 regarding equipment, although the department has been given regulatory authority to cover this should they desire to do so. Similarly, the details of holding contests, such as the limitation of rounds, have been omitted. Again, the department might address this in regulations if they so desire.

No provision appears in your bill concerning cancellation of contests and the notification of the public of a cancellation. The provision for promoter's bonds deals with the subject by

requiring a good faith effort to put on the contest for which the tickets have been sold.

No provision appears in your bill to handle the payment of fees to the referee, the examining physician, or the attending physician. The bonds provision above is intended to assure that the boxers are paid as contracted.

Your bill contains no provisions concerning telecasts, reports, or the taxation of receipts of contests or telecasts. No provisions prohibit sham contests or the participation in the purse of a boxer or manager by a promoter.

Unlicensed contests are prohibited, but there is no provision to enjoin them.

There is no provision to suspend a license of a person licensed under the chapter the bill creates. Revocation of a license is possible for participation in or for promoting an unsafe contest. No other ground for license revocation has been specified.

In brief, those are the differences between the two bills.

In addition, I would point out a few things in the bill that appear to deviate from your request and explain them. In the section providing for an attending physician, the medic/paramedic option has been omitted. After reviewing the qualifications of those people and talking with the Department of Health and Social Services, I felt that you would be better with a physician in that role. First, the Department of Health and Social Service's answer to the question of what level of emergency medical technician would be qualified was "None". Second, I think that you very well may run into legal problems with the paramedic approach. I doubt that their licenses would cover them if they act as attending physicians. The same thinking applies to the use of paramedics to examine boxers before a bout. I think that in both cases you will find that the paramedics are practicing medicine beyond the limits of their licenses.

Another difference between HB 241 and the request is in the section on licenses. You will note that an "individual" may apply for a boxer's or referee's license and that a "person" may apply for a promoter's license. The word "person" in the statutes, under AS 01.10.060, covers all applicants listed in your request for the promoter's license. So,

Representative Walt Furnace
Page 3
April 13, 1983

where you mean a person in the common sense, "individual" is used.

Finally, you requested a section excluding certain contests. Some of those are not mentioned in the section of this bill that limits the authority under the chapter. This is simply because it is clear that the chapter covers only professional boxing. It was not necessary, therefore, to say that wrestling was not covered, for example.

If I may be of further service, please let me know.

RJ:ljb
14/020

I. REQUEST

Bill/Resolution No.: HB 241
 Title: Creation of Ath. Comm./Sports Tax
 Sponsor: _____
 Requestor: House Labor & Commerce

II. FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING						
CAPITAL						
REVENUE		12.0	13.2	14.5	16.0	17.6

FUNDING: (Thousands of Dollars)

GENERAL FUND		12.0	13.2	14.5	16.0	17.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: ~~Attach a separate page for any Analysis~~

Prepared By: Robert W. Elliott Phone: 465-2173
 Division: Revenue - Research Date: 3/15/83
 Approved by Commissioner: Joseph K. Dmolane Date: 3/25/83
 Department: Revenue

Distribution:

Original to Legislative Finance
 Copy to Office of Management and Budget (for Legislature introduced bills)
 Copy to Department (for Governor introduced bills)
 Copy to Sponsor
Copy to Requestor

Analysis: HB 241

The figures represent the estimated revenues the sports tax would generate based on average yearly gross receipts provided by the Athletic Commission. The estimates did not take into consideration any future major championship fights held within the state.

HB 257

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state
hospital
association

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REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

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American Hospital Assoc.
Michael Lockwood
Central Peninsula Hospital
Soldotna

Delegate to the American
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Jack Buck
St. Ann's Nursing Home
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Alternate Delegate to the
American Health Care
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Emma G. Ivy
Wrangell General Hospital
Wrangell

Delegate to the Association
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Michael Herring
South Peninsula Hospital
Homer

Alternate Delegate to the
Association of Western
Hospitals
Daniel Van Wieringen
Kodiak Island Hospital
Kodiak

Trustee Delegate to the
American Hospital Assoc.
Moe Kadish
Trustee, Providence
Hospital
Anchorage

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

Physician Member of
the Board
Keith Brownsberger, M.D.
Anchorage

President
Dennis L. DeWitt
Juneau

April 1, 1983

The Honorable Jerry Ward
House of Representatives
Pouch V
Juneau, Alaska 99811

Subject: HJR 35.


