CONVENTION COVERAGE
Northern Native Law
Development & Environment
Judicial Systems
Awards, and More

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The Alaska BAR RAG

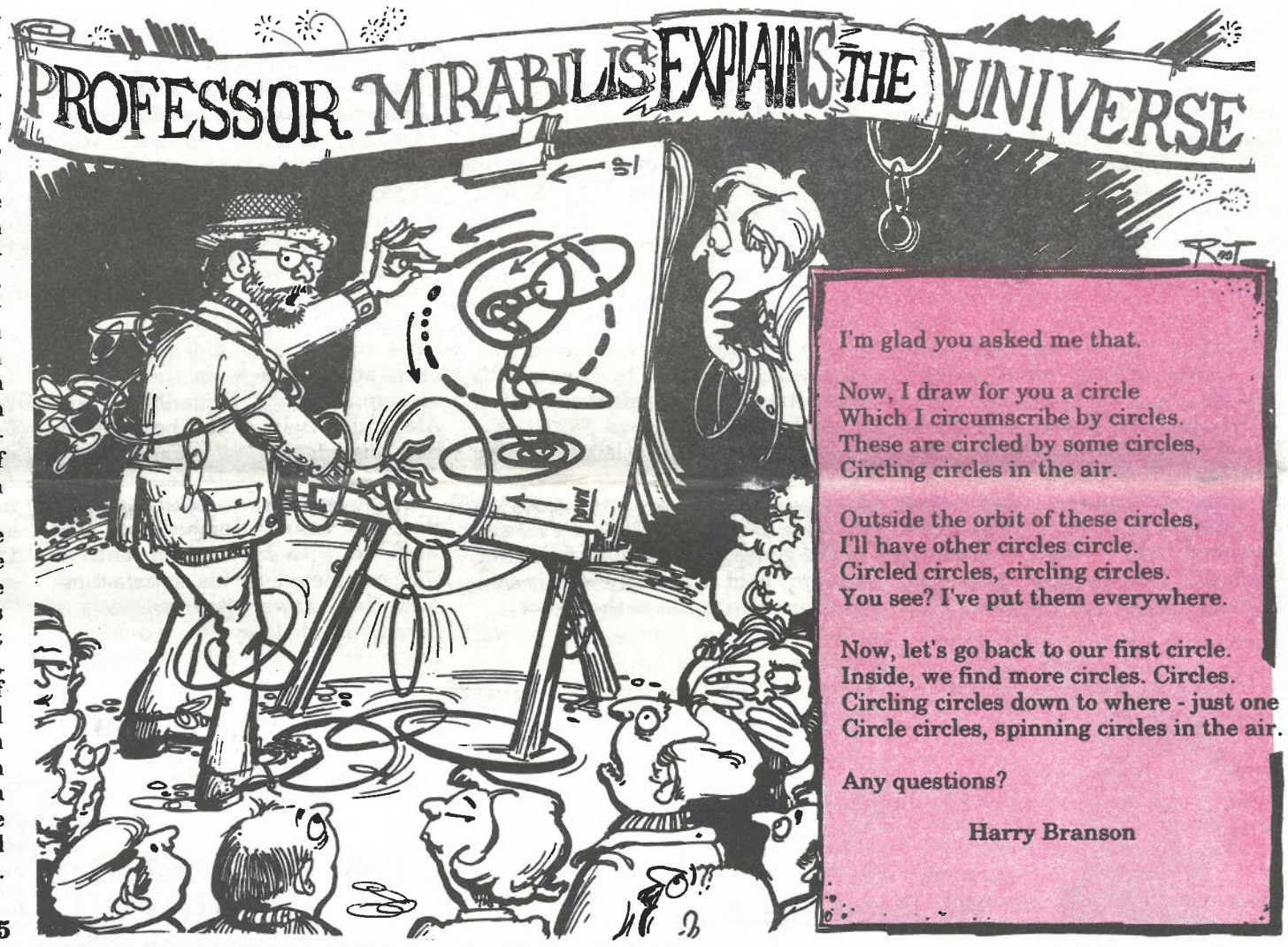
JULY, AUGUST, 1990 — *Dignitas, semper dignitas* — VOLUME 14, NO. 4

The legal rights of Aboriginal people of the north

Aboriginal peoples of the far north have many unique and special needs. While legal approaches vary from one country to another all of the northern countries are struggling with the issue of how to properly recognize the special needs of Native populations. The Saturday morning plenary session of the 1990 Alaska Bar Convention/Northern Justice Conference, entitled "Northern Native Populations and the Law", dealt with such issues. Different perspectives from the Canadian, Soviet, and Alaskan lawyers and judges taking part in the discussion provided a fascinating examination of this issue of common concern to our northern cultures.

Described by many in attendance as the best panel discussion of the Northern Justice Conference, the Saturday plenary session was moderated by U.S. District Court Judge William Matthews Byrne, Jr., of the Central District of California. Judge Byrne presented the distinguished panel, from Alaska, the Yukon, British Columbia and the U.S.S.R., with a series of hypothetical cases. The hypotheticals had a familiar factual ring to the Alaskan audience. Judge Byrne moderated

Continued on Page 5



I'm glad you asked me that.

Now, I draw for you a circle
Which I circumscribe by circles.
These are circled by some circles,
Circling circles in the air.

Outside the orbit of these circles,
I'll have other circles circle.
Circled circles, circling circles.
You see? I've put them everywhere.

Now, let's go back to our first circle.
Inside, we find more circles. Circles.
Circling circles down to where - just one
Circle circles, spinning circles in the air.

Any questions?

Harry Branson

9th Circuit judges to hear cases in Anchorage

The United States Court of Appeals for the Ninth Circuit will hear oral arguments in Anchorage, Alaska, during the week of August 7th, 1990. One panel of three federal appellate judges will sit in the Historic Courtroom of the Historic Courthouse and Federal Building at 605 West Fourth Avenue in Anchorage, beginning at 9:00 a.m. on Tuesday, August 7, to hear 19 scheduled cases that week. The names of the judges selected to sit in Anchorage will be announced in early August.

The 27 active judges of the United States Court of Appeals for the Ninth Circuit reside throughout the nine states in the circuit. Each month, most of the judges travel to the four principal places of holding court within the circuit: Seattle, Portland, San Francisco, and Pasadena. Additional places of holding court are designated from time to time. The court of appeals generally sits once a year in Anchorage. The judges sit in three-member panels to hear oral arguments for one week, then return to their places of residence to write their opinions and issue their decisions.

The cases scheduled for hearing during the week of August 7 include matters that arose in the State of Alaska and have been appealed from the United States District Court for the District of Alaska. During the week, the court will hear cases on a wide range o subjects. Pending cases include National Labor Relations Board petitions to enforce its orders in a refusal to bargain case and in a back pay case, a prisoner's challenge to the district court's refusal to reduce a sentence for cocaine distribution, a challenge to the suppression of search warrants in connection with various wildlife crimes, an appeal from a jury conviction for taking walrus in a wasteful manner, a bankruptcy appeal relating to abandonment of a parcel of land, an attack on the state's plan to retain custody of an adopted Native child and to establish a visitation schedule, an appeal of a personal injury products liability judgement arising from the use of an electric drill, a request for review of an FDIC order involving an insolvent bank, a tax protestor appeal, a challenge to a conviction for unlawfully selling herring spawn on kelp, and review of an order dismissing a civil RICO action against a party's attorney, among others.

Court of appeals oral argument hearings are open to the public for observation. A copy of the hearing schedule will be posted in the Clerk's Office at the Federal Building and United States District Court, 222 West 7th Street, Anchorage, Alaska.

Alaska Bar Association
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Anchorage, Alaska 99510

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President's Column

By Daniel Cooper

If you missed the 1990 Northern Justice Conference, you should seriously consider hanging your head. This is particularly so if you live in Anchorage (those who live outside the greater Anchorage metropolitan area, as always, are entitled to more leeway). If you did attend, you are entitled to hold your head high and adopt a superior attitude.

The best word to describe the conference is "excellent." The best two words, my kids would say, are "most excellent." The participants on the panels were very impressive. The Canadian lawyers, judges and justices were a particular treat. The Canadians were so delightful that, as the result of a meeting of the Tanana Valley Bar Association held Satuarday night in the hospitality suite (at the insistence of Justice Rabinowitz), they will be invited to attend the 1991 Alaska Bar Association Convention in Fairbanks. The contributions the Canadian participants made to the program were particularly valuable when they spoke on issues concerning native sovereignty and the issues arising when cultures conflict.

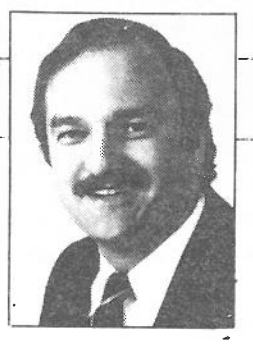
The lawyers from the Soviet Union were also delightful. These men brought a unique perspective to the conference. But their uniqueness was sometimes tempered by their shocking similarity in thought processes. They are, after all, lawyers. Their problem solving methodologies were very similar to those of the Canadians and Alaskans. Indeed, they seemed to have learned their ability to reason at the feet of Jesuits, as Pat Kennedy found to her dismay. Pat got into a discussion of the comparative economic and social systems of Japan and the United States with Boris Puginsky, the Deputy Chief Arbitrator for the Russian Federative Republic. Pat, like any good American, was asserting that the United States system of management and labor and general economic policy would prevail over that of Japan in the long run. Mr. Puginsky disagreed, and argued persuasively that the Japanese system of soliciting innovation and participation by labor in the decision process was effective, and resulted in more efficient production than the U.S. system. He then stated that such had been the goal of communism, but unfortunately it had not worked in his country. It was hard to argue with his conclusion, so Pat didn't. Along the way, Pat was faced with arguments spiced by quotations from the New Testament and a few French philosophers.

Mr. Puginsky also left his mark on the proceedings in an answer he gave to a question posed by a member of the Chickaloon Village in the general question and answer session held Saturday afternoon. The question posed to the panel went to the issue of whether, in the Treaty of Cession in 1867 transferring Alaska to the United States, the Russians intended to transfer ownership of the aborigines of Alaska. Essentially the question asked whether the Russians considered the Natives as chattels, and whether they intended to sell the Natives with the land. The person posing the question indicated this was important, apparently to an argument going to rescission of the agreement. Mr. Puglinsky asked for the opportunity to reply, and did so. His answer was simple: that one of the first things the people had done in late October of 1917 was to declare null and void all contracts, agreements and treaties of Czarist Russia. Therefor, as far as the Russian people were concerned, there was no treaty and there could have been no valid intent. One was left with the impression that the answer given was not the answer sought.

The language barrier seemed to fall as the program progressed. In some instances, it did not seem to exist at all. When, in the opening session, Fred Friendly asked Alexander Boikov, the head of the bar association in Magadan, a question and tried to interrupt his answer, Boikov stridently asserted that he wasn't finished yet and went on with his answer until it was completed to his satisfaction. And the answer he gave was a paradigm of lawyerly exposition. Later on in that opening session, Boikov gave an impromptu closing argument for the defendant in a criminal defense case. His argument was everything one would have expected from a preeminent trial lawyer in Alaska.

Generally, those I've spoken to who attended the conference have stated they found it interesting, or stimulating, or words of like import. I admit that most of them also had some comment about the relevance of the content to practicing members of the Alaska Bar. Certainly that is a point well taken, but probably not decisive on the issue of whether the conference met a normative standard of "good." If nothing else, those attending got to talk with their colleagues, were exposed to some new thoughts and problem solving processes by colleagues from different jurisdictions and had the opportunity to meet with Alaska's judiciary who were prominent in their presence.

In summary, I have concluded that, to my way of thinking, the conference turned out quite well. Giving credit where credit is due, Doug Serdahley thought of it, Bob Wagstaff conceptualized it, and Jeff Feldman did it. Whether it will be done again by the Alaska Bar Association remains to be seen, but for those who attended it was, by and large, a rewarding experience. There is, however, no basis for the whisper campaign "Magadan in '92." Unless, of course, Bob talks to Jeff and ...



Editor's Column

By Ralph Beistline

With this edition of the *Bar Rag*, I begin my third and last year as Editor of the paper.

We are now publishing six times a year and are enjoying continued support from both the Board of Governors and the membership as a whole. We have especially appreciated the contributions of past President Jeff Feldman, and express our thanks for his work as president of the bar association.

At the same time, we welcome our new president, Dan Cooper, and look forward to his wisdom and guidance throughout the upcoming year.

The one thing that has become clear, however, with regard to the success of the paper, is the importance of membership contributions and the continued need for "new blood."

We rely heavily on member input and strive for a wide variety of material. This has set us apart from other publications. In order to continue this tradition, though, we need your continued support and input. We therefore hope to hear from each of you during the coming year.

Letter

Rag to the New York Times?

As an ex-Alaskan lawyer and inactive member of the Alaska Bar Association, I look forward to receiving each copy of the Bar Rag both for the update on current goings-on and the entertainment (esp. the TVBA minutes!).

I was recently at a WSBA CLE session in Coeur d'Alene where the luncheon speaker one day was David Margolick of the New York Times. I enclose his card. You might consider sending him a courtesy copy (if you don't already) of your publication as the content is frequently of the stuff in which he revels. Who knows, he might even reciprocate!

Keep up the good work; your efforts are not going unnoticed down here!

Regards,
R.C. Mattson

The 1990 Primary Elections Are Coming Soon

Don't Forget to VOTE!

The Alaska BAR RAG

President Cooper has established the following schedule of board meetings during his term as president. If you wish to include an item on the agenda of any board meeting, you should contact the Bar office at 310 K Street, Suite 602, Anchorage, Alaska 99501 (272-7469) or your Board representatives at least three weeks before the Board meeting.

Sept. 7 & 8, 1990
Oct. 26 & 27, 1990
Jan. 18 & 19, 1991
March 22 & 23, 1991
June 3-5, 1991, Fairbanks
June 6-8, 1991, Fairbanks

The *Alaska Bar Rag* is published in January, March, May, July, September, and November.

Letters

Protests politics

I write to protest the editorialization in the coverage of the American Bar Association February meeting as set out in the May-June Bar Rag at page 13.

I am a member of the Alaska Bar Association because Alaska law requires Alaska Bar membership in order to practice law in Alaska. Until April of this year, I was a member of the American Bar Association. I am one of those "other lawyers" who quit the ABA because of the pro-abortion resolution adopted by the ABA House of Delegates in February. I enclose copies of my correspondence with ABA President L. Stanley Chauvin. Perhaps the readers of the Bar Rag would find the exchange interesting.

In the May-June Bar Rag, your "reporter" urges Alaska attorneys to support the resolution adopted by the ABA. Perhaps others will urge attorneys to oppose the resolution. This debate will continue the divisive trend of both the ABA and Alaska Bar Association to involve the respective organizations in blatantly political matters. Because the ABA is a voluntary organization, the trend may well signal the demise of the ABA as the leader in legal organizations. Since the Alaska Bar Association is an involuntary organization, its members have no similar ability to protest actions of the Association by resigning.

I deplore the politicization of these organizations. The substance of the resolution, while personally abhorrent to me, is less important than the fact that the ABA considers it appropriate to make constitutional and political pronouncements which are properly the function of the United States Supreme Court and the respective state legislatures. I hope this trend is soon reversed, but I'm not going to hold my breath.

Sincerely,
Marc Bond

Association's stand criticized

This letter is in response to Donna Willard's column contained in the May/June issue of the Bar Rag. At the outset, I should note that I was a little surprised that the Bar Rag would allow non-editorial news space used in such an advocacy format. Ms. Willard urged readers to "join the ABA, if you have not already done so and indicate when you do so that you support the pro-choice policy." The policy referred to is the American Bar Association's misguided endorsement of the *Roe v. Wade* decision which purports to find a constitutional right to an abortion in the United States Constitution.

I oppose the resolution for the following reasons: First, I believe that *Roe v. Wade* does not represent any genuine interpretation of the Constitution but rather reflects the private social agenda of the Supreme Court justices who sided with the majority in that case. Even *Roe's* supporters have been ideologically embarrassed by the intellectual underpinnings of the decision. The use of the Constitution as a ideological springboard for private social agendas has been criticized not only by conservatives but by liberals such as Prof. Raoul Berger.

Secondly, the *Roe* decision, and the legal philosophy which supports the decision, totally disregards the rights of the child living in the womb of the mother. All scientific evidence is uniform in holding that human life is present from the moment of conception through birth. There is disagreement as to whether this prenatal human life should be subject to legal protection. It is my view that this human life deserves to be protected. The use of the much touted term "pro-choice" assumes that there is only the choice of the mother to be considered, not the choice of the life being killed by the abortion procedure.

Ms. Willard states that the ABA resolution is not pro-abortion but "merely acknowledges that there are privacy rights grounded in the Constitution and recognized in *Roe v. Wade* which limit government intervention in certain reproductive decisions." (Quoting Michael Tagar). Yet, if the issue is one of constitutional interpretation and not abortion, why does Ms. Willard refer to the opponent's of the ABA's resolution as "pro-choice foes"? Why not call them "strict constructionalists" or "original intent constitutionalists"? Ms. Willard knows perfectly well that abortion is at the crux of this issue.

