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**Traveling with kids, and Russians,
reading about kids,
and the Kingdom of Juneau**



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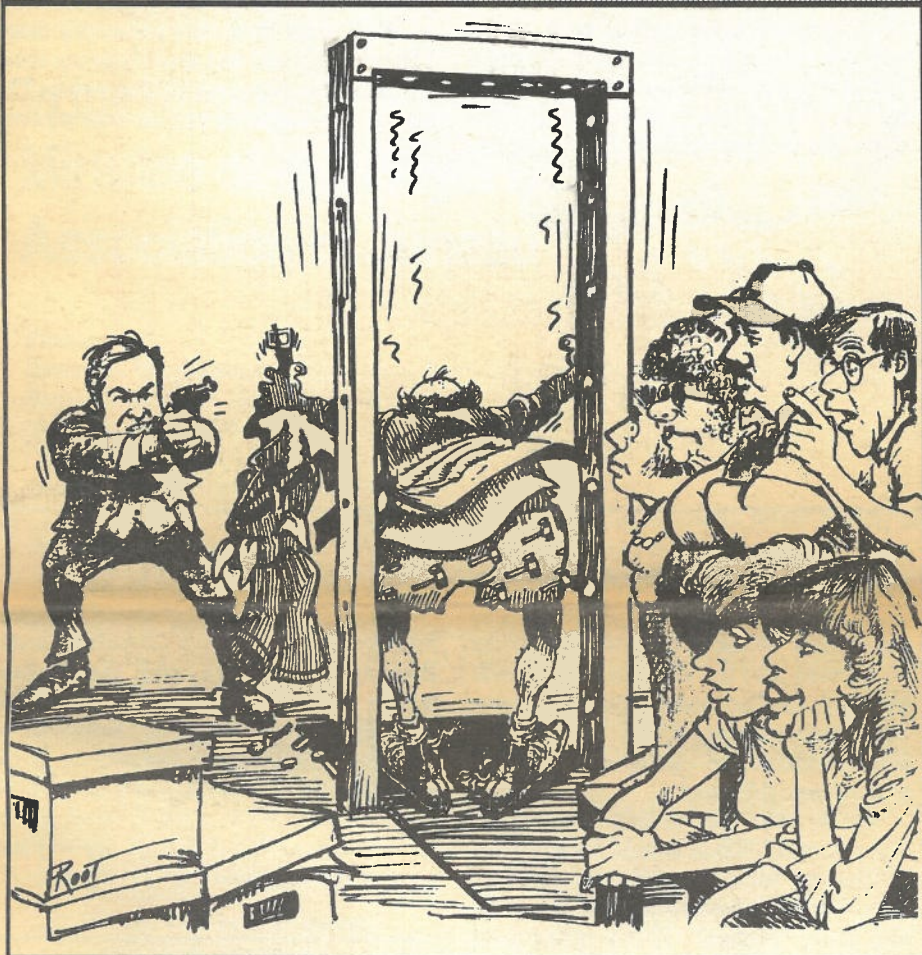
\$2.00 The Alaska BAR RAG

VOLUME 18, NO. 5

Dignitas, semper dignitas

SEPTEMBER-OCTOBER, 1994

NEW COURT SECURITY SYSTEM...



Visiting & other attorneys beware: It could happen to you

Hate waiting in line? Worried about sanctions? Disgusted because you have to remove *all* those boxes of trial materials, place them on the X-ray machine, and remove, re-stack, and re-tie them to the luggage cart? Is that's what's getting you down?

Well, attention all attorneys suffering the possible dire consequences of the new court security system in Anchorage!

Countless imagined and unimagined results such as unpredictable delays, sanctions for tardy arrivals, disappearing (?) persons and property, embarrassment before clients and others at having their pants hit the deck when deprived of a metal belt fastening device, and so on and so forth. And all perpetrated on unassuming, unconsulted, victimized attorneys *cum onere* Officers of the Court; harrumph!

And what cure? Why the mere change of a bit of policy — just allowing attorneys to pass upon the flick of a bar card, a mere flick of the wrist and all these woes be foregone!

Rise up, ye attorneys of good faith and cheer! Throw off the shackles and contact Judge Johnstone, presiding

judge. Petition for redress, demand freedom of passage upon showing of the bar card! Request direct access to the library, with bar card or without. Whatsamatter you wannaremain anonymouse (sic)? Okay, then send your protest pen-named or otherwise to: Security Access Protest c/o Editor, Alaska Bar Rag, Alaska Bar Association, 510 L Street, # 602, Anchorage, AK 99501 (Fax: 272-2932).