Dear Representative Ward:

The Alaska State Hospital Association wishes to indicate our support for House Joint Resolution 35.

We believe that the use of health insurance by those who are entitled to services provided by the Alaska Native Health Service would be in the public's best interest. That additional influx of funds would allow the Alaska Native Health Service to continue to provide needed services in the face of federal budget reductions.

The Alaska State Hospital Association believes that the concepts in HJR 35 are necessary if an adequate health care delivery system is to continue in Alaska. We believe it merits legislative support.

Sincerely,


Dennis L. DeWitt
President

DLD:hb

cc: House HESS Committee
John Dumbolton
Frank Sutton
Richard E. Zitzow

Offered: 4/15/83
Referred: Labor & Commerce

Original sponsor: Ward

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR HOUSE BILL NO. 257 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to certain limitations and exclu-

7

sions in health insurance policies; and providing for

8

an effective date."

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10

* Section 1. AS 21.42 is amended by adding a new section to read:

11

Sec. 21.42.347. COVERAGE WHEN ALASKA AREA NATIVE HEALTH SERVICE

12

BENEFITS AVAILABLE. An ~~individual~~^A or group health insurance policy

13

that provides coverage on an expense incurred basis or ~~an individual~~

14

or ~~group~~^{OF A} service or indemnity type contract issued by a nonprofit

15

corporation may not exclude or limit coverage for the reason that the

16

covered person is eligible to receive health care benefits provided by

17

the Alaska Area Native Health Service.

18

* Sec. 2. This Act applies only to policies and contracts issued or

19

renewed after December 31, 1983.

20

* Sec. 3. This Act takes effect January 1, 1984.

M E M O R A N D U M

DATE: May 2, 1983

TO: Jeff Barry, Professional Assistant
House Labor & Commerce Committee

FROM: M. E. Tirador, *ME* Manager
Alaska Provider & Government Relations
Blue Cross of Washington & Alaska

SUBJECT: Committee Substitute for HB 257

This memo is for information purposes only. There is no intent on behalf of Blue Cross of Washington and Alaska to either endorse or oppose this legislation. In the very near future, the Federal Government will probably initiate changes in the Indian Health Service delivery system that will render this legislation moot.

Blue Cross of Washington and Alaska doesn't believe there is an obligation for Indian Health Service beneficiaries to pay for services received in Indian Health Service hospitals or clinics. Therefore, if there is no obligation to pay, no third-party payor has an obligation to a policyholder or subscriber. In my experience, the Indian Health Service apparently is not in a position to render billings for services. The accounting mechanism is not presently able to provide itemization necessary to properly adjudicate a claim.

As I understand this bill, the Indian Health Service hospitals and clinics would benefit from third-party payment for services provided policyholders who are also Indian Health Service beneficiaries. This may be a fallacy because in instances where only contract hospitals might be directly reimbursed, the patient would receive payment and not the hospital. This could encourage over-utilization of health care services and make medical necessity take second place.

This bill might be considered to be a subsidy to the Federal Government in providing health care services to Alaska Natives and American Indians. A double taxation measure, if you will. This is also a bill requiring the first dollar come from third-party payors rather than an effort to coordinate benefits using the Indian Health Service as any other third-party payor. The result of such legislation could well be an increase in the premiums paid by other subscribers, but would directly benefit the Federal Government.

State of Alaska

Fiscal Note

HB 257

IV Analysis: Premiums are assumed to increase by 8% per year.

The impact of this bill is estimated to be a 1% increase in premiums. These cost figures are based on the assumption that the state's plan will be primary when benefits are available through the Alaska Area Native Health Service.