The Nazi extermination of the mentally retarded, of handicapped persons, and racial and ethnic minorities would not have been possible without the widespread cooperation of the medical and legal community in Germany. The same is true of the American abortion industry. It is regrettable that the American Bar Association has cast its lot with those who believe that certain human lives are expendable.

Sincerely,
James M. Bendell

Do you know Fred Crane?

At the present time I am doing a biography of Archie Ferguson, a bush pilot out of Kotzebue who died in 1967. In the course of my research, I discovered that a close associate of his was a lawyer by the name of Fred Crane.

Could you possibly put a short item in the *Bar Rag* that I am looking for people who knew either Archie Ferguson or Fred Crane to get in touch with me for an interview?

Thanks.

Steven C. Levi
8512 E. 4th Avenue
Anchorage, Alaska 99504
(907)337-2021

Thanks

Thanks for the great assistance of your office and staff during the Northern Justice Conference. It goes without saying that the efforts of Barbara Armstrong were superb. Her enthusiasm, fortitude and boundless energy were as awesome as Mount McKinley.

Pursuant to my conversation with someone, I am sending along a copy of a couple of articles I wrote many years ago about law in early Alaska. If they are of interest to the Alaska Bar Rag, they can be used with impunity. Thanks again.

Sincerely,
Weyman I. Lundquist
Heller, Ehrman, White & McAuliffe
San Francisco

Editor's Note: See article; page 16.

Lew Williams says thanks

At a future Board of Governors' meeting or in the Bar Rag, please convey my thanks to the officers, staff and members of the Alaska Bar Association for an informative eight years as one of the first laymembers of the Board of Governors. Everyone was polite and helpful in educating a laymember in the realities of the practice of law in Alaska.

I gained a great deal of respect for the legal profession over the 18 years I served on the Alaska Judicial Council, the Governor's Advisory Commission on the Administration of Justice and more recently on the Board of Governors. I hope my service helped dispel the idea that all that newspaper types seek are headlines to sell newspapers.

What impressed me the most is the progress the Alaska Bar Association made in the past eight years, thanks in part to the members agreeing to a large dues increase the year before I was named to the Board of Governors. That enabled the association to assemble an exceptionally competent administrative staff, to reduce staff turnover to a level other offices envy and to maintain a fiscally sound, efficiently run organization without further dues increases. And you don't have the highest dues in the nation. Last I heard Alaska is ninth among the states. In addition, you have reserves increasing at a modest amount each year to offset inflation and prolong the time before another dues increase is necessary.

When I went on the board, we had one discipline attorney. Three different people held that post the first year I remember. The association was woefully behind in investigating complaints. You now have two and one-half discipline counsel. Although there may be a need for speeding the processing of claims (the board has a committee helping with that), the association is far ahead compared with earlier years. Association members should be proud of its discipline staff and the progress made in handling discipline and fee arbitration.

During my time on the board, discipline rules and bylaws have been revised. The model rules are before the Supreme Court for adoption. The Alaska Bar Foundation has become an active organization. Other accomplishments cover malpractice insurance, IOLTA, ethics, fee arbitration, fiscal policy and a few I have forgotten to list here. An important step taken was to better inform the public on the legal profession and services — including the rights of clients in disputes or lesses — and by initiating lawyer referral.

Hosting the Northern Justice Conference is an example of public service of which the Alaska Bar can be proud.

I've made many friendships within the legal profession which I'll value the rest of my life. It was a pleasure working with all of you.

Lew M. Williams, Jr.
Publisher Emeritus
Ketchikan Daily News

Lew Williams was one of the first public members appointed to the Board of Governors by the Governor in 1982. He was the first non-attorney officer of the Association, serving as Treasurer from 1984-1990. Lew finished his last term on the Board with the June 1990 meeting.

Estate Planning Corner

By Steven O'Hara

The calculation of federal estate tax can be analogized to the calculation of federal income tax. The gross estate, which is the starting point, is like gross income--it is nearly all-inclusive.

The gross estate includes the value of all property the decedent owned at the time of her death, including, in general, retirement plans and jointly-owned property (I.R.C. Sec. 2033, 2039, and 2040).

The gross estate also includes any gift taxes paid within the three-year period ending on the decedent's death (I.R.C. Sec. 2035(c)).

The gross estate includes the value of certain string-transaction property--that is, property transferred by the decedent before death but with respect to which the decedent retained certain strings (I.R.C. Sec. 2036, 2037, and 2038). The classic example is the creation and funding of a revocable living trust.

Also included within the string-transactions is relatively new Section 2036(c), which is unbelievably broad. Three bills are currently pending in Congress to repeal this statute, so discussion here will await the outcome of this legislation (H.R. 60, S. 659, and S. 838).

The gross estate includes property over which the decedent had a general power of appointment. For these purposes, a general power of appointment means the decedent had the power to direct that property be paid to herself, her estate, her creditors, or the creditors of her estate (I.R.C. Sec. 2041(b)(1)).

The gross estate includes insurance on the decedent's life if the decedent possessed at death any incidents of ownership over the insurance or if the insurance is payable to her estate (I.R.C. Sec. 2042).

The gross estate also includes property with respect to which the decedent's spouse took a marital deduction (I.R.C. Sec. 2044). For example, suppose a husband creates a trust and qualifies a $100,000 contribution to that trust for the gift-tax marital deduction by making an election, on his gift tax return, to treat the contribution as so-called qualified terminable interest property (I.R.C. Sec. 2523(f)).

Suppose the beneficiary-spouse dies, with $100,000 of principal then remaining in the trust. Under such circumstances, the $100,000 would be included in the decedent's gross estate (I.R.C. Sec. 2044(b)(1)(B)).

After arriving at the gross estate, deductions are then considered. Typical deductions are funeral expenses, administration expenses, indebtedness, and losses incurred in estate administration, as well as transfers to a qualifying charity or to the decedent's spouse (I.R.C. Sec. 2053, 2054, 2055, and 2056).

The marital deduction is generally not available for transfers to a surviving spouse who is not a U.S. citizen (I.R.C. Sec. 2056(d)). There is an exception if the transfer to the alien spouse is made through a so-called qualified domestic trust (I.R.C. Sec. 2056(d)(2)).

After subtracting the deductions from the gross estate, the remaining balance is known as the taxable estate (I.R.C. Sec. 2051). If the entire gross estate qualifies for the marital deduction, then, of course, the taxable estate is zero.

Suppose we have a client, domiciled in Alaska, who is not married, has no debts, and has never made a taxable gift. His sole asset is a $600,000 brokerage account (in which the broker holds the securities in street name), all of which the client contributed, but which he owns jointly with his son. Suppose the client dies.

Under such circumstances, the gross estate would be $600,000 (I.R.C. Sec. 2040) and the taxable estate would also be $600,000 because the administration expenses would be nil.

Looking at I.R.C. Section 2001, it appears at first glance that the decedent's estate tax would be $192,800. This amount of tax is completely offset, however, by the decedent's unified credit, which is also currently $192,800 (I.R.C. Sec. 2010).

Suppose our client's situation is more complicated. Suppose that on the day before our client's death, the joint brokerage account balance is $1,210,000, all contributed by the client.

Suppose further that the client's son withdraws, for himself, $610,000 from the brokerage account the day before his father's death. He did this because he heard about the $10,000 annual gift tax exclusion (I.R.C. Sec. 2503(b)) plus the unified credit, also applicable against gift tax, and believed that if his father died with no more than $600,000, his estate would owe no tax.

Under such circumstances, the father would be considered to have made a taxable gift of the $600,000 in excess of the annual exclusion on the day before his death (I.R.C. 2503 and Treas. Reg. Sec. 25.2511-1(h)(4)). His gross estate would consist of the $600,000 that remained in the account at the moment of his death.

The decedent's personal representative would be required to file a gift tax return, reporting the $600,000 taxable gift, but no gift tax would be payable because the gift tax would be completely sheltered by the unified credit (I.R.C. Sec. 2505).

The decedent's estate tax return would report a gross and, in general, taxable estate of $600,000. The estate tax liability would be calculated by including the $600,000 taxable gift (I.R.C. Sec. 2001(b)), which would produce an estate tax of $427,800 (I.R.C. Sec. 2001(c)).

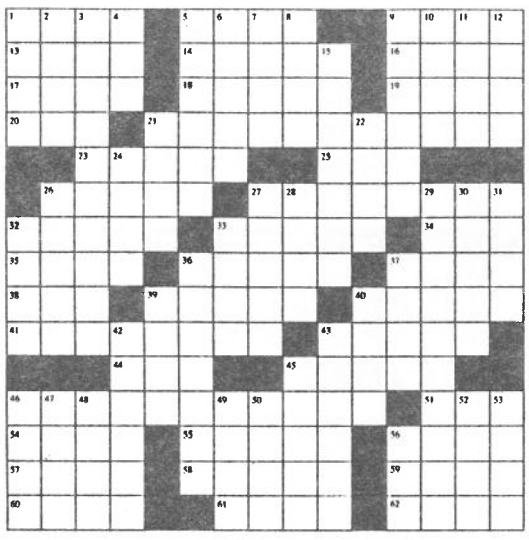
This amount would then be offset by the unified credit, which is $192,800 (I.R.C. Sec. 2010), leaving an estate tax payable of $235,000.

The effect of including the taxable gift in the estate-tax calculation is to assure not only the payment of a transfer tax, but also the application of the marginal tax rates, which begin at 18% and generally go up to 55% (I.R.C. Sec. 2001).

Recall under our facts that on the day before the client's death, the brokerage account had a balance of $1,210,000. The estate tax on that total amount would have been, in general, $239,100 (I.R.C. Sec. 2001(c) and 2010).

So the son saved $4,100 by making the withdrawal. He could have saved the same, plus avoided a gift tax return, by withdrawing only $10,000, which illustrates the effectiveness of the annual gift-tax exclusion.

LAW CROSS



ACROSS

1. treaty
5. Shakespeare e.g.
9. IOU
13. border lake
14. courthouse plantings
16. disgrace L. Fr
17. reserve
18. hollow rock with crystal interior
19. atop
20. friend L. Fr
21. "I have a dream", SCLC leader
23. certain soils
25. very definitely alright
26. 62A's milieu
27. nuisance effect on children
32. 5–7 times per week
33. young cod
34. Southern constellation
35. assns: abbr
36. Algerian currency
37. request court relief
38. speed limit measure
39. 36A or 45A
40. ICC concern
41. illegalized
43. aloe derivative
44. between Can. and Mex.
45. Parisian legal tender
46. 1st black at Univ. of Alabam
51. mob murder
54. new: Lat
55. policeman in 56A's era
56. Roman censor
57. Middle East monopoly: abbr
58. telegraph distress again
59. obey
60. extremely
61. lease
62. Admiral Zumwalt

DOWN

1. 256 pounds
2. Syria, formerly
3. to assemble or vote, e.g.
4. golf prop
5. criminal marriage
6. alleges
7. read the ___ act
8. Latin word of conveyance
9. polo boot
10. BIA tribe
11. privy to: 2 wds
12. high-pitched sound
15. elected every 6 yrs.
21. great number
22. 15D English equivalent
24. 57A products
26. Anti-nuke slogan: 2 wds, abbr
27. pock-faced (ID)
28. serving piece
29. SNCC's Stokely
30. RR traffic
31. states
32. major-_____
33. _____die
36. provisioned widow
37. working debtor
39. naval disciplinary hrg
40. kill (in battle)
42. mental soundness
43. "bust"
45. prison resident
46. post-judgment relief: abbr
47. feel blue
48. above
49. Frankfurt's River
50. suit costs
52. line ___ veto
53. bustle
56. revolutionary Guevara

Answers: Page 19

Courtesy, Law Cross Syndicate

People News Always Welcome

Be Careful Don't Start Wildfires

Aboriginal people gaining increased rights

the panel discussion at a quick and lively pace. The input of panel members from widely divergent viewpoints allowed for fresh insights into these difficult and important issues.

Native Exclusionary Law

The first hypothetical case involved a decision by the Native council of a northern village to exclude non tribal members from residing in the village. As analyzed initially by Jim Reynolds, Ph.D. and barrister from Vancouver, B.C., the case requires a classic balancing act between aboriginal rights and the more general right of all people to equality before the law. A recent decision of the Canadian Supreme Court, the *Sparrow* case, has held that the aboriginal rights will prevail under such circumstances, as long as they can be clearly traced and established, and have not been expressly extinguished. Thus the Natives should win, in Reynold's opinion, if such rights can be established. The village would be well advised, however, that it could be in for a long and expensive fight.

Becky Snow, of the Alaska Department of Law, asserted that the law of aboriginal rights is less clear in the United States, which view was echoed by a number of other Alaskans. Upon further discussion it appeared that the Canadian law as not all that clear, either. There seemed to be substantial concerns, in both countries, as to the rights and ability of the Natives to enforce such an exclusionary law. The major point of agreement was that both sides could be in for a long and expensive fight.

The Soviets had less difficulty with the hypothetical. Such a situation would simply not occur in the USSR, said Alexander Boikov, chairman of the Magaden Collegium of Advocates. The case would be over within three months, and the Natives would lose. Anatoly Kruglyak, chairman of the Kamchatka Regional Court, elaborated that the Soviet Constitution currently does not grant express aboriginal rights to Native people. Thus, the discussion is academic in the USSR at the present time.

Kruglyak said that such issues are starting to arise with more frequency, however. There is a growing recognition in the USSR that new mechanisms need to be developed to deal with the legitimate concerns of the native people. With over 100 different aboriginal groups in the Soviet Union, substantial problems exist.

The gathering of the clan at the annual meeting during the Northern Justice Conference and Alaska Bar Association Convention: (From left) Incoming President Dan Cooper; Outgoing President Jeff Feldman; John Lohff, parliamentarian; and board members John Murtagh, Alex Young, and Ardith Lynch. *Photo: Steve Van Goor*

From left, Native law panelists J. Keith Lowes, Barrister, British Columbia; Judge Mike Jeffery, Barrow, Alaska; Kamchatka Regional Court Chairman Anatoly Kruglyak; and assistant Alaska attorney general (Fairbanks) Becky Snow participate in lively discussion. *Photo: Greg Martin Photography.*

Societal Control

The second hypothetical dealt with village restrictions of pornography and alcohol advertisements. Both Canadian and Alaska members of the panel indicated that special circumstances might pertain to the question of alcohol because of the devastating effects of alcohol in the Native villages.

Anatoly Kruglyak noted than in the USSR the problem of alcohol is receiving wide attention, which is not limited to Native villages or populations. (Besides, he joked, in the Soviet Union there would be nothing to advertise since there is not enough vodka, anyway).

Search & Seizure

The third hypothetical had to do with illegal searches and seizures in the villages, looking for alcohol. This conversation focused on the question of the admissability of the illegally obtained evidence. In Canada, said Ed Horembala of the Yukon, the question would come down to whether the admission of the illegally seized evidence would bring the administration of justice into disrespect. The tendency of the Canadian courts, he said, is to admit evidence of a serious offense, except in situations involving the denial of the right to counsel.

The State of Alaska would probably not prosecute, at least not using the illegally obtained evidence, according to a number of the panel members. In the Soviet Union searches are sometimes made even where they are illegal, Alexander Boikov said. The evidence obtained would be admissable in court, but the person conducting the illegal search would be held accountable.

Traditional Hunting Rights

The final hypothetical question dealt with a Native hunter killing a duck and a moose out of season for use at a funeral potlatch. The discussion focused first on the concept of prosecutorial discretion. Because of the international migratory waterfowl treaty involved, the Canadian and Alaskan attorneys both agreed that "the moose is a better case than the duck." Ed Horembala said that as a trial lawyer, he'd surely want a jury, because they would never convict.

The judges on the panel were virtually unanimous in ruling that they would release both the moose and the duck from evidence impoundment, to allow their use at the funeral. Alexander Boikov stated that while there was generally one simple law for the land in the USSR, that such a question of burial rights and custom would evidence an extreme need and thus cause an exception to the general rule.

By way of summarizing the discussion, Judge Byrne said that much of what he had heard sounded strange to a federal judge from California, where the emphasis seemed to be on the equal rights of all people, whether American Indians, blacks, Chicanos, Oriental, or whomever, and not on the separate rights of certain people. Are we in the United States on the wrong path, he asked the Canadian and Russian participants?

Heino Lilles, Yukon Territorial Court, observed that the equality principal can be very unfair, where it is in conflict with the special needs and aboriginal rights of local people. Alfred Scow, Judge from British Columbia, echoed Judge Lilles' views. He noted once again the *Sparrow* case, the recent decision of the Canadian Supreme Court which supports the view of the predominance of aboriginal rights where they have not been expressly extinguished.

In the Soviet Union, said Anatoly Kruglyak, the cornerstone of the law is the equality of everyone. There is one law for everyone, agreed Ivan Shadrin, Justice of the Supreme Court of the Russian Federation, but local customs are taken into account in applying the laws and punishment.