Only a deluge will do. Do it now. Do it with a friend. Just do it. Of course, if you like the system, don't do it. And remember, no one else is going to do it for you.

Signed: an unincorporated, unamalgamated, loosely associated group of Officer of the Court already chafing at the delay and nuisance in Anchorage, also known as

John Galt

Rex Lamont Butler

Law Offices of Claire Steffens

Law Offices of William L. McNall

Patterson, Van Abel & Lindeman

Ross & Miner, Wayne Anthony Ross and...

several "oh, you do it, I like to keep a low profile" attorneys

Unforgettable retirement celebration

By KERI CLARK

Friday evening, September 16, 1994 marked a milestone in the annals of Alaska's history. A retirement dinner was held at the Anchorage Hilton for U. S. District Court Judge James A. von der Heydt. Over 200 attended the dinner to pay tribute to the Judge. Attending the dinner were friends who have known Judge von der Heydt since prior to statehood as well as those who are relative newcomers to his friendship and the state. A song performed for Judge von der Heydt by the Sweet Adelines summed up the sentiment of the speakers as well as those in attendance — Unforgettable.

The evening began gently and subtly as people gathered during a social hour to speak personally to Judge von der Heydt and his wife, Verna, prior to the dinner and speeches. Bill Tobin skillfully directed the evening as Master of Ceremonies. After calling the crowd to order, Bill Tobin read two letters from individuals who could not be present. One letter was from Alaska Senator Ted Stevens. The other letter was from Judge Boochever. Both men spoke of their admiration for Judge von der Heydt, not only as a judge, but as a gentleman and friend.

The first person to speak was the Honorable Andrew Kleinfeld. Judge Kleinfeld came to know Judge von der Heydt during his tenure on the district court bench. He recalled Judge von der Heydt's kindness and how the Judge volunteered his guidance to the new judge. Thinking he had things well in control but realizing there

might be some things for which he needed guidance, Judge Kleinfeld agreed to Judge von der Heydt's offer to sit in with him his first day on the bench. All went well for the first few minutes. After the clerk announced the court to order and every one sat down, the silence began. Several minutes passed with no one saying a word. Finally Judge von der Heydt remarked to Judge Kleinfeld that until he said something, nothing would happen. Judge Kleinfeld concluded that he was proud and appreciative to have had Judge von der Heydt as a colleague.



Judge James von der Heydt

A well known Alaskan politician who served in the first state legislature, the next speaker, John Rader, was excited to see such a big crowd. It made him almost want to run again for office! John recalled hearing about Judge von der Heydt long before he actually met him. Working in a gold mine near Fairbanks, there was talk among the miners of the U.S. Marshal in Nome. Some spoke of him as another Abe Lincoln; some spoke of him as a precursor to Arnold Schwarzenegger; and still others described him as a Charlie Chaplin. Two years later, while taking the Alaska bar exam in 1951, John was to meet the man about whom he had heard so much. John later became a city attorney for Anchorage and Judge von der Heydt returned to Nome, where he was city attorney from 1951-1959. There were two things John recalled

continued on page 9

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Anchorage, Alaska 99510

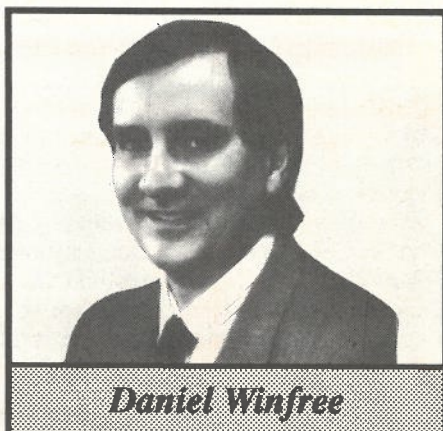
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President's Column

Back to business

No more Mark Twain until at least my last column. My jet skis are put away for the winter, and my snowmachines will have to wait a couple more months. So I guess I'll get back to business.

In my inaugural column, I mentioned the need to take a thorough look at our discipline system to see if changes are warranted. We now have a committee appointed to do the looking. Former Bar President Pat Kennedy has agreed to chair the committee, and the other members are former Bar Presidents Hal Brown and Jeff Feldman, former BOG members Ken Eggers and Bruce Bookman, current BOG member Diane Vallentine and Public Member Nancy Blunk. Chief Justice Moore soon will appoint a Supreme Court Justice to participate, as well. This committee will begin meeting September 30, and we hope to have a full report by the 1995



Daniel Winfree

convention.