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Kodiak Island Hospital
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American Hospital Assoc.
Moe Kadish
Trustee, Providence
Hospital
Anchorage

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

Physician Member of
the Board
Keith Brownsberger, M.D.
Anchorage

President
Dennis L. DeWitt
Juneau

April 1, 1983

The Honorable Jerry Ward
House of Representatives
Pouch V
Juneau, Alaska 99811

Subject: HB 257.

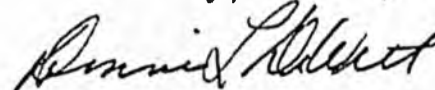
Dear Representative Ward:

The Alaska State Hospital Association wishes to offer our support to the concepts found in House Bill 257.

We believe that it is imperative that the Alaska Native Hospitals be able to collect third party payments for services they provide. With the impending reductions in federal funds, all potential sources of revenue must be pursued by the ANS facilities if they are to remain viable and up to the standard of quality Alaskans have the right to demand. While some may scoff at HB 257, we suggest that is how most forward looking proposals are treated. Without this gradual movement away from depending on federal funding, health services to Alaskan Natives will soon only be a memory.

The Alaska State Hospital Association commends your willingness to address this critical issue in such a meaningful fashion.

Sincerely,



Dennis L. DeWitt
President

DLD:hb

cc: House HESS Comm.
John Dumbolton
Richard E. Zitzow
Frank Sutton

HB 258

NOT GERMAIN

{ REVENUE BASE INCREASE -
BY GIVING A TAX CREDIT LIKE THIS
HOW WILL THIS STIMULATE - THE
PRODUCTION OF MINING }

14500
12500
\$27000

80,000.00

5

30,000

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No: SSHB 258
 Title: Special Investment Tax Credit
 Sponsor: Hayes & Szymanski
 Requestor: Labor, Commerce & Finance

II. FISCAL DETAIL

Agency Affected: _____
 Program Category Affected: _____
 BRU, Program of Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC.	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-

CAPITAL	-	-	-	-	-	-
---------	---	---	---	---	---	---

REVENUE	-	-	-	-	-	-
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-
-	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis.

Prepared By: Vincent D. Wright *vdw*
 Division: Revenue - Research

Phone: 465-2173
 Date: 3/25/83

Approved by Commissioner: *[Signature]*
 Department: Revenue

Date: 4/4/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

Analysis of SSMB 258

The incorporation of this expanded credit in effect would reduce state taxes as a deductible item at the federal level and thus increase the federal tax take at the expense of Alaska.

The bill is also discriminatory in that it applies only to specified geographical regions within the state.

The impact of this bill is negative to the state in terms of lost revenues. The quantitative impact cannot be assessed due to carry forward and carry backward provisions which vary from one existing operation to another. If the bill is intended for new facilities, the effect cannot be assessed until they are completed and in operation.

Alaska State Legislature



{ 1980 }

Speaker of the House of Representatives

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-3720

Official Business

113-866

SPECIAL INVESTMENT TAX CREDIT LEGISLATION

As projections of declining revenue loom in Alaska's near future, we must begin to diversify our economy so that both state government and local economies are not so heavily dependent on oil derived revenues. I have introduced legislation which would accomplish this goal by establishing a special investment tax credit. Such a credit would apply for investments to develop gas processing facilities South of the Arctic Circle and to investments for exploration, development and mining of minerals other than oil and gas throughout Alaska. A major priority of both myself and the House Majority is diversification of our economy. I believe enactment of this legislation would go a long way towards achieving that goal.

MAKING
IT EQUAL 100% FEDERAL CREDIT

Currently state law limits the amount of investment tax credit (ITC) which is allowed to corporations in computing their Alaska income taxes to 18% of the amount of investment tax credit which is allowed for federal income tax purposes. So while the Federal ITC is 10%, the Alaska investment tax credit is only 1.8%. Current law also limits the ITC which is allowed in computing Alaska income taxes to the first \$20 million of qualified investment put into use in the state for each taxable year. That limitation would be removed by this bill.

The Alaska tax credit would only apply to investments which also qualify for the federal credit. This is primarily personal property such as trucks, machinery and manufacturing equipment.