The final word belonged to Alexander Boikov, who argued that complete assimilation of all peoples is not the best course. It is better, he said, to take the best of each separate people or nation, while at the same time protecting the interests of the smaller nations.

Transcripts and videotapes of the "Northern Native Populations and the Law" plenary session are available through the Bar office.

Referendum on Minimum CLE Rule

Ballots on a proposed rule on minimum continuing legal education were mailed to all active members of the bar association several weeks ago. The deadline for returning the ballot to the bar association office is *August 22, 1990.* Please be sure to cast your ballot and return it to the bar office by the deadline. Alaska is infamous for its close elections, so every vote counts!

ROLLINS BURDICK HUNTER OF ALASKA INC.
announces the winner of the
1990 Northern Justice Conference
Special Drawing

KEN EGGERS has won a "Game Boy" Video Game
courtesy of Rollins Burdick Hunter

The Alaska Bar Association thanks Rollins Burdick Hunter for their support of and participation in the 1990 Northern Justice Conference.

Family Matters

By Drew Peterson

A Bill of Rights For Children

Being otherwise occupied in this issue of the *Bar Rag*, I thought I would take this opportunity to use my column to spread the word about the parties to the divorce equation who are too often forgotten, namely the children..

The following Bill Of Rights of Children in Divorce Actions was adapted by the Family Court of Milwaukee County, from decisions of the Wisconsin Supreme Court. As far as I can tell it is entirely consistent with the decisions of the Alaska Supreme Court. I believe that it should be regularly read and reflected upon by anyone involved with the interests of children at the time of divorce.

Bill of Rights of Children in Divorce Actions

I. The right to be treated as an interested and affected person and not as a pawn, possession or chattel of either or both parents.

II. The right to grow to maturity in that home environment that will best guarantee an opportunity for the child to grow to mature and responsible citizenship.

III. The right to the day-by-day love, care, discipline, and protection of the parent having custody of the child.

IV. The right to know the non-custodial parent and to have the benefit of such parent and to have the benefit of such parent's love and guidance through adequate visitation.

V. The right to a positive and constructive relationship with both parents, with neither parent to be permitted to downgrade the other in the mind of the child.

VI. The right to have moral and ethical values developed by precept and practices and to have limits set for behavior so that the child early in life may develop self discipline and self control.

VII. The right to the most adequate level of economic support that can be provided by the best efforts of both parents.

VIII. The right to the same opportunities for education that the child would have had if the family unit had not been broken.

IX. The right to periodic review of custodial arrangements and child support orders as the circumstances of the parents and the benefit of the child may require.

X. The right to the recognition of the fact that children involved in a divorce are always disadvantaged parties and that the law must take affirmative steps to assure their welfare, including, where indicated, a social investigation to determine, and the protection of a guardian ad litem to protect their interests.

Smith suspended

IN THE SUPREME COURT OF THE STATE OF ALASKA

In the Disciplinary Matter Involving:

JAMES DAVID KIMO SMITH,
Respondent.

Supreme Court No. S-3764

ORDER

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton and Moore, Justices.

The Supreme Court of Colorado filed an opinion on April 17, 1989, suspending JAMES DAVID KIMO SMITH from the practice of law for a period of one year and one day, effective May 18, 1989. 773 P.2d 522 (Colo. 1989). The Alaska Bar Association submitted notice of the action of the Supreme Court of Colorado in this matter to the Supreme Court of Alaska on January 23, 1990. This court issued an order on February 6, 1990, directing the respondent to show cause why the imposition by the Supreme Court of Alaska of discipline identical to the discipline impossed by

Continued on Page 19

COMMENTS OF AN ALASKAN ATTORNEY IN CALIFORNIA ON HIS HOTEL'S "CONTINENTAL" BREAKFASTS

In this land, of fruit and nuts
I'd just like to kick some butts.
"Family Breakfast", the menu said.
I guess I should have stayed in bed.
For two days running, I've been had.
I've come to breakfast, a hungry lad,
only to be met, by pansy fare,
unsuitable, for this hungry bear.

Oh, there was cereal, and fruits galore,
but honestly, I must have more!
Where's the eggs? Where's the meat?
How 'bout waffles? They're real neat.
How about pancakes? A slice of ham?
What kind of guy do you think I am?

I come away, my stomach aching,
wishing for some strips of bacon.
How about a steak? Or a sausage patty?
It doesn't help to call me "Fatty!"

A Real "Farm Breakfast," is what I say,

that this guy needs, to start his day.
Am I alone, in seeking meat?
Or are there others, who like this treat?
If I'm alone, I'll shut my yap.
But I sure as hell
won't eat THIS crap!

By WAYNE ANTHONY ROSS

Movie Mouthpiece

By Ed Reasor

Richard Nixon notwithstanding, there is something awesome about selling cars. Every car salesman I know who became a lawyer graduated to trial work and did well.

I don't know any lawyer with guts enough to sell cars, but I suspect those who did change professions did not do quite as well as their non-law educated counterparts. It takes creativity, not *stare decisis*, to make consistent sales.

But if you're stuck and the wife just won't let you sell cars even on your off days, go rent *Cadillac Man*, a wonderful little film by Orion Pictures starring Robin Williams, Tim Robbins, Fran Drescher and Pamela Reed.

The movie opens with a master shot of what might very well be a foggy city either on the West or East coast of America. The locale is really supposed to be darkest Queens, New York, but the music accompaniment to the first opening feet of film - "opportunity, opportunity knocking on your door..." sets the mood precisely. We know immediately that Williams is going to be a go-getter and since the title is *Cadillac Man* (a copy perhaps of the idea from *Tin Men*) that he's quite likely to be a car salesman. You'll discover this in just two minutes and five laughs.

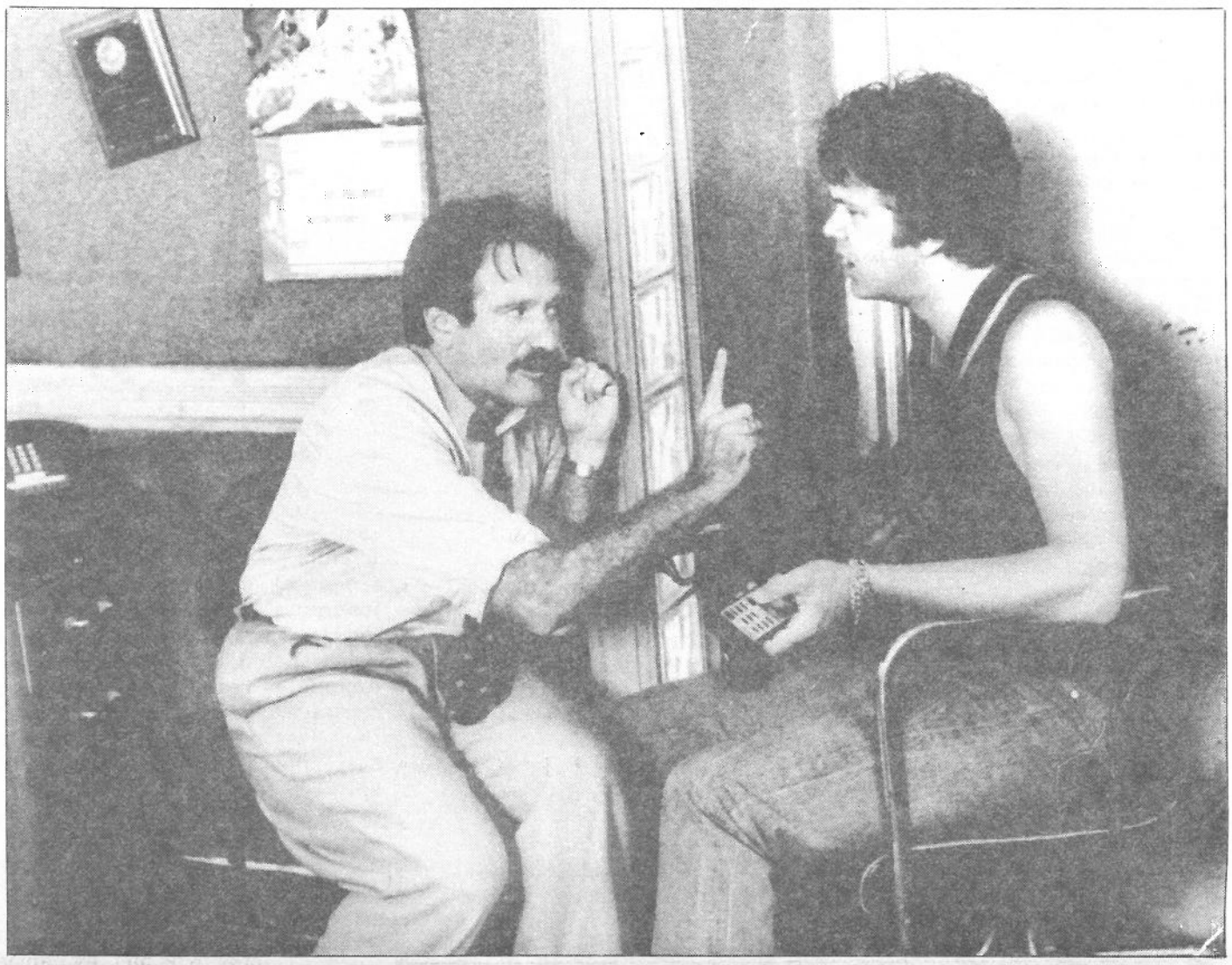
He is, but not just any kind of salesman. Williams is a rubbery featured, smooth-talking, at times maniacally glib Joey O'Brien, trying his best to remain the top salesman on the lot.

"Most people think car salesmen are the scum of the earth", Joey states emphatically, and he does not try to disappoint them. Before you've eaten half a box of popcorn, Williams has smooth-talked a funeral director with car problems into coming in to buy a new hearse, while vocally attacking the widow of the cortege to buy a new car on the spot. Kind of like a lawyer executing on a judgement against Santa Claus on Christmas eve. These things do happen.

Like most men who earn a lot of money rapidly, Williams spends a good deal of it on women. First there is his ex-wife Tina (Pamela Reed), to whom he owes money. This doesn't stop him from conning her to bring her brother in to buy a new car during the lot's gigantic sales attempts.

Then there is his married rich girl friend Joy (Fran Drescher in an excellent comedic role) whose Pomeranian is about as loud as the average New Yorker; then an attractive mistress Lila (played by Lori Petty as dumb and vulnerable) coupled with a dominating mother (Mimi Cecchini) and Lisa (Tristine Skyler) a wild, do-it-my-way teenage daughter.

Life in this lane is expensive and Williams is in debt. He has to work and work hard. To top it off, the ungrateful lot owner and his son, flush with nouveau riche, are moving from Queens to upscale suburbia, and they're only taking the top salesmen from a one day Sunday sale with them.



Robin William (left) as Joey O'Brien works salesmanship magic with Larry (Tim Robbins). *Orion Pictures Photo*

Williams is selling, faster, smoother even than before, when suddenly out of the blue comes the husband of Donna (Annabella Sciorra) with what appears to be a Uzi automatic rifle and enough ammunition to walk the streets of Beirut. Donna, the pretty showroom secretary, is having an affair and husband Larry (Tom Robbins) wants to know with whom, and now, or everyone is going to die. Williams sees this as the opportunity to make the sales pitch of his life. It is.

Cadillac Man is much better than its reviews. Remember, most film critics (this one included) have not sold cars before so what they think are improbable situations are really just real life happenings exaggerated for laughter.

Ask any worker's compensation attorney, plaintiff or defense, and he will tell you that *Cadillac Man* makes good, common sense.

Director Roger Donaldson ("Cocktail") and screenwriter Ken Friedman, a former cab driver from New York City, have a handle on a true salesman. Here Williams is sincere. He only sells brand new, top of the line Cadillacs.

Williams is wild as Joey O'Brien, but his is the one who takes the blame for secretary Donna's adultery, even though he is not the guilty one. Tim Robbins is a former aviation mechanic at LaGuardia as the zealous husband, shaggy, a numbskull (similar to his role as the pitcher in "Bull Durham"). He is volatile, but a man who likes ideas. In fact he literally beams at how Williams is handling the problem with the police after his invasion of the public car showroom in a bedlam of flying machinery, showering glass, hurtling bodies, and resulting captured hostages. The scenes between Williams and Robbins, alone, are worth the price of the theater ticket or the video rental.

A subplot involving the equally hustling Chinese who are trying to sell lunches first to the car salesmen and then to the police who hole up in the restaurant during the rescue attempt is well written, exceptionally well directed, and does just what it intended - break the tension from the main story of captured Williams, captured fellow employees, and car purchasers. There are lovely Dim Sun waitresses like this in San Francisco and Honolulu. You don't order, she does - for you! Her parting shot to any reluctant luncher is always: "No eat, no seat".

Don't make the mistake of missing a seat to *Cadillac Man.*

Cadillac Man's Tina (Pamela Reed), Lila (Lori Petty) and Joy (Fran Drescher) worry a problem on the sidewalk (left to right). *Orion Pictures Photo*

Torts

By Michael Schneider

I. *Introduction.*

While questions of coverage are typically a matter for decision by the court, uninsured motorist and underinsured motorist policies universally provide for dispute resolution via arbitration. It is also common for these policies to divide the economic burden of arbitration by some formula or other. The two variations that I've seen are the "loser pays" variation, and the "you pay for your arbitrator and arbitration expenses, I pay for my arbitrator and arbitration expenses, and we split the expense of the neutral arbitrator" variation. As a matter of custom, arbitrators are usually attorneys (with healthy hourly rates...), and most arbitration panels are required by the insurance contract to consist of three arbitrators. While arbitration is cheaper than litigation in superior court, our firm has been involved in UM arbitrations where costs have exceeded $10,000 and the proceedings have lasted for in excess of three days. How can these expenses be avoided?

II. *An Assured May Avoid the Expense of Arbitration While Still Utilizing the Procedure for Dispute Resolution.*

A. *The Cost-Splitting Provision of UM and UIM Policies Violates Public Policy.*

The argument is fairly straight forward and goes like this:

1. Uninsured and underinsured motorist coverages are statutorily mandated.

2. Any reduction of or erosion of the benefits defined by the statute is inconsistent with the statute and thus void as a matter of public policy.

This concept is not new to the law:

> "It is clear that an insured who is required to settle his uninsured motorist claim through arbitration under the policy issued by defendant...must pay the entire fee of the arbitrator that he has selected, plus one-half of the fee of the third arbitrator and one-half of the cost of the arbitration hearing itself. Read together, the...[statutes] mandate that uninsured motorist coverage be at least $10,000/20,000 exclusive of interest and costs. Since none of the arbitration fees and costs incurred by an insured are recoverable under the instant policy, the statutorily prescribed uninsured motorist coverage to which an insured is entitled is directly diluted. It is axiomatic that any conflict between the provisions of an insurance policy and a section of the Illinois Insurance Code must be resolved in favor of the statute."

Nickla v. Industrial Fire & Cas. Ins. Co., 349 N.E.2d 644, 647 (Ill. App. 1976).

A more recent and more western UIM case reached the same result:

> "The pertinent question then is whether a policy that shifts the costs of arbitration to the claimant provides the statutorily mandated coverage. Put another way, as the cases hold, is the underinsured claimant recovering those damages that the claimant would have received from an insured responsible party? To pose the question is to answer it. The claimant's recovery from an insured responsible party would not be reduced by any arbitration costs or their equivalent."

Kenworthy v. Pennsylvania General Insurance, 779 P.2d 257, 260 (Wash. 1989).

B. *The Cost-Splitting Provision of UM/UIM Policies is Inconsistent with Alaska Law.*

The judicial philosophy expressed in *Nickla* and *Kenworthy* was supported by our supreme court in the context of examining the "owned, but uninsured motor vehicle" exclusion:

> "We align ourselves with the majority position on this question. Our statute prohibited coverage narrower than that which was statutorily prescribed. As the Supreme Court of Florida stated in a similar case: 'Insurance or carriers writing automobile liability insurance and reciprocal uninsured motorist insurance are not permitted *by law* to insert provisions in the policies that they issue that exclude or reduce the liability coverage prescribed *by law* for the class of persons insured thereunder who are legally entitled to recover damages from owners or operators of motor vehicles because of bodily injury.'"

Emphasis in the original; citations omitted. *Hilllman v. Nationwide Mutual Fire Ins. Co.*, 758 P.2d 1248, 1251, 1252 (Alaska 1988).

A.S. 28.20.445 is the statute that talks about uninsured-and underinsured-motorist coverage. It has undergone a number of changes since the facts giving rise to the *Hillman* case. Generally speaking, the earlier changes were designed to make the world safe for the insurance industry. The most recent change is a result of HB #429, introduced by Representative Dave Donnelly and signed by the Governor in June of 1990. This latest change is consumer oriented. Neither the statute in its original form nor later amendments authorize a splitting or apportionment of the costs of arbitration. All forms of the statute suggest that the UM and UIM coverage must provide specific limits of coverage. The Alaska Statute is thus similar or identical to the statutes analyzed by the courts of Illinois and Washington and referred to in the cases mentioned above. The specific limits of coverage demanded by A.S. 28. 20.445 are eroded by imposition of the cost-splitting provision of the policy.

III. *Options and Approaches.*

If you're facing the arbitration of a UM or UIM claim, it may be wise to demand that the carrier pay the costs of the arbitration consistent with the cases that I mention above. If the carrier declines, then the cheapest and easiest approach to resolving the dispute may be to get the carrier to agree to arbitrate the issue of who pays for the arbitration. Any agreement to arbitrate this issued should include an agreement that no appeal will be taken to any other forum from the arbitration result. The other option is to bring a declaratory judgement action against the carrier in superior court to determine who pays the cost of arbitration.

Credits.

Good authority exists consistent with Alaska Statutes and case law that the costs of an arbitration proceeding should be borne in their entirety by the carrier despite the language of the policy. Claimants should endeavor to shift the economic burden of the arbitration proceeding to the carrier, despite contrary policy language.

My thanks to Ken Legacki for mentioning this issue and providing the cases above.

ALASKA BAR ASSOCIATION
SUMMER & FALL 1990 CALENDAR

#41 Aug 3 1 cle (Luncheon)	10 Malpractice Traps in Handling Military Divorces	Anchorage - Hotel Captain Cook
#33f Sept 20	Professional Responsibility & Ethics	Regency Hotel FAIRBANKS
#33a Sept 21	Professional Responsibility & Ethics - LIVE REPEAT	Sheraton Hotel Anchorage
#14 Oct 2 & 4 AM Mini-Seminar	Making & Meeting Objections	Hotel Captain Cook-Anchorage
#42 Oct 12	Bankruptcy Tax Problems of Individuals	Hotel Captain Cook-Anchorage
#38 Oct 22	3rd Annual Alaska Native Law Conference	Hotel Captain Cook-Anchorage
#40 Oct 30	Tax Update & Review	Hotel Captain Cook-Anchorage
#43 Dec 4	FDIC and Resolution Trust Corp.	Hotel Captain Cook-Anchorage

For further information on any of the above programs, contact the Alaska Bar Association, PO Box 100279, Anchorage, AK 99510, phone 907-272-7469 fax 907-272-2932.

Three attorneys disciplined

Attorney X received a written private admonition for violating DR 6-101(A)(3). The lawyer was retained to assist a client in filing paperwork necessary to protect a mining claim. The lawyer filed the paperwork in the wrong office (with BLM instead of State Division of Mining) and continued to do so despite BLM's warning that the papers were misfiled. The client lost his interest in the claim as a result, but was able to reacquire it and suffered little harm. This fact, together with Attorney X's previously unblemished disciplinary record, warranted a lower level of discipline than might otherwise have been sought under the circumstances.

Attorney Y received a written private admonition for violating DR 6-101(A)(3). The lawyer was retained to seek release of a vehicle that had been seized by federal authorities during an arrest for drug sales. The lawyer contacted federal officials to discuss the forfeiture and prepared necessary papers but failed to file them in time. All appeals were rejected and the vehicle was forfeited. Attorney Y argued that discipline was not appropriate because the vehicle would have been forfeited anyway, but this argument was rejected because a lawyer's duty to act competently and diligently is independent of results on the merits. An admonition was deemed appropriate because the amount of harm, if any, suffered by the vehicle owner was uncertain.

Attorney Z received a private reprimand for two acts of misconduct. First, the attorney engaged in a conflict of interest by defending a party in one proceeding while simultaneously litigating against the same party as a cross-defendent in another action. Second, in one of these cases the attorney made groundless statements that opposing counsel was involved in criminal activities. These acts of misconduct would ordinarily have warranted public disclipline. However, medical evidence supported a finding that the attorney suffered from a psychological disorder during the relevant periods, which is a mitigating factor under the ABA Standards for Lawyer Sanctions adopted in Alaska.

Banning Diapers is next national cause?

BY DAN BRANCH

State and Local governments across the country are considering, and in some cases enacting, laws to ban the dumping of disposable diapers in their landfills.[1] Are these proposed bans the responsible exercise of governmental authority to protect the local environmental or an odious invasion of privacy?

Any discussion of the constitutional right to privacy must begin with *Griswold v. Connecticut*, 381 US 479 (1965). That is the landmark case which struck down a state ban of the dispensation of birth control information to married persons. Justice Douglas found a right to privacy in marriage which predates the Bill of Rights and struck down the Connecticut law for fear that it would place a policeman under every marital bed.

How would the proposed diaper ban hold up to a challenge under *Griswold*? At first blush it would appear to be on all fours with the Connecticut birth control ban. After all both seek to effect bodily functions in the family home. A closer look shows that this analysis is too simplistic. Since the diaper ban seeks to prevent the dumping rather than the use of disposables, enforcement would place a policeman in the dumpster rather than under the crib. Fortunately, there are some other cases providing guidance here.

There is, for example *Stanley v. Georgia*,[2] which found that states cannot dictate what a man sitting alone in his home may read even if it is a naughty book. Many would argue that a fully charged disposable diaper is as distatseful as pornography. But *Stanley* goes out the window when the diapers go out the door on their way to the trash can. Clearly, the focus of this analysis must shift to garbage and whether a parent's trash can is within the zone of privacy.[3] privacy.[3]

The Supreme Court did address this question in *California v. Greenwood* (1988). *Greenwood* found that the Fourth Amendment does not prohibit warrantless searches of garbage left for collection outside the curtilage of one's home. Shoot, the court pointed out, "it is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, or other members of the public." Yuck! *Greenwood* pretty well wipes out the hopes of parents to use the U.S. Constitution to challenge the disposable diaper ban.[4] What about Alaska state law?

In Alaska, the right to privacy is guaranteed by an explicit constitutional provision. (See, for example, *Falcon v. Alaska Public Offices Com'n.*, 570 P2d 469 (Alaska 1977)). This explicit grant guarantees Alaskans a basic right of privacy in their home encompassing the possession and ingestion of marijuana for personal use. *Ravin v. State*, 537 P2d 494,504 (Alaska 1975). The *Ravin* court found that a strong right to privacy goes along with the character of the Alaskan people who have chosen to settle in the state to achieve a measure of control over their lives virtually unattainable in the other 49 states. (*Id*, p. 504).

The test for determining whether a person's right to privacy has been invaded under the Alaska Constitution is two-fold: (1) did the person harbor an actual (subjective) expectation of privacy, and if so, (2) is that expectation one that society is prepared to recognize as reasonable. *City and Borough of Juneau v. Quinto*, 684 P2d 127,129 (Alaska 1984). When applied to the question of disposable diapers, the first question, then, is whether Alaskans believe that the stuff they put in their garbage cans is safe from government eyes.

Before the *Greenwood* decision, the California Supreme Court had found that their citizens had a reasonable expectation of privacy with respect to garbage from a single residence when placed on the street for collection.[5] Since *Ravin* recognizes that Alaskans generally have a greater expectation of privacy than Californians, a strong argument can be made that the Alaskan zone of privacy extends to garbage cans.

A person seeking to strike down a diaper ban in the great land will have a harder time meeting the other Alaskan privacy test. Is the Alaskan society prepared to recognize private garbage if it means being inundated with smelly heaps of stinky diapers? As local landfills run out of dumping room, Alaska courts may be disinclined to make such a finding.

Conclusion: If an Alaskan town ever bans disposable diapers the law will probably withstand constitutional challenge. With communities scrambling for landfill space, it is only a matter of time before dumping a diaper becomes a criminal act.

1. The City Council of Olema California has refered the matter to their Spaceship Earth Committee for consensus and a New England state has talked about banning the things altogether. I am sure that some town with an overflowing landfill has actually made the use of the disposable diapers illegal.
2. 381 U.S. 557 (1969).
3. *Griswold*, 381 U.S. at 484 recognizes that the penumbral rights formed by the emanations of the specific guarantees of the Bill of Rights create zones of privacy.
4. Before *Greenwood* I would have taken up a few pages discussing cases holding that people using trash cans to hide their garbage have a right to privacy (*State v. Broom*, 557 P2d 1052 (Arizona 1976) while people who just use plastic bags do not. (See *U.S. v. Kramer*, 711 F2d 789 (7th Cir. 1983).
5. *People v. Krinda*, 486 P2d 1262 (1971).

Julie shops the singles columns

BY JULIE A. CLARK

The personals columns are such fun to read, my only regret is not getting to read them every day. Years of reading them plus reports from people with the nerve to put their own ads in the paper makes me an 'expert'.

Alas, they are not as interesting as they were for about six months in about 1970. The personals column started to read like Screw Magazine! I had lived briefly near San Francisco and bought a copy of the magazine. My younger cousin, more with it than I (me?) translated some of that magazine's more esoteric ads for me. I can just imagine the Anchorage editor when someone, undoubtedly from San Francisco, pointed out to him what some of those terms really meant. "This guy wants to do what??!?? Holy #@&!@&#@!!! That's illegal and this is a family newspaper!", he probably gasped. Abruptly those stopped.

Sifting the ads. Most of them start with DWF or BM or other esoteric letters. Sometimes there's a "G" in there. If you are of the heterosexual persuasion, give those a miss. I am constantly surprised at how many people do not know the codes. One recent ad from a GWF cautioned the men to save their stamps.

Otherwise you may be in for a surprise like a gentleman of my acquaintance many years ago, who told this story on himself. Answering one of those ads, he took out a really hot-looking blonde, wined her and dined her, impoverishing himself in the process. Later, he took her to his apartment: turned the charm and the stereo up, the lights down low. (This was pre-AIDS.) His hands began exploring without objection from this gorgeous creature, so he became bolder and started running his hand up her silken thigh. The blonde took pity on him and told him there was something he ought to know. 'She' was a he who did a standing-room-only act in one of the local nightclubs.

If you are between spouses or girlfriends or boyfriends and are thinking about shopping for a new love interest through the personals, here's a guide, sort of.

Male: "Chiseled good looks, looking for earthy younger friend." (I can't pass up a mirror and I'm prettier than you are.)

Female: "Looking for a man to lighten up my life." (You won't be able to go for a haircut without my giving you the third degree.)

Female or Male: "Looking for sincere man/woman, who likes children." [No specification noted.] (I am interested in marriage and want father/mother for seven kids. Any old warm body will do and it better be fast or I'll be checking into API in a strait jacket.)

Male or Female: "You must be financially secure." (I have bankrupted three ex-husbands/wives and am now looking for the fourth.)

Male: "Health conscious." (I want to tell you all about my high blood pressure, constipation, back troubles.)

Female: "If you're a [fill in astrological sign], I'd like to hear from you." I will want you to eat bean sprouts and listen to New Age music and will do nothing without consulting my horoscope.)

Male or Female: "Enjoy quiet times at home." (I am a grade A couch tuber. Only blasting powder or a .45 will budge me from my sports programs/soap operas.)

Male: "Sensitive, caring male seeks attractive trim female for intimate relationship." (Looking for sex, the rest is hype.)

Male: "Ladies, how do you rate? I am a successful professional, blah, blah, etc." (I look great, live a yuppie lifestyle and am a total jerk.)

Male: "Tired of the bar scene." (No one will go home with me.)

Female: "Rated for adventure." (I will drain you to a dried up husk OR I charge by the hour, cash or credit cards only.)

Female: "I am your date from hell." (If you like whips and chains, I'm your woman.)

If you are thinking that you might try an ad, here are some I'd like to see for lawyers, keeping in mind truth in advertising:

Divorced male, stuffy, middle-aged senior partner in thriving practice, marriage minded, seeks like-minded F, 20-30, trim blonde, attractive, as a trophy wife, for dining, dancing, quiet evenings in front of the fire, mostly the latter. Excellent retirement program to which my four ex-wives can attest.

Single female attorney, partner in medium-sized firm seeks sincere attorney, earning at least 200K per year. Must drive a BMW but if you drive a Mercedes, you'll do. My biological clock is ticking.

Single professional looking for someone who enjoys the good life. Have boat and BMW. Looking for an attractive F with an airplane and home on the hillside. Let's get together and clang our status symbols. Send picture and while you are at it, send a picture of the airplane.

Attorney, tired of the rat race seeks another like-minded soul. Must have independent income.

1990 NORTHERN J

Legal systems similar, different in four nations

BY MICKALE CARTER

The first day of the Northern Justice Conference began with summaries of the basic structure and operation of the legal systems in Canada, the United States and the U.S.S.R.

This somewhat technical description of the respective legal systems was designed to provide background information which would aid in the understanding of the upcoming plenary sessions of the conference. At the luncheon address, Alaska Chief Justice Warren Matthews, through his review of the history of the Alaska purchase from Russia, revealed the strong ties which once existed between Russia and the U.S. The stage was thusly set for the fruition of the primary goal of the conference, i.e., the discussion of the varied approaches to the common problems of the Northern Territories of Canada, the U.S.S.R. and Alaska.

LEGAL SYSTEMS

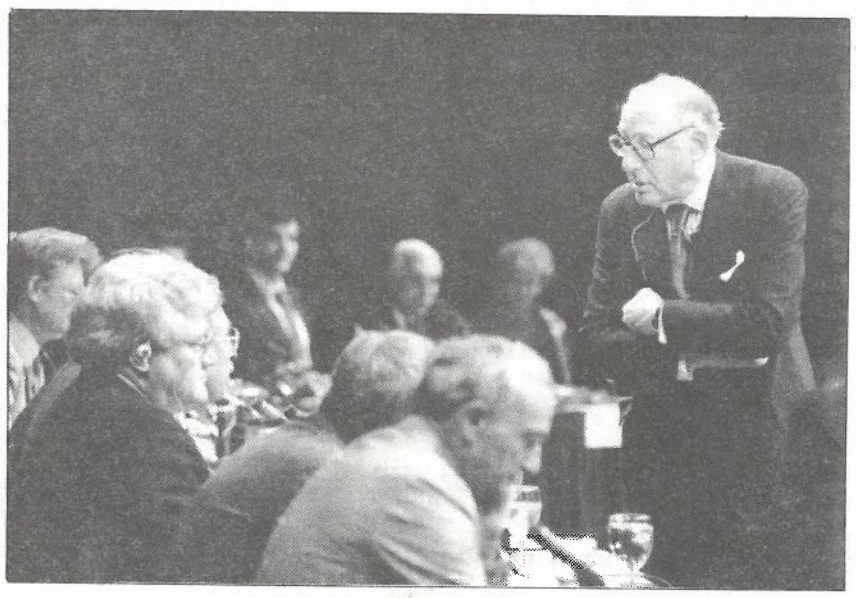
The United States

Judge Walter L. Carpeneti, Alaska Superior Court Judge, First Judicial District, provided the outline for the American judicial system. Judge Carpeneti stressed three aspects of our judicial system which he believes are critical parts of what makes our country what it is: (1). the role of the law; (2). the adversary system; and (3). the Doctrine of Judicial Review.

The law is central to American life. We are a nation of laws with the goal that no person is above the law. The adversary system is essential to the guarantee of individual rights. Judge Carpeneti noted the tension within our system between the respect for precedent and the requirement that the commcon law reflect the changes in our society. It is for the judge to strike the right balance between *stare decisis* and the development of the common law.

The U.S.S.R.

Vasiliy Vlasihin, the head of the Legal Studies of the Institute of U.S. and Canadian Studies in the Soviet Union, described the Soviet legal system. In the Soviet Union, the rule of law is merely a goal. Presently the Soviet public, if asked what the rule of law means, would likely say, "Shoot the bastards" or "Standing in lines."



Media personality Fred Friendly queries Far North Justice panel. *Photo: Greg Martin Photography*

Although the Soviets are working toward a legal system where the rule of law will be synonymous with basic fairness and justice, presently the law still has characteristics of repression. The law puts in its center the interests of the state, not the individual. That is not to say that the rights of the individual are not professed. The Constitution had words of rights and freedoms even under Stalin's regime, Vlasihin said.

There is no federalism in the Soviet Union. The National Legislatlure in Moscow adopts fundamentals of law which provide basic guidelines. However, the Republics, which form the Union, can adopt contrary legislation. Indeed, the Baltic States are presently adopting statutes which require local approval of federal law. The Republics can even adopt legislation which eviscerates the Constitution.

The Soviet Union is not a common law country. There is no case law. There is no power of judicial review. There are no checks and balances. They are working to establish separation of powers. The judiciary is not yet considered a separate branch of the government. However, it is now independent from the party and the executive officers. There is a statute which prohibits party and executive officers from exerting pressure on the courts.

The Soviet system for enforcement of law is both similar to and different from that of the United States. They have local trial courts that sit in each district, handling most criminal cases except capital crimes.

Cases are tried before three-judge panels made up of one professional judge and two lay judges. The judges decide both the law and the facts. The lay judges have been referred to as "nodders," because they frequently simply adopt the conclusions of the professional judge. For the more serious crimes, the case is tried before a 5-judge panel comprised of two professional judges and three lay judges.