2 1/2 -
MILLION
(27-M)
NO
FISCAL
NOTE

It would not include roads, buildings, mine sites and such things as feasibility studies. Using the \$1 billion Quartz Hill mine project for example, a very limited amount of that development would qualify for the tax credit. But enough of an incentive would be created to attract industry to Alaska that currently is lacking.

The promotion of exploration, development and mining of minerals and other natural deposits in the state will encourage development of Alaska's non oil and gas mineral resources. This legislation would also accelerate the diversification of the state's economy and employment base.

One new addition to this legislation, not included in the version which passed the House last session, is inclusion of gas processing facilities South of the Arctic Circle. There are areas in Alaska where established infrastructure, access to ice free ports and substantial amounts of uncommitted reserves of natural gas combine to provide great potential for gas processing development and export activity. The development of these gas processing facilities will promote full and stable employment and minimize adverse population and environmental impacts.

I expect the impact on state revenues upon enactment of this legislation would be minimal. While initially there would be a slight loss of revenue, the long range goal to promote investment and development would increase non petroleum related revenue in future years. The investment tax credit is a temporary tax reduction directly tied to profitable investment that will produce increased revenues in the future. Additionally, investments in targeted industries may substantially expand local governments sales and property tax bases. If the Prudhoe bay curve is accurate, and oil revenues begin to decline in the late 1980's, it is our responsibility to plan to offset that decline. I am confident it will have the support of the administration, which has stated a desire to reach this goal as well.

#

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

MAR 23 1983

MAR 23 1983

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

March 23, 1983

SUBJECT: Special investment tax credit
(HB 258)

TO: Representative Joe L. Hayes

FROM: Richard C. Folta (1)
Legislative Counsel

You have requested a sectional analysis of HB 258, relating to special investment tax credits.

Section 1 of the bill modifying the special investment tax credit for state corporate income taxes, sets out the state legislature's purpose, which is identical to the congressional purpose, in providing for an additional allowance for tax credits for certain property. The thrust of the investment credit is to stimulate the economy through encouragement of investment in productive resources, which tend to wear out at quicker rates than those which have been recognized by depreciation previously allowed by the Internal Revenue Service. In the Alaska case, these special properties which the sponsor wishes to give additional credits, are stated to be gas processing facilities and mineral extraction systems established south of the arctic circle in the State of Alaska.

Section 2 of the bill provides that the 18 percent investment credit limit on state corporation income tax will not be applicable for the gas processing facilities and mineral extraction systems established south of arctic circle.

Section 3 of the bill provides for a 100 percent investment credit instead of the previous 18 percent for gas processing facilities and mineral extraction systems. Subsections (j) and (k) also provide that the 20 million dollar investment credit allowed will not be in addition to that under sec. (b). There is also a provision that the credits will not apply on leased property -- they have to be purchased properties.

Representative Joe L. Hayes
Page 2
March 23, 1983

Sections 4 and 5 provide that the tax years for credit considerations under this bill begin January 1, 1984, and this act will be in effect immediately upon passage.

RCF:ljb
12/002

STATE OF ALASKA

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(907) 465-3892

HOUSE LABOR AND COMMERCE COMMITTEE

MEETING SCHEDULE

FOR THE WEEK OF APRIL 4 - APRIL 10

LABOR & COMMERCE

Meets: Behrends Rm. 209
M - F 8:45 - 10 am

Monday, April 4

NO MEETING SCHEDULED

Tuesday, April 5

** HB 25 An Act providing for preferences and reservations in sale or purchase of state royalty oil to companies purchasing state coal.

HB 258 An Act establishing a special investment tax credit; and providing for an effective date.

Wednesday, April 6

HB 22 An Act establishing a state residence requirement for loans purchased by the Alaska Industrial Development Authority.

Sunset - Medical Board

HB 111 An Act relating to investments and deposits of public money with foreign banks.

Thursday, April 7

HB 126 An Act limiting the liability of aircraft owners or operators for personal injury or death to guest passengers.

HB 246 An Act relating to the deregulation of interest rates; and providing for an effective date.