There is a right of appeal to the Regional Court, which also has original jurisdiction over capital crimes. The appellate court of last resort is the Supreme Court of the Union Republic. The Supreme Court also has discretionary trial jurisdiction.

There are 27,000 advocate members of the bar. Advocates are attorneys in private practice. There are also 90,000 governmental agency counsel, making a total of 117,000 attorneys.

Canada

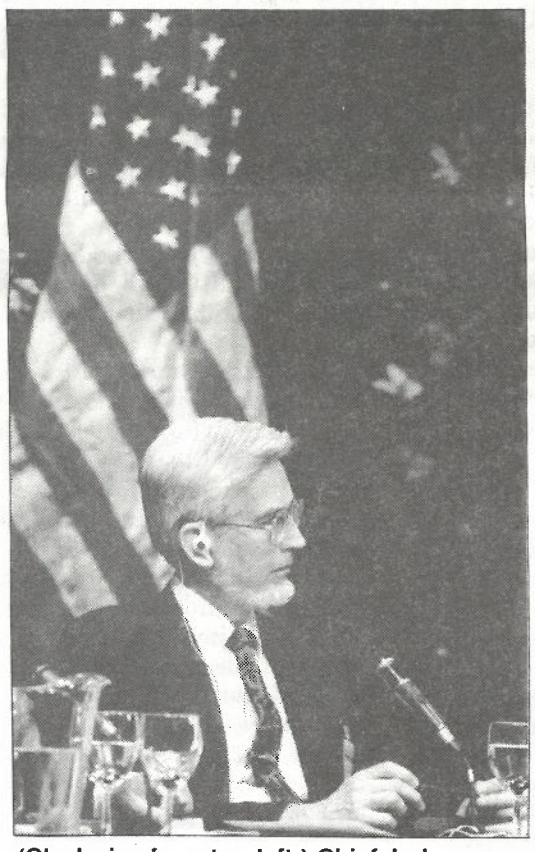
Justice Roger Kerans, of the Supreme Court of the Yukon Territory, described the Canadian legal system. Canada is a study of "Evolution over Revolution," he said, and the Canadians obtained their independence by bargaining for it. There was no blood shed. They have the same approach to their system of justice. As Winston Churchill once said, "The Canadian way has everything against it except one thing--it works."

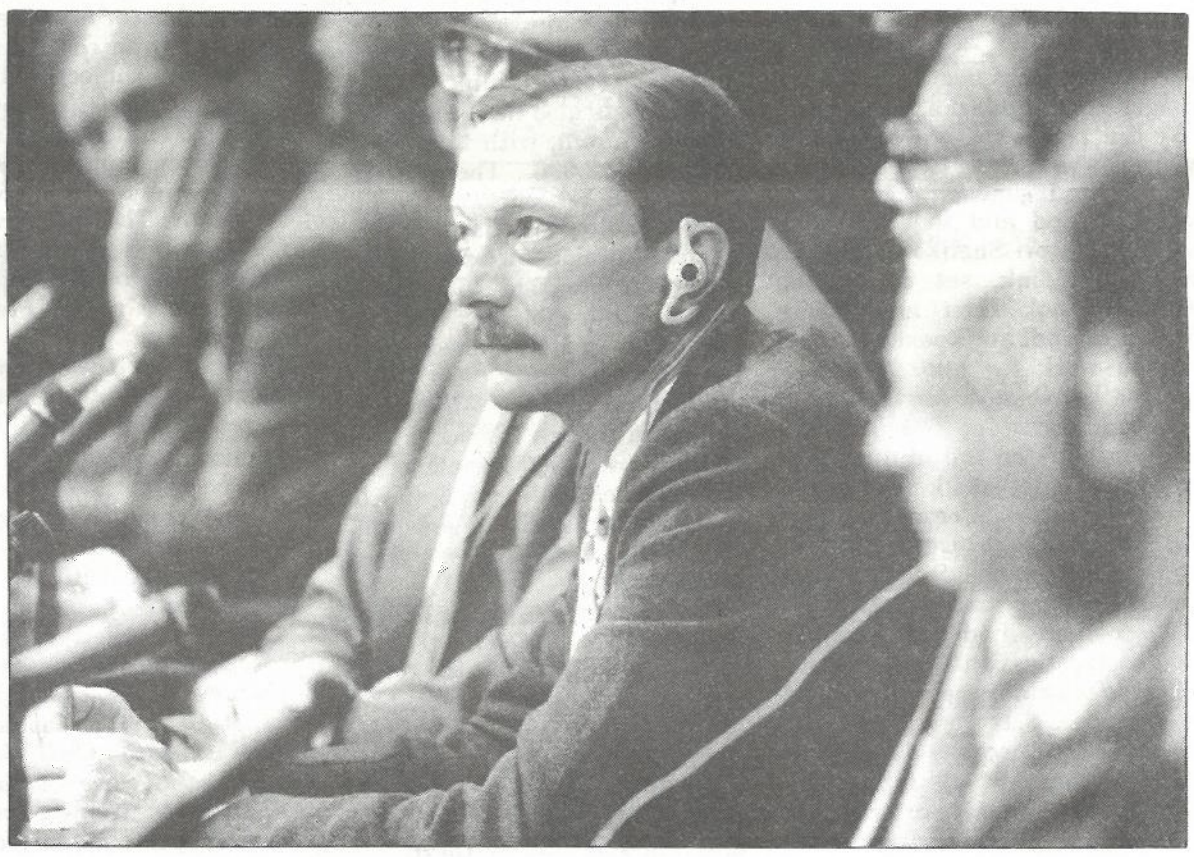
Ninety percent of the population of Canada lives within 300 miles of the 49th parallel and the Great Lakes. The National Government governs the relatively unpopulated land north of the 55th parallel. It is divided up into two territories, the

Continued on Page 15

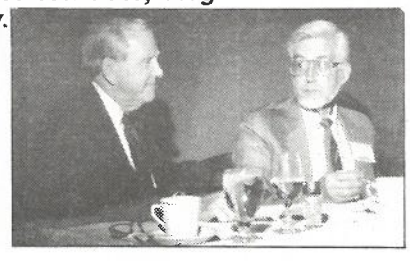
STICE CONFERENCE

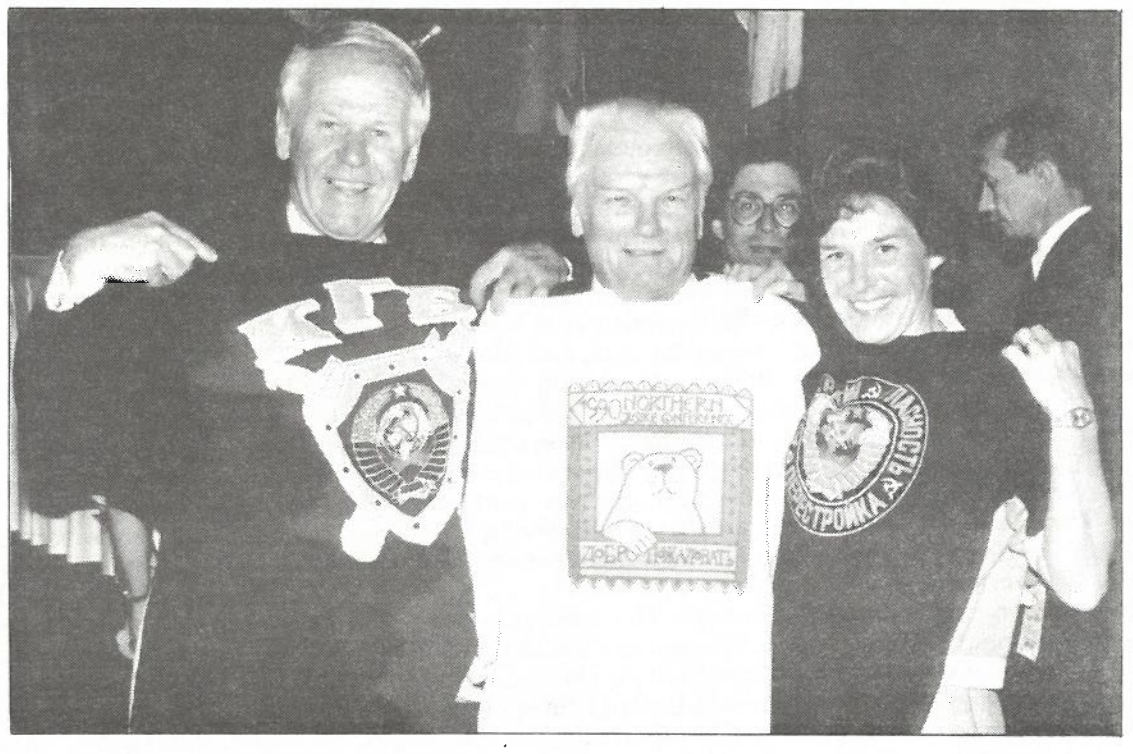
Photographer Greg Martin captures a panoramic shot of all 18 panelists for Saturday's question and answer session at the conference, as moderator Weyman Lundquist (at podium) poses a query.





(Clockwise from top left:) Chief Judge Russel Holland, U.S. District Court (Alaska) listens to translations as a conference panelist; Vasiliy Vlasihin of the Soviet Union listens as a panelist in another session; attendees pose with "exchange t-shirts." Alaska's Weyman Lundquist poses with KGB shirt on left; Moscow's Vladimir Krutskijh sports an Ayse Gilbert model T; and Heather Walker shows off another Soviet style. (In background, Feldman breaks all records for number of photo appearances in the *Bar Rag*, while Vlasihin heads for the bar at the closing banquet). And panel moderator Judge William Matthew Byrne, Jr., (left) U.S. District Court, (Central California), pauses for federal reflection with Chief Judge Holland of Alaska. *Photos: Steve Van Goor; Greg Martin Photography.*





1990 NORTHERN

How the U.S. got "Seward's Icebox" from Soviets

BY MICKALE CARTER

Chief Justice Warren Matthews for his luncheon address reviewed the history of the purchase of Alaska from Russia. "Alaska was sold by a nation with a small desire to sell, to a nation with a small desire to buy," Justice Mathews said. Both the United States and Russia entered into the agreement thinking that it was what the other nation wanted. The purchase is also unique in that Alaska was acquired without war or even threat of war, and without the United States having any claim to the land.

After Vitus Bering discovered for Russia what is present-day Alaska, an eastward movement of trappers from Siberia began. The trappers island-hopped across the Aleutian Chain. The Siberians were not maritime people, and their boats were held together with rawhide. Their only navigational equipment, if any, was a compass.

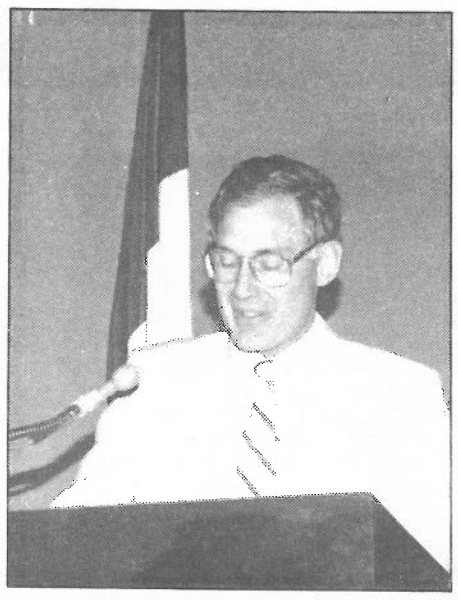
The trappers, similar to American mountain men, founded small companies, with free trappers working on shares. The Russians' treatment of the Native people was atrocious, and in 1762 the Aleuts retaliated in an attack of a Russian ship in Unalaska. Many Russians were killed, and in the following year the trappers destroyed all the villages near Unalaska.

By the 1780's the era of the free trappers was coming to an end. The trappers had gone all the way to Kodiak Island and the mainland. In 1784 Gregori Shelikof founded a town in Kodiak, set up trading posts in Cook Inlet and Prince William Sound, and coaxed the Natives to work for him by paying them, rather than by terrorism.

At the urging of Shelikof, the Czar consolidated the trading companies into what was known as the Russian-America Company. This colonial company controlled all commerce from the Siberian east coast to the American mainland.

The company had the authority to make treaties with foreign powers, trade with anyone and raise an army or a navy. It was wonderfully cheap to run because it did not have the concomitant duties of a government to educate or provide a system for resolution of disputes.

Alexander Baronof first came to Alaska as Shelikof's manager.



Chief Justice Warren Matthews speaks at the closing banquet at the convention. *Photo: Steve Van Goor*

When he became the governor, he set up a post at Sitka. This post was destroyed by the Tlingits. Baronof formed a fleet and again engaged the Tlingits, and this time he prevailed. He establishled a post at Sitka which became the headquarters for the Russian-America Company that ultimately extended its reach to California.

At the time of the sale of Alaska, there were 43 trading posts. Most of the posts also had a Russian Orthodox church, with total membership of 12,000. There were 50 schools, four hospitals, one library and one college in Sitka.

The Russian-America Company was quite profitable. The furs were sold to China for tea, with 30% of the tea served in Russia supplied by the company. It employed 10,000 Indians and Aleuts, and at the time of the Alaska Purchase, there were 1,700 people of mixed Russian and Native ancestry living in Alaska, as well as a few hundred Russians. But there were no Americans.

So why was there the sale of Alaska to the United States?

The Russian decision-makers uncritically accepted the U.S. doctrine of manifest destiny. President James Polk was elected in 1845 with the campaign slogan of "54-40 or fight" (54 degrees and 40 minutes marked the southern boundary of the Russian holdings in North America. When the minister for Russia was in Washington D.C. in the 1840's, he saw manifest destiny first hand as U.S. policy provoked war with Mexico so the U.S. could acquire its territory.

The Russians were worried about the impact of manifest destiny on their relations with the U.S. Relations between the two nations were good, and Russia wanted to keep them that way.

Russia and Great Britain were rivals. On the North American continent, the Hudson Bay Company and the Russian-America Company were rivals. They were also rivals on a global scale. The rivalry over the domination of southeastern Europe led to the Crimean War of 1854-56. (Crimea is a peninsula in Russia which extends into the Black Sea). During the Crimean War, British ships blockaded Russian-American shipping to and from Alaska. The U.S. press was pro-Russian, arms were sent to Siberia, and the U.S. manned ships through the British blockade.

The Russians were impressed with the United States and recognized the U.S.'s vulnerability to attack in the Pacific Northwest. Russia was certain that the United States wanted Alaska. Nonetheless, the subject of the sale of the Russian-America Company to the United States was first raised as a proposed phony sale of the company to forestall invasion by Britain. The maneuver led to the exploration of an actual sale. The Czar was persuaded that the sale should be made. President James Buchanan initially offered $5 million for their arctic possession, but further negotiations were put on hold during the U.S. Civil War.

Russia was the only major world power which was sympathetic with the Union cause during the War between the States, as the Union feared that Britain would side with the South.

In 1863, the Russians dispatched its fleet to American waters. Their mere presence sent a message to Britain that it should keep out of the American Civil War.

By the close of the Civil War, Russian/American relations had never been higher, and the Russians continued to believe that Alaska should be sold to the United States in order to preserve these relations.

Weak after the Civil War, the U.S.'s attempts to encourage the Canadians to join the Union were unsuccessful. High tariffs failed to endear the Canadians to the United States.

Secretary of State, William Seward was enthusiastic about purchasing Alaska, believing that if the United States owned Alaska it would put Canada in an American vise. Seward also thought that the purchase might lead to British Columbia joining the United States.

The sale was finally consummated for $7.2 million, and the treaty was signed the same evening the selling price was agreed upon. The Senate ratified the treaty within 2 months. The arguments for ratifying the treaty did not focus on the natural resources of Alaska. They rather discussed the fact that the sale would seal the friendship between the United States and Russia.

The official transfer took place on October 18, 1867 at Sitka, and the House of Representatives appropriated money to pay for the purchase in June of 1868, amid rumors in the U.S. that the House of Representatives had been bribed by the Russian ambassador who apparently would be receiving a commission for the sale. Meanwhile, news of the sale was unpopular in Russia, and among the Orthodox faith it was said that abandoning the Russian Orthodox faithful was a sin.

The United States purchased Alaska from Russia because it wanted to cement their good relations. Similarly, Russia sold Alaska to the United States because it thought the sale would insure the continuation of their friendship.

In the United States there was almost no thought that civilization could survive in Alaska. Indeed, the Far North real estate was known as "Seward's Ice Box."

Friendly moderates Day 1 session

The topic for the first plenary session was "Problems of the Administration of Justice and Law Enforcement in the North." The moderator was Fred W. Friendly, who along with Edward R. Murrow produced "See It Now." Friendly also produced "CBS Reports," was president of CBS News from 1964 to 1966, and left CBS because of a network decision to run reruns of "I Love Lucy" instead of televising congressional hearings on the Vietnam War. Friendly then served as dean of the School of Journalism at Columbia University.

The session was conducted using the same format as Friendly's PBS series "The Constitution: That Delicate Balance," wherein Friendly presented scenarios and asked the members of the panel to express their opinions. He would then change the scenario and the panelist would determine whether the opinion previously expressed was still valid.

The panel was composed of participants from the Soviet Union, Canada, and Alaska.

Scenarios dealt with conflicts such as those which arise because our legal system recognizes attorney-client confidentiality. They also focused on conflicts which result from preserving basic freedoms including freedom from unreasonable searches.

The scenarios were of a general nature dealing with conflicts inherent in the system of justice in the United States. As a result, Friendly inquired, in the main, of the Alaskans on the panel. Soviets and Canadians were queried only after the Alaskans had set the parameters for how the problem is defined pursuant to our system of jurisprudence. The forum consequently was not conducive to revealing the extent of the conflict, indeed if there was any conflict at all, applying the Canadian or the Soviet system of jurisprudence.

Even though the session was billed as focusing on problems of the administration of justice and law enforcement which are shared by Alaska, the Yukon and Northwest Territories and northern U.S.S.R., no such scenarios were presented. At best the generalized scenarios were merely tinted with "local color," e.g., the subject incident took place in an Alaska town, the main actor was named Sitka Joe. As a result, the panelists were not given the opportunity to discuss solutions to the problems of administrations of justice and law enforcement in the north.

--Mickale Carter

Remember to Vote! Aug. 28

JUSTICE CONFERENCE

Environmental cases will monopolize the 90's

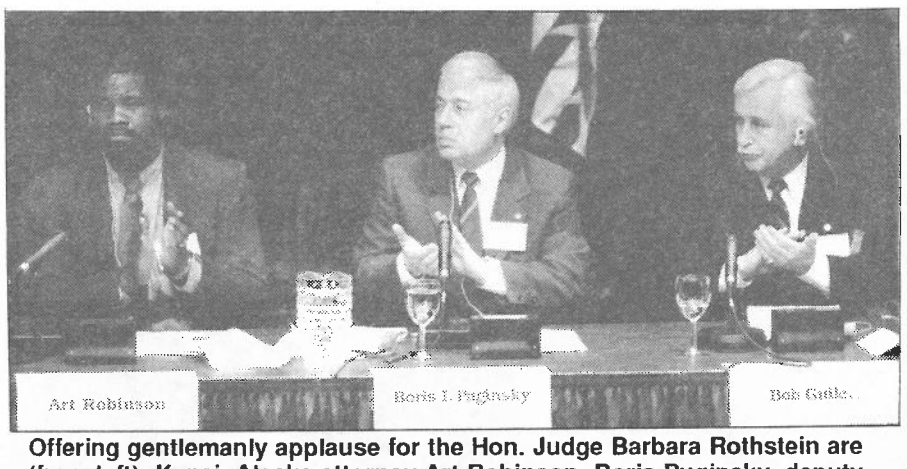
BY SALLY J. SUDDOCK

When the environmental movement peaked in the 1970's, few of the reforms it spawned extended into nations outside of the U.S.

Two decades later, environmentalism has spread worldwide well beyond its earlier movement of the 1970's.

"I would predict, based on what my calendar looks like and what I hear from my fellow judges, that environmental cases will monopolize the decade of the 1990's to come," said Ninth Circuit federal judge Barbara Rothstein as she opened the Northern Justice Conference panel on "Northern Communities as Developing Nations: Environmental and Economic Problems."

Judge Rothstein, Chief U.S. District Court Judge, Western District of Washington, moderated a panel of 12 members from Alaska, British Columbia, the Yukon Territory and the Soviet Union. "Every decade has its issues," she said, "and in the case of the environment, many are being hammered out in the Northwest and Alaska, where it has captivated every issue with struggles and balancing."



Offering gentlemanly applause for the Hon. Judge Barbara Rothstein are (from left): Kenai, Alaska attorney Art Robinson; Boris Puginsky, deputy chief arbitrator, Russian Soviet Federated Socialist Republic; and Bob Guile, Q.C., Barrister and Master Treasurer, Law Society of British Columbia. *Photo: Greg Martin Photography*

Two hypotheticals were presented to the panel: one dealt with the balancing act between a proposed coal development project on privately held, remote land in a pristine environment; the other explored a MacKenzie River natural gas pipeline project across Canada to the North Slope and down the Alaska Pipeline corridor.

The coal developer will face scrutiny from the regional natural resources agency, fish and wildlife agencies, hunters and fishermen who use the region, environmental groups that are opposed to the development and several residents who live in the remote area adjacent to the surface mining project.

"Will all these groups seek to participate, and do they have adequate opportunity to do so?" asked Judge Rothstein.

Alaska's Jeff Lowenfels fielded the first question, speaking, he said, from his experience as legal counsel for Yukon Pacific Corp.'s TransAlaska Gas pipeline project. "These projects are usually contested, usually opposed by environmental groups, usually have a large federal presence, and the process is usually too long for the applicant and too short for the protestors," he said. "But all these groups must be brought to the table early in the process."

This is true, said Eric Smith, former EPA counsel and executive director from 1982-86 for the Trustees for Alaska non-profit environmental law firm.

"We generally follow two strategies--either to oppose the entire project or go for a tight permit, tight bonding and tight monitoring," said Smith. "We will employ procedural devices and we will probably go look for endangered species of animals or plants to stop it. The federal Endangered Species Act is the only law that enables the complete shut-down of a project."

Several panelists agreed that the tactic of delay often is employed to fatal result for the would-be developer, and the lengthy process of public review and multiple permit applications sparked an interesting dialog of opinion.

"Many of these groups that participate in the public review process do so because 'no one can be trusted but them, except maybe the federal courts'," said panelist Chuck Flynn, partner in the Anchorage lawfirm of Burr, Pease and Kurtz. "I believe we are approaching these issues from the wrong perspective--we are waging warfare by delay that starts with an assumption that agencies won't do their jobs," he said, with "delays" taken finally through the courts. "I submit that it's not a U.S. district court judge who has the expertise to make these decisions."

"I strongly disagree that it's delay for delay's sake," said Smith. "To file a lawsuit simply to delay is unethical, unless it's part of a broader political strategy."

In Canada, developers also face a lengthy permitting process, noted J. Keith Lowes, British Columbia barrister, and Bruce Willis, Q.C. barrister in the Yukon Territory. "In Canada, change in law is occurring so rapidly" that federal government policies are virtually being rewritten to reflect not only case law decisions, but increased involvement of aboriginal peoples in land claims and development policy, said Willis. In the Yukon, federal policy is the central issue in most projects because the federal government owns or controls 99 percent of the land area.

Major project proposals typically face pre-hearings to clarify the issues. An array of First Indian Nations land and water treaties also come into play. Development is governed by 10 national regulatory authorities, such as the Northern Inland Waters Act, the Environmental Assessment Review Act, the Territorial Lands Act, the National Energy Board, and (in the case of the gasline hypothetical), the Petroleum Resources Act. "The flow chart for (our permitting process) is phenomenal," said Willis. "We have brought ourselves a bureacratic

Continued on Page 19

Barker receives Professionalism Award

LeRoy Barker (left) gets the Professionalism Award from outgoing President Jeff Feldman. *Photo: Steve Van Goor*

(From left): Alaska Superior Court Judge Dana Fabe; Alexander Boikov, chair of the Presidium of Magadan Collegium of Advocates; British Columbia Barrister Jim Reynolds; and and Vladimir Krutskijh, chief, Legal Policy Department of the Russian Soviet Federated Socialist Republic, ponder their notes during Saturday's question and answer panel during the Northern Justice Conference. *Photo: Greg Martin Photography*

Leroy J. Barker, a partner with the Anchorage firm of Robertson, Monagale & Eastaugh, has been awarded the Alaska Bar Association Professionalism Award, which was presented on June 9 at the 1990 Annual Convention in Anchorage.

The annual award recognizes an attorney who exemplifies the attributes of the true professional; whose conduct is always consistent with the highest standards of practice and who displays appropriate courtesy and respect for clients and fellow attorneys.

Mr. Barker received his J.D. degree at the University of California at Berkeley. Mr. Barker has served as an assistant district attorney in both Alaska and California, and as an assistant attorney general in Alaska. Mr. Barker has been in private practice in Anchorage since 1970.

The Board of Governors, in announcing the Professionalism Award, recognized Mr. Barker's consistent and enormous commitment and loyalty to his clients; and his reputation for total respect and consideration for opposing attorneys, judges, court personnel, clients and witnesses.

Jones receives Distinguished Service Award

Carolyn E. Jones was selected for the Alaska Bar Association Board of Governors Distinguished Service award. The award, presented at the 1990 Alaska Bar Association annual convention on June 9 in Anchorage, annually honors an attorney for outstanding service to the membership of the Alaska Bar Association.

Ms. Jones is in her second term on the Association's Law Examiners Committee which drafts and grades the Alaska Bar Exam. Ms. Jones has chaired the committee since 1988. Ms. Jones has also served on the Bar's Continuing Legal Education committee, which develops legal education seminars for attorneys, the Legal Education Opportunities Committee which was responsible for the oversight of WICHIE funds for legal education, tutoring assistance to failing bar examinees and oversight of the impact of Bar admission standards on minority applicants, and the Alaska Bar Foundation which provides scholarships to law students.

Ms. Jones was born in New York,

Outgoing President Jeff Feldman presents Jones with Distinguished Service Award. *Photo: Steve Van Goor*

received her B.A. from Stanford and her law degree from Yale. She worked for the Legal Aid Society of Alameda County, the California Continuing Education of the Bar and was in private practice in Berkeley before moving to Alaska in 1975. Since that time Ms. Jones has worked as an Assistant Attorney General in the Transportation and Public Facilities Section of the Attorney General's office in Anchorage.

1990 NORTHERN

Soviet males prefer NAPA to Nordy's

BY BARBARA ARMSTRONG

"Being here is like being on another planet, but the aliens are very nice!" That's how one of the six visiting Soviets described his reaction to being in Anchorage for the 1990 Northern Justice Conference.

Vladimir Krutskijh, Chief of Legal Policy for the Russian Soviet Federated Socialist Republic (RSFSR); Vasilily Vlasihin, Head of Legal Studies, Institute of U.S. and Canadian Studies; Ivan Shadrin, Supreme Court Justice, RSFSR; Boris Puginsky, Deputy Chief Arbitrator, RSFSR; Anatoly Kruglyak, Chairman, Kamchatka Regional Court; and Alexander Boikov, Chairman, Presidium of Magadan, Collegium of Advocates (the Magadan Bar Association) arrived in Anchorage in early June to participate as panelists in the conference.

Only Mr. Vlasihin is fluent in English, so with the help of John Tichotsky, a research assistant and Russian interpreter from the UAA Institute of Social and Economic Research, the contingent was able to communicate as they toured Anchorage.

A well-rounded itinerary was planned for the group, and some of the scheduled stops were definite hits. Indian Valley Meats was a highlight, especially for the three Moscow urbanites who loved seeing reindeer and ptarmigan up close at Douglas Drum's establishment.

Carr's Huffman, however, seemed a bit overwhelming; the six were rather subdued as they gazed down aisle after aisle of food. And the scheduled tour of the Anchorage Museum and Nordy's was usurped by NAPA Auto Parts.

En route to the Museum, the contingent spied a NAPA store and excitedly asked what it was. Upon being told it was an auto parts store, they directed the driver/interpreter to pull over immediately. Once inside, the Magadan attorney and Kamchatka judge descended on the manager and with the help of John got a crash course in entrepreneurship--they asked questions about stocking, inventory control, marketing, parts distribution —you name it. "After all," mused my husband upon hearing this story, "any guys in town from anywhere would probably rather go to a NAPA Auto Parts Store over the Museum and Nordy's —I mean, if they had a choice." It may be the 90's, but sex roles die hard everywhere.

Soviet guests of the Alaska Bar Association's Northern Justice Conference enjoyed touring Russian Orthodox heritage at Eklutna in June. *Photo: Barbara Armstrong*

Even the Hotel Captain Cook was an other-worldly experience. During dinner on their first evening here, I asked one of the delegates if his hotel room was satisfactory. He spoke a little English, and after smiling to himself, he remarked, "Oh yes, it is very nice. It is bigger than my house in Magadan." A sobering thought — we didn't have them in suites — just regular rooms.

While in Alaska, we wanted them to sample some of the food and beverages of the Great Land. They politely extolled the virtues of Attakiska Vodka, but one Soviet confessed he preferred Stolichnaya if he could get it. Most of their own vodka is exported out of the country, he commented, and it is difficult to obtain in the stores.

And what would a trip to the West be without a stop at McDonald's? One Sunday, we took the group out to Eklutna to see the spirit houses and the Palmer Agricultural Center with a detour to the McDonald's in Wasilla. The entire group trooped in to witness fast food at its finest. They remarked on the short line and laughed at how they could never get into McDonald's in Moscow because of the long wait.

We ordered a little of everything off the menu, including a Happy Meal, and went to the nearby park to picnic. None of the Soviets seemed particularly impressed by the food, the McDLT notwithstanding, but murmured how "nice" it all was. Nonetheless they ate everything that had been ordered and seemed rather fond of the chicken McNuggets. While the chocolate shake was a universal favorite, the beverage of choice, even at lunch, was still vodka.

The Soviets all received gifts from the Bar Association as remembrances of their visit: a book of photographs of the Great Land and the nifty 1990 Conference T-shirt. What really had them spellbound, however, was the Alaska Passports they spotted at the Palmer Visitors' Center.

The Russians were enthralled with official looking paperwork. These tourist item Passports had them fascinated. Weyman Lundquist, an Alaska Bar member based in San Francisco, and Heather Walker, his assistant, who were with us for this tour and had gone to Moscow earlier in the year to confirm the details of the Soviet visit to Anchorage, told us how much the Russians loved documents with seals and stamps.

At Heather's urging, we asked the cashier at the Center to put some type of stamp in the Passports to make them seem even more official. So the Soviets each walked out with a Passport with a stamp "Deposit to First National Bank" — and they loved it!

And what memories will the Soviets take back with them to the USSR?

According to one Bar member, when the Soviets were asked at dinner one evening what impressed them most about Anchorage, one delegate replied, "The buildings." Then another chimed in, "The thin legs on your women. How do you do it?" All the Soviets nodded in consensus and looked to the Bar member for an answer. He replied, "Genetic engineering. Top Secret. Pentagon."

"Aahh," said the Soviets nodding again. Is this story apocryphal, you ask? Just remember you read it in the Bar Rag first.

Dinner, vodka, and chitchat on the Soviets' last evening here soon led to reflections on their time spent in Alaska. When asked what was the first thing he would say to his family upon arriving home the replies of the Soviet delegation were as follows:

"I want to go again!" — "What an open-hearted, sincere and generous people live in Alaska." — "I could not expect ever in my life to again have such a warm, friendly reception." — "My first words to my family would be that I am now even more convinced about the necessity of *perestroika*." — "How beautiful is our life when we meet with people full of caring; how enriched it makes our life." — "I love it here!"

Dosvedanya, Comrades.

Fairbanks' Cooper ascends to Maximum Leader of Bar

Fairbanks attorney Daniel R. Cooper, Jr. was elected president of the Alaska Bar Association at its annual convention June 7-9, 1990. Cooper is a partner in the law firm of Bradbury, Bliss & Riordan. Other officers are president-elect Elizabeth Page Kennedy, an assistant attorney general; vice-president Michael A. Thompson of Ketchikan, a sole practitioner; secretary Daniel E. Winfree of Fairbanks, a partner in Winfree & Hompesch; and treasurer Bruce A. Bookman with the Anchorage firm of Perkins Coie.

Outgoing President Jeff Feldman (right) passes the gavel to incoming President Dan Cooper (left). *Photo: Steve Van Goor*

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JUSTICE CONFERENCE

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Richard E. Vollertsen
Gary A. Zipkin

Northern legal systems vary

Continued from Page 10

Yukon and the Northwest Territory. There are fewer than 25,000 non-Native people in each territory, and the land is similar to Alaska except that there was no post war industrial development. The territories have a large measure of local autonomy with elected assemblies. The territories are governed using a colonial model.

The Canadian legal system borrowed many ideas from Great Britain, and the government continues to have trappings of a monarchial society. They have added Federal States and a charter on human rights. Northern courts are all bilingual, and each lawyer is both a barrister and solicitor. Most of the attorneys in Canada are in private practice. There are 50 lawyers in each of the two territories.

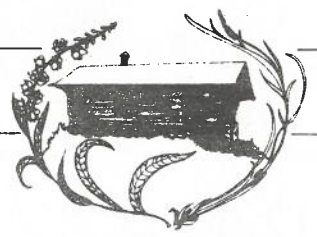
Each province has the power to create courts which are similar to the state supreme courts in the U.S. The judges of these courts, known as Section 96 judges, are appointed by the chief executive of Canada. The provincial judges are appointed locally. Section 96 judges interpret national as well as local law and determine whether the law is constitutional.

Gov. Steve Cowper (ABA member) and Vasiliy Vlasihin ponder a point on opening day of the Northern Justice Conference and bar convention. *Greg Martin Photographers*

The Territories have three Section 96 judges, one in the Yukon and two in the Northwest Territory. These judges are assisted by "southern" judges. The Supreme Court of Canada can review any decision of any court. Both the Yukon and Northwest have a Court of Appeals which is staffed by nationally appointed judges.

The Supreme Court of Canada limits its cases by a certiorari process. The petition, however, is usually made orally by satellite T.V. at the nearest national television station.

There are no elected judges in Canada. All are appointed at the provincial or national level by the executive. There is no confirmation by the legislature. There is presently a review committee in place which advises the executive as to the qualifications of candidates for appointment. The 700 nationally appointed judges can be removed only by Parliament for any reason by a joint resolution of both houses.



Historical Bar

Alaska frontier justice

By Weyman I. Lundquist

During my days on circuit with the federal court in Alaska, our entourage moved southeast from Anchorage to Ketchikan, then northwest 2,000 miles to Nome. We resembled a Chaucerian pilgrimage: prosecutors, defense lawyers, court clerks, bailiffs and a judge, all moving from court to court across the Alaskan frontier. A few trials and thousands of miles later, I understood that substantial legal precedent lay dormant under the permanent Arctic ice.

Action began with a small band of settlers led by God to a "chosen spot," which unfortunately belonged to the United States Government. Eviction proceedings were initiated; order after order served. No one moved, and the parties came into court on contempt hearings. They were sworn and eagerly took God's oath to tell the whole truth: God directed them to settle where they had, and much as they would like to obey the laws of the United States, they had to obey God's law first.

Finally, Judge Hodge rose to announce that he respected these views. He believed the settlers' testimony. He understood what they had said. He knew they followed God's law. "God works in mysterious ways," intoned the Judge. "He came to me last night and directed me to say that you have not settled perfectly. There is another location. Indeed, He even told me the location." Most opportunely, God had directed Judge Hodge to settle the people on land available for homesteading which was not owned by the government. That night, we celebrated Judge Hodge's courtroom acumen with more than prayers of thanks.

Close and continuing contact prevailed in the court party. Everyone knew everyone. I confess never to understanding fully my relationship with the judge. Was it appropriate for Judge Hodge to drop into my solitary office to ask that I store on my windowsill the fish he had caught last weekend? And during sustained hours of hard travel, did the judge favor a younger Assistant U.S. Attorney as much for his abilities as a prosecutor as for his dexterity as a porter?

Rapport Recovered

For whatever reason, Judge Hodge's social treatment of me did differ from his judicial treatment. In court he was curt, ruled against me with notable flair and declared mistrials when I prevailed. Yet, over the dining table, his curiosity about "Eastern established" law subsumed his disdain for my Harvard Law School credentials, and our conversations lasted hours after midnight. The rapport lost between us in court inevitably was recovered either at dinner or during circuit journeys through the wilderness.

Cases were unusual. I remember the trial of the Big Swede in Ketchikan as one vivid example. The Swede was a huge man, physically overpowering and well into his sixties when I met him. He fished from a one-man boat, powered by a small motor, enjoying the pursuit of salmon and the boat's most solid piece of equipment, its shortwave radio.

One day while Big Swede was listening to the regular Metropolitan Opera broadcast with salmon troll poles set, the Coast Guard approached and insisted on boarding over some minor violation. Big Swede repelled them with an ancient pistol. The Coast Guard took affront, and suit was duly filed on the criminal charge of assault with a deadly weapon on a federal officer.

Entourage and all, we came to Ketchikan. It was late September, 1962, and the Yankees were in the World Series. A jury panel and counsel for Big Swede appeared in court; Big Swede did not. He was nowhere to be found. An astute marshal prevailed upon a Coast Guard Flying Goose to take us around and about Ketchikan near the usual haunts of the Swede.

Breaking through a cloud cover and rain squalls, we saw Big Swede in his boat with troll poles outstretched. We circled the boat, waved at the Swede without response, and ultimately landed on the water beside him. "You are due in court," we shouted as our plane taxied too close to his boat.

"I know it," he replied, "but the World Series is on. I can't cover court and the World Series, and I must cover the World Series. I'll be there when it's over." Big Swede's position sounded reasonable, considering that our plane was almost inundated with waves, so back we flew to the judge. The Series was short. Big Swedge appeared, was convicted, and justice prevailed with a mistrial.

Nautical adventures contributed greatly to my continuing education in Alaska. As Assistant U.S. Attorney, I somehow became involved in a case concerning pollution of navigable waters in Cook Inlet.

Cook Inlet tides are rivaled only by those in the Bay of Fundy, and in normal range they exceed thirty feet. Bore tides filled with glacial silt, they come sweeping into the Gulf of Alaska and in final eruption, rush into the inlet. In this foaming cauldron, early oil and gas exploration took place. British Petroleum and Pan American Oil stuck their drills in the mighty waters and hoped to discover one of the larger fields in the world.

Inopportunely, the bore tides declined cooperation in this pursuit. When success for the oil companies seemed imminent, tides in ferocious rush severed the casing delivering the gas, and a rather spectacular eruption bubbled to a height of fifty-five feet in Cook Inlet - on the flight path of the Anchorage International Airport.

Ignition Called For

With whatever wisdom, it was determined that the eruption be ignited. The Coast Guard, the oil company and I departed from the Federal Building, climbed aboard a single-engine float airplane and, unbelieving, headed for the bubbler. I engaged my seat-partner in conversation and after a few preliminaries inquired:

"Where did you come from?"

"Los Angeles."

"When?"

"Wednesday."

"Why are you here?"

"This God damned blow-up."

"When will you try to light the thing?"

"This afternoon is as good as any time."

I was to participate in legal arson involving a $5 million investment.

In huge rolling waves our airplane managed to land, riding the length of the wave to taxi up to a tugboat positioned dizzyingly close to the erupting gas. We edged closer. "The one thing we can be certain of," shouted the cigar-smoking man next to me, "is that it is inflammable as hell."

Anxiously, I tried to find out who was in charge and, particularly, which engineering genius was to mastermind this inferno. My partner didn't know. Soon it became apparent that no one was. No one in the plane had ever had anything to do with blowing up a well or had even witnessed such a spectacle.

With this reassurance, we first tried to ignite a rowboat and let it float through the gas eruption. Water, forming a natural column around the erupting spot, caused the flaming boat to drift around and under the gas. The oil people had become desperate; 5:30 and not a drink in sight.

A young Coast Guard officer suggested that we try long bamboo poles and a boat. Fortunately, wiser heads prevailed. Finally, in desperation, we decided upon the flare pistol. The range was short but the flares burned hot. Making a run, the tugboat undulated towards the eruption while six men stood on its decks and rather casually fired pistols into the bubbling mass.

The desired result came quickly. An erupting sphere of flame ignited, relocating the tugboat with fierce efficiency and scorching all of us with its gasping blast of heat. With the luck of fools, we returned to Anchorage where food and drink awaited those of us who cared.

Upon arriving in Nome years after gold had been discovered and rapidly extracted from its sands, I expected to encounter a disenchanted group of oldtimers gazing solemnly over a once-rich beach now littered with rusting mining tools and frozen in time.

Not so. Nome was infused with the romanticism and adventure of its past. Opium dens of 1900 rested beside the few small stores on Nome's muddy streets. Decrepit houses, battered beyond the picturesque, attested to Arctic wilderness. Mammoth ivory tusks embellished structures. On the outskirts of town, sled dogs tied to poles leaped and snarled at fish drying on the racks. Polar bears were close by. Nome, however, eluded the poetic when it dumped its garbage on the ice, which, as it melted and broke up, drifted fragrantly out to sea.

When in Nome, the federal entourage chose to stay at the North Star Hotel, a place distinguished by the huge papier-mache cow dominating its lobby, the only cow in Nome. We did not spend time drinking milk. After dinner, marked by neither fresh vegetables nor fresh anything, the jukebox started to play. As junior member of the entourage, I had the nightly duty to dance with the court reporter at penalty of having no objections sustained the next day. Comeliness was not her virtue. But she was an intelligent and engaging woman, her father had been the publisher of the *Nome Nugget*, and she was a favorite of the judge, and I danced through the night.

My first case in Nome was on behalf of the government that had just condemned for the Federal Aviation Agency a number of gold-mining claims around radio communication sites. The owner of the condemned property was, as I recall, an Archie Ferguson; his lawyer was Fred Crane. Fred, a distinguished member of the Nome-Kotzebue Bar--distinguished mostly by the fact that he was its only member--boasted that he had been disbarred in other jurisdictions, and that that qualified him for practice in Nome.

We were in the new Nome courthouse. The jury was empaneled. With 85 percent of Nome's population Eskimo, it was not surprising that all the jurors were Eskimos. There were a few spectators and many children, all of whom had a great fondness for Fred Crane.

I felt confident. The government had two excellent experts. I believed that Fred's client would testify to his opinion of valuation. Soon I learned differently: The *Nome Nugget*, or perhaps the *Kotzebue Free Press*, reported in candor that Archie Ferguson was vacationing in the Lower Forty-Eight with his mistress Beulah Levy. What Fred's case would be, I could not comprehend.

I made my opening statement. The jury remained stolid and placid. Fred did not open. The government case started to go in. Occasionally Fred would sit up and when the trial lulled, turn to the jurors, and speak quietly to them in Eskimo. The court reporter sat, hands poised over the shorthand pad, immobile and bewildered. I was quickly on my feet objecting.

To the judge it was a matter of indifference as he shrugged deep into his chair and admonished, "Come on, Fred." The unintelligible interchanges with the jurors continued. I continued to object vociferously.

At last, the judge turned to Fred: "Now what are you telling them this time, Fred?"

"Your honor," Fred replied, "the jurors get nervous in this big building. They worry about the one that sank. I just keep telling them to be patient, be patient, everything will turn out all right." The case settled that night.

Cracked in Two

In fact, the old courthouse had sunk. A wonder of concrete construction with inside heating, it was built on permafrost. The more the building was heated, the more the permafrost melted. The more the permafrost melted, the more

Continued on Page 17

Golden Heart City Bar studies Lithuania

Introduction of "Guests":

Dan Cooper started the meeting by introducing as a "guest" the recently elected BOG member for the Second and Fourth Judicial Districts, Dan Winfree. Winfree asked why he had to pay for his lunch if he was a guest. The overwhelming response was to make Winfree the Acting Secretary for the meeting.

Early Chitchat:

After going through the buffet line, there was some really very pleasant conversation about whether certain of our ancestors genuinely liked to eat dog meat or whether that menu was under gastronomic duress. After considerable similar discussion, Dave Call and Jon Link were appointed to a new Food Committee and directed to report back ASAP.

Practice Tips:

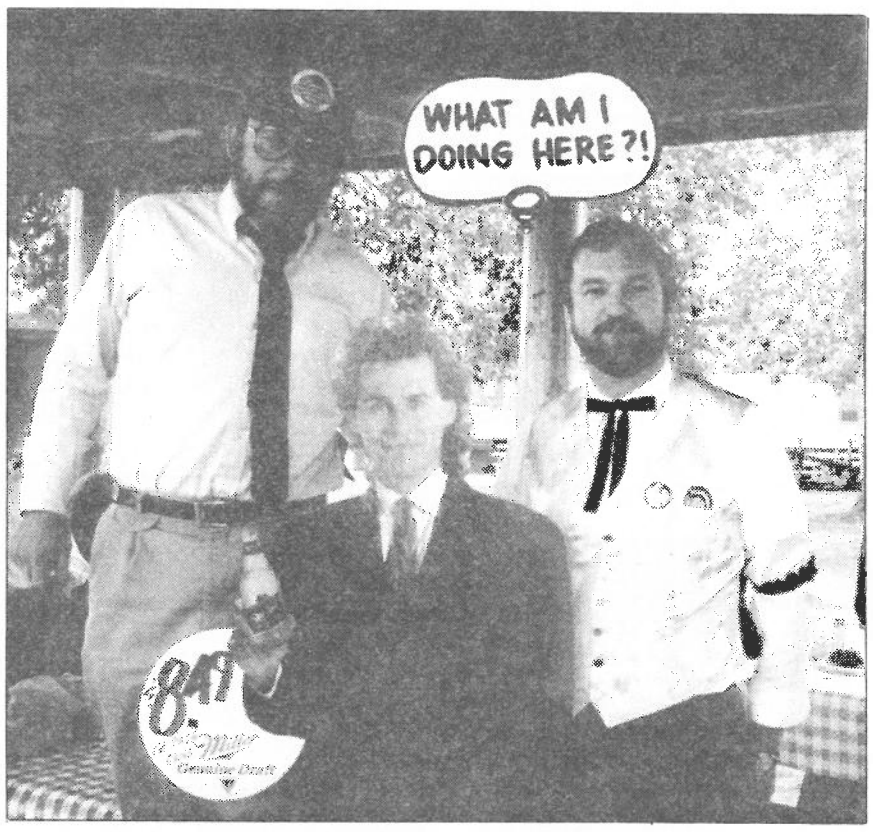
Ken Covell, after apologizing for the absence of someone named "Mr. Madson" volunteered some practice tips for putting together federal court plea bargains. These tips apparently came from some very recent experience. First, said Ken, do a good job. Second, said Ken, it is important to get the signature of your client and the U.S. Attorney on the paperwork. Third, said Ken, ignore one and two because the judge does what *he* wants to do anyway, so *it* really doesn't matter. A *young* but distinguished federal court judge in attendance noted that the only signature missing from Ken's paperwork was that of the sentencing judge. Everyone gave a knowing nod and we moved on, although some queried whether "Mr. Madson" might be Dick Madson's father.

Dan Cooper relayed a practice tip from Randy Olsen, who was inexplicably not in attendance. Randy's tip, according to Dan, was not to grant too many extensions of time for opposition memoranda all at the same time. Otherwise, noted Randy/Don, you will be faced with preparing too mamy reply memoranda at the same time. Everyone gave a knowing nod and we moved on.

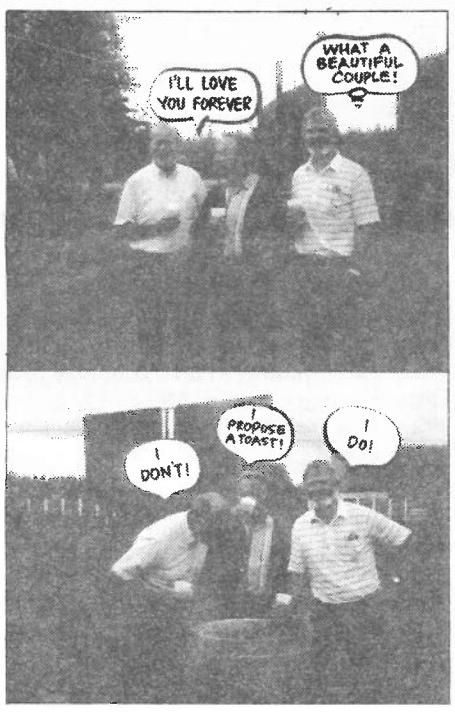
Gail Ballou was asked to give a practice tip based upon her recent appellate experiences. Gail's response was interpreted to mean that from her recent results, she had no practice tips to offer. Everyone gave a knowing nod and we moved on.

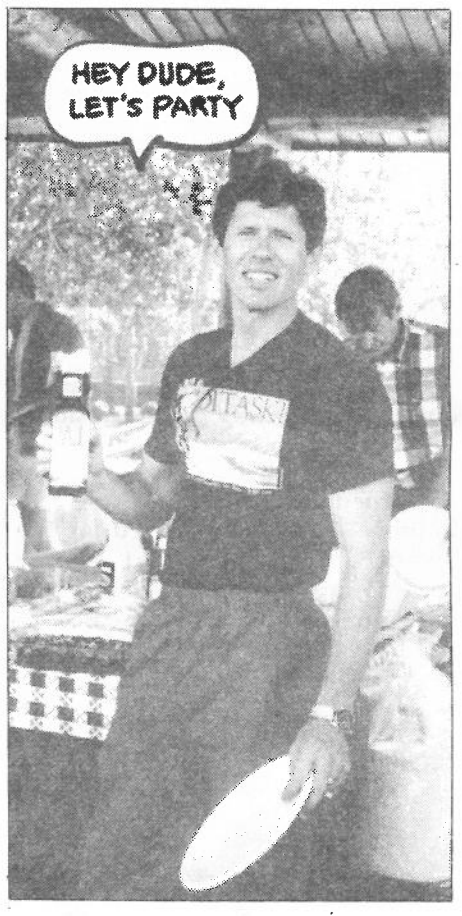
Foreign Policy:

R. Dryden Burke, in his continuing efforts to assist the people of Lithuania, moved to recognize Lithaunia and to communicate the resolution immediately to Washington D.C. since George and Gorby were in heavy conference. (Burke noted that while he was probably the only Alaskan attorney fluent in the Russian language, he had no diplomatic (or other) relations with Russia and could not deliver the resolution personally.) While it was clear to this writer that most, if not all, of those in attendance would not recognize Lithuania if they saw it, it was pointed out that a similar motion had been pased at the March 23, 1990 meeting. The matter was referred to the Foreign Policy Committee for further study, along with the proposal that the U.S. and U.S.S.R. sign a mutual assistance pact to defend against a united Germany.



Clockwise from top, Judge Dick Savelle and M.E. Ralph Beistline meet with Dennis Miller and his beer; Bob Groseclose drinks A-1 Sauce; and (left to right) Dick Madson, Dave Call, and Jim Blair drink from tacky paper cups at the TVBA Christmas Party. (See report below).





Judgeships:

President Dan advised that Chris Zimmerman's former District Court position was open, and suggested to Jon Link that it was much closer to home than the Superior Court positions open in Kenai, Juneau, Sitka, Latvia, Estonia and Lithuania. Jon replied that he had writer's cramp and would not fill out another application. Then, apparently referring to a senior level Juneau official with some kind of influence over the appointment process, Jon *may* have been heard to say "The #@&!*@ won't even return my phone calls." Everyone gave a knowing nod and we moved on.

Unpleasant Topics:

President Dan noted that he had received several calls from irate consumers of legal services complaining that their lawyers were neglecting their cases and/or failing to communicate with them. Dan said that he referred the calls to disciplinary counsel without finding out who the attorneys were, but that none of the alleged transgressors were present at the lunch. That statement alone was sufficient to explain Dan's meteoric rise from the ranks to the position of Maximum Leader.

M.L. also announced that the June 18 meeting would feature Pat Brown's "malpractice tips." It quickly was clarified that the tips would be for "avoiding malpractice." The presentation apparently will be similar to that given by Pat at a recent lunch meeting of the Fairbanks Chapter of the Alaska Academy of Trial Lawyers, fatuously referred to as FATLA by M.L. It is hoped that Pat's presentation will be better than his earlier one, since Pat showed up for that lunch having forgotten he was the speaker of the day.

Bar Convention Resolutions:

Dave Call, chairman of the Resolution Committee, sadly noted that no resolutions had been proposed for the upcoming Bar Convention. Numerous suggestions then were made. First, considerable discussion centered on MCLE, but the only clear consensus was that the minutes should reflect that Roger Brunner really likes CLE. Second, a resolution to abolish the Alaska appellate courts was suggested by an unnamed female attorney with recent appellate experience. A young but distinguished federal court judge in attendance gave a short discourse that was interpreted to mean that we all should consider federal court litigation because there really is no need for appellate court review of federal trial court results. Finally, there was a brief discussion about putting together a resolution about the recent *Wadsworth* decision, but no one wanted to make any kind of promise or representation about what they would do for fear of some sort of contractual liability, so the discussion was quickly muted.

Final Tidbits:

M.L. announced that he would be unable to lead next week's meeting because he would be in Los Anchorage all next week for the BOG meeting and the Bar Convention. Someone who clearly had no real roots in Fairbanks suggested that next week's TVBA lunch be held in Los Anchorage in some nice restaurant where we could look out over the mud flats. Someone with far better sense opined that this would be against a law of some kind, generally assumed to be a law of nature. In any event, next week's meeting will be in Fairbanks, but Dave and Jon were reminded to report back from the Food Committee ASAP.

Respectfully submitted,
Daniel E. Winfree
Acting Secretary
June 1, 1990

Christmas party held

On Friday, July 14, 1990 Interior Alaska attorneys celebrated their annual Christmas party.

The group was greeted by clear skies and 70 degree plus temperatures. The warm weather kept Santa Claus away, but good cheer was shared by all.

Originally, the TVBA Christmas party was held in December, however, approximately 10 years ago, inclement weather and a lazy chairperson caused numerous postponements of the event.

Finally it occurred, but not until July — pushing the 4th of July picnic back to the point that it was celebrated in February. That schedule has been adhered to strictly ever since.

Bar history

Continued from page 16

the building sank. It ultimately cracked in two.

Conformity did not exist in Alaska in 1961. Precedents upon which to judge behavior were consequently irrelevant. If situational ethics prevailed in the open country, they were ethics dictated by honesty and the instinctive wisdom of self-preservation.

Statehood, economic development, and increased population have bedaubed a supreme wilderness with corruption and a pipeline coursing across 800 miles of tundra. The wilderness has been affected. Behind its polluted filter, the magic of the sun that does not set illuminates less and less a lone caribou or the silver salmon's endless dance above clear water.

People

John Clough, formerly of Faulkner, Banfield, et. al. has opened the firm of Clough & Associates....**Nathan Callahan** transferred from the D.A.'s office in Kodiak to Kenai....**Marcia Davis**, formerly at Bogle & Gates, is now employed at BP Exploration (Alaska) Inc....**John Eberhart** has relocated from Fairbanks to Anchorage.

John Gissberg is working out of the Seattle office of Faulkner, Banfield, et. al....**Marcus Paine**, a former P.D. in Palmer, has opened his own law office in Anchorage....**Mitchel Schapira** is now with the Office of Public Advocacy....**Cesar Velasquez** is now with the Municipal Prosecutors office in Anchorage....**Bonnie Robson** and **Rick Johannsen** were married on June 2.

Russell S. Babcock, former Assistant D.A. in Anchorage, has opened his own practice emphasizing criminal defense and personal injury cases at Victoria Square, 222 Ash Street, #7, San Diego, CA 92101....**Michael Bolling**, formerly with Erwin & Smith, is now vice president and general counsel with Bristol Bay Native Corporation....**Barbara Craver** is now with the law department for the City & Borough of Juneau....**Kay Maassen Gouwens** is now with the A.G.'s office in Anchorage.

Jay McCarthy will be leaving OPA to work with a firm in Flagstaff, Arizona....**Carmen Gutierrez** is now with the P.D.'s office in Anchorage....**Alison Balen**, formerly with Bogle & Gates, is now with Cook Inlet Region, Inc....**Bob Bacon** is now the Deputy State Public Defender in Sacramento, CA....Governor Cowper has appointed **Stan Filler** of Sitka as a new public member on the Association Board of Governors.

Connie Sipe and **Cliff Groh II** had a 8 lb., 6 1/2 oz. baby boy, Kevin, on June 20....**Julia Coster** and **Steve DeVries** had a daughter, Paige, this spring.

Justice Rabinowitz honored at conference

Jay A. Rabinowitz, Alaska Supreme Court Justice, received the American Judicature Society's Herbert Harley Award in recognition of his efforts to improve the administration of justice. The award was presented on June 9, during the closing banquet of the Northern Justice Conference at the Captain Cook Hotel in Anchorage.

Justice Rabinowitz has been a member of the Supreme Court of Alaska for 25 years, serving three terms as chief justice. He is currently one of Alaska's four commissioners to the National Conference of Commissioners on Uniform State Laws and made notable contributions to the Conference's Uniform Rules of Criminal Procedure, the Uniform Post Conviction Relief Act, and the Uniform Pretrial Detention Act.

As a supreme court justice he has consistently supported freedom of expression, individuals rights to privacy and personal liberty, and equal protection under the law. During his terms as chief justice, he has sought to expedite the decision-making process at the appellate level and to simplify procedures in the Superior and District courts.

Justice Jay Rabinowitz speaks after accepting American Judicature Society's Herbert Harley Award from Chief Justice Matthews. *Photo: Steve Van Goor*

Justice Rabinowitz's supreme court tenure follows service as a superior court judge, deputy attorney general and assistant U.S. attorney. His outstanding professional achievements earned him the "Citizen of the Decade" award from the *Anchorage Daily News*. Justice Rabinowitz earned his law degree at Harvard.

Founded in 1913, the American Judicature Society is a national organization of more than 20,000 lawyers, judges and other concerned citizens working to improve the courts. Named for the founder of AJS, Herbert Harley Awards are presented to recognize individuals or organizations who have made a significant contribution to strengthening the cause of justice.

Douglas J. Barker, member of the Alaska Bar, wed Kayako Omori, of Tokyo, Japan, in a ceremony performed by the Honorable James M. Fitzgerald, Senior U.S. District Judge for the District of Alaska in Anchorage on May 12, 1990. The bride, daughter of Mr. and Mrs. Hisashi Omori of Fujisawa, Japan, was formerly employed by Kirin Brewery as a marketing specialist. A graduate of Keio University in Tokyo, she first met Douglas seven years ago when both were students participating in an exchange program between Keio and Stanford Universities. Douglas, son of Mr. and Mrs. Leroy J. Barker of Anchorage, is employed by the law firm of Nishi, Tanaka, Takahashi in Tokyo where the couple now resides.

Solid Foundations

By Mary Hughes

Interest on Lawyers Trust Accounts (IOLTA) grants have exceeded $100,000 in 1990. On June 21, 1990, trustees of the Alaska Bar Foundation considered three grant applications and approved grants for a total amount of $105,125.

The Alaska Pro Bono Program received $60,000. The program, jointly sponsored by the Alaska Legal Services Corp. and the Alaska Bar Association, is a statewide, nonprofit, direct-service program involving private and public sector attorneyes in the delivery of free legal services to low income Alaskans. The program's grant will be used for:

--Elderlaw Project serving low income Alaskans over 60 years of age, $10,000.

--Tuesday Night Bar Advice-Only and Pro Se Clinics, providing classes on various legal issues, $20,000.

--Cost reimbursement for cases referred to volunteer attorneys, $20,000

--Remote Rural Native Community Outreach, defraying the cost of travel to remote villages for program activities, $10,000.

Advocacy Services of Alaska received $10,925. The protection and advocacy agency assists the economically disadvantaged clients who also experience developmental disabilities. The funds will be used to (1) support publication and distribution of materials on guardianship to economically disadvantaged persons who experience developmental disabilities and (2) provide statewide outreach on the recent U.S. Supreme Court Zebley supplemental security income case.

Anchorage Youth Court received $34,200. The youth court is an alternative pre-adjudicatory program which provides an opportunity for Anchorage area youth who are accused of breaking the law to be represented and judged by their peers. The grant will be used to employ a full-time coordinator and to fund the court generally for six months.

The trustees were extremely impressed with the applications submitted and the programs existing in Alaska which provide legal services for the disadvantaged or assist in the administration of justice--the two IOLTA grant purposes.

The grantees are to be congratulated. And a special thank-you on behalf of the grantee groups goes to all those members of the Alaska Bar Association who are IOLTA participants.

WATCH FOR

EXCITING

CLE PROGRAMS

PLAYING IN

YOUR TOWN

And Fischer receives 1990 Pro Bono Award at annual convention

At left, Seth Eames, Pro Bono coordinator, congratulates Jamie Fischer as the recipient of the 1990 award during the annual convention. *Photo: Steve Van Goor*

Smith suspended

Continued from Page 6

the State of Colorado would be unwarranted. Respondent filed a response to the order to show cause on April 2, 1990. The Alaska Bar Association filed a reply to the response to the order to show cause on April 4, 1990.

IT IS ORDERED:

1. Discipline identical to the discipline imposed by the Supreme Court of Colorado is imposed upon the respondent JAMES DAVID KIMO SMITH, and he is suspended from the practice of law in this state for a period of one year and one day, effective May 18, 1989.

2. Respondent JAMES DAVID KIMO SMITH shall comply with the requirements of Alaska Bar Rule 28(f).

3. Any application for reinstatement shall comply with the requirements of Alaska Bar Rule 29. Reinstatement shall not be automatic and proceedings for reinstatement must comply with the requirements of Alaska Bar Rule 29(c)(1)-(4).

4. Any application for reinstatement must also comply with the requirements of Alaska Bar Rule 61.

Entered *nunc pro tunc* by direction of the court at Anchorage, Alaska on June 11, 1990.

DAVID A. LAMPEN, SR.
Clerk of the Supreme Court

Burrell on disability status

THE SUPREME COURT OF THE STATE OF ALASKA
In The Disciplinary Matter)
Involving HOMER BURRELL,
Supreme Court No. S-3926

ORDER

ABA File No. 89.001 OP

Before: Matthews, Chief Justice, Rabinowitz, Burke, Compton, and Moore, Justices.

The court having considered the motion for leave to resign and notice of incapacity, and the opposition thereto,

IT IS ORDERED:

1. The motion for leave to resign is denied without prejudice as respondent has not complied with Article II, Section 7 of the By-Laws of the Alaska Bar Association, which governs the procedures for resignation.

2. With respect to the notice of incapacity, Bar Rule 30(a)(3) requires immediate transfer of an attorney to interim disability inactive status once the attorney "has alleged during a disciplinary proceeding that he...is incapable of assisting in his...defense due to mental or physical incapacity." Respondent has made such an allegation. Thus, Homer L. Burrell is hereby transferred to disability inactive status.

3. The Board shall give notice as required under Alaska Bar Rule 30(e) and (f).

Entered by direction of the court at Anchorage, Alaska on June 15, 1990.

DAVID A. LAMPEN
Clerk of the Supreme Court

Law Cross Answers

P	A	C	T	■	B	A	R	D	■	■	C	H	I	T
E	R	I	E	■	I	V	I	E	S	■	H	O	N	I
S	A	V	E	■	G	E	O	D	E	■	U	P	O	N
A	M	I	■	M	A	R	T	I	N	L	K	I	N	G
■	■	L	O	A	M	S	■	■	A	O	K	■	■	■
■	B	R	I	N	Y	■	A	T	T	R	A	C	T	S
D	A	I	L	Y	■	S	C	R	O	D	■	A	R	A
O	R	G	S	■	D	I	N	A	R	■	P	R	A	Y
M	P	H	■	M	O	N	E	Y	■	S	E	M	I	S
O	U	T	L	A	W	E	D	■	A	L	O	I	N	■
■	■	■	U	S	A	■	■	F	R	A	N	C	■	■
J	M	O	N	T	G	O	M	E	R	Y	■	H	I	T
N	O	V	A	■	E	D	I	L	E	■	C	A	T	O
O	P	E	C	■	R	E	S	O	S	■	H	E	E	D
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Should juries question witness? Society says it's OK

In recent months the role of jurors at trial has been the subject of national media attention as well as nationwide public debate by trial lawyers, judges, and jury psychologists. This interest resulted from the announcement last spring by the American Judicature Society and the State Justice Institute of a one hundred thousand dollar grant for the first nationwide study of the effect of allowing jurors to question witnesses. For the first time Professor Larry Heuer of Northwestern University's Kellogg School of Management and Professor Steven Penrod of the University of Minnesota Law Center, the authors of this study, have responded to the speculative arguments of advocates and critics of juror questioning. In the lead article of the fall issue of *The Docket*, the National Institute for Trial Advocacy's quarterly magazine, Professors Heuer and Penrod discuss the merits of major arguments on both sides of this issue by referring to information obtained in their study of this subject.

In commenting on this subject Heuer and Penrod state:

1. They found no evidence that when jurors are allowed to ask questions they lose their objectivity during trial and become advocates.
2. Juror questioning does not tend to interfere with counsel's trial strategy or presentation.
3. Juror questioning may, at best, only "modestly" aid in the discovery of pertinent information during trial.
4. Both judges and lawyers exposed to a controlled juror questioning procedure had "generally favorable" reactions to this practice.
5. Juror questions provided counsel "moderately useful" feedback during trial about jurors' perception of the case.
6. Juror satisfaction with their participation in the trial process increases when questioning is allowed.

Heuer and Penrod conclude that juror questions are more "likely" to be an aid rather than a threat to most trial attorneys. The formal findings of Heuer and Penrod's nationwide study will be published at a later date.

Environment: the bottom line

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nightmare."

These competing interests, the panelists agreed, would spell doom for the gasline hypothesized in the second scenario. Added Flynn, the complex permitting process in both the Canada and U.S. "demonstrates the excess we've gone to in this process. We have tied our own hands to compete with the Soviets" in the marketing of resources in the Far North that are abundant on both continents.

And what of the Soviets? How do officials in the U.S.S.R. respond to global awareness on behalf of environmental protection? Times are changing in this nation, as well.

For Vasily Vlasihin, head of the Legal Studies Group for the Institute of U.S, and Canadian Studies in Moscow, the question of due development process was simple: "The issue here involves different interests, all with ecological implications. In the Soviet Union we must increase our action to pursue all the due process niceties."

Boris I. Puginsky, deputy chief arbitrator of the Russian Federative Republic disagreed with his colleague, who in an earlier bar convention panel had criticized the Soviet business courts as the arbiter on these conflicts. In Puginsky's view, the republic's traditional policy over the past 60 years to allow the (economic cooperatives) to use land on behalf of all the people who live on it has generated a workable system. If the cooperative damages the land or violates operating provisions, the matter goes to the state or local business court, which penalizes the developer.

Puginsky cited a business court case he decided in the south, where the state was building irrigation canals for irrigation. Antelopes entrapped themselves in the canals and perished, to the dismay of local residents. In the end, Puginsky said, the cooperative proposed to build bridges across. "I said, 'did you make sure to train the antelopes how to use them?'," said Puginsky.

As the Soviet Union responds to greater democratic awareness in its decisonmaking, said Puginsky, "I fear all kinds of agencies, fearing imagined ecological disaster, will start fining (companies) right and left, and the companies will go bankrupt from these imagined disasters."

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