We also have a committee looking at our own version of "universal coverage." This committee consists of Past President Philip Volland, President what's his name Winfree, President-Elect Brant McGee, BOG member Diane Vallentine, and Keith Brown, Michael Schneider and Gary Zipkin,

and it will examine the possibility of implementing a mandatory professional liability insurance requirement for the practice of law in Alaska. A possible format could follow what Oregon already has in place and/or what Idaho is considering putting in place, both of which are based on an actual insurance pool administered by or on behalf of the Bar and funded by member assessments. In contrast, a possible format could be a free market approach, where a member simply submits a certificate of insurance for a minimum level of coverage each year as a condition of licensure. If neither of these approaches seems appropriate, another approach may be to mirror California's rules requiring disclosure of insurance information to a client when an attorney is retained. We hope to have the possible options narrowed by the end of the year and will then open the matter up for full discussion.

Our most recent committee was put together because of the many responses to the proposed rule on the unauthorized practice of law. It was evident to the BOG from the many comments that the proposed rule needed significant revisions. Naturally, responding attorneys were the obvious choices for filling the committee. Our thanks to BOG members David Bundy, Dennis McCarty, and Ethel Staton (public member), attorneys David Crosby, Lynn Levensgood, Jim Reeves, and James Forbes, and legal assistant Carol Butler for agreeing to do the work on this matter.

One of the great things about being President is the ability to delegate and avoid the hard work. This, of course, is an important TVBA characteristic, as well, so I had little difficulty fitting in here. But I am always impressed by the willingness of Bar members to serve when asked. Whether it is a special committee, a hearing officer spot or a position on a standing committee, many, many Bar members volunteer their time and talents. It makes the President's job easier, and it greatly benefits the Bar. If you haven't volunteered yet, get on board.

Well, now that this column's done, I think I'll head out and do some duck hunting for the rest of the week. The stress of command can be overwhelming.

Editor's Column

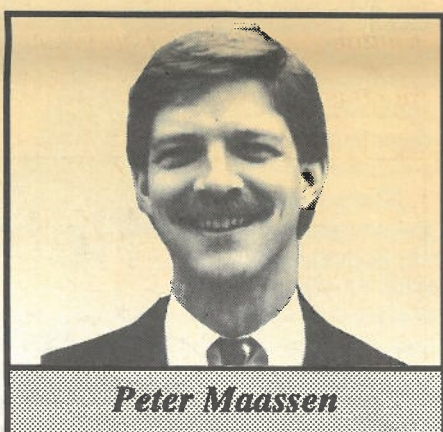
It's time we had a mascot

A number of people (yes, zero is a number, too — you can look it up) have told me that I will continue to waste the enormous moral force that I wield as editor of the *Bar Rag* until I start using it to advance the profession rather than simply as a vehicle for sophomoric humor. The point has merit. Not a lot of merit, true, but enough to warrant a few column inches, especially since we never got that promised half-page advertisement from the Reelect Hickel campaign. (I hear they're thinking now of drafting the Little Man, as soon as they can pin down his party affiliation and determine whether he meets the height requirement.)

I was thinking of the Little Man over Labor Day weekend, as I sat in the gondola that swigs cross the river from McCarthy and watched the tramway rope burn through the straps on my backpack. Some benevolent force — could it be the Little Man, or simply the better angels of our nature? — hovers over McCarthy whenever I'm there, making everybody unfailingly courteous and helpful. People wait for the tram without complaining, they blister their hands on the towrope for perfect strangers, they lunge eagerly to carry others' bags and bicycles. And many of these model citizens are lawyers (I counted ten that I know personally). One is a judge. Helpful, patient, and polite. I'd like to bottle this weekend benevolence and distribute it to all members of the Bar.

Wouldn't it be nice if our profession were known for its courtesy? If every mom and dad were to say, "Our little Trudy is so good at sharing. I expect she'll be a lawyer someday," or "Bobby needs help with his manners. Let's put him in the pre-law program at school — that'll straighten him out fast."

Since we can't bottle the McCarthy spirit, I have this suggestion to make instead. The Bar Association needs a mascot, like the Little Man, only more



Peter Maassen

visual. A fuzzy little animal, a talking plant, an inspiring figure from history or legend — something or someone who embodies those virtues of courtesy and patience for which we lawyers will someday be known.

Wielding the force of the editor's pen for the greater good of the profession, I hereby make a nomination. The mascot I have in mind is a pudgy, purple-faced dinosaur with a hyperactive fantasy life — and no, I'm not talking about Rush Limbaugh. I'm talking about Barney, the lovable lavender brontosaurus who sings, dances, and tells stories, and who thereby

helps children locate their nicer selves, their placid, patient, imaginative little superegos. What a team we will make — Barney and the Alaska Bar, a cold-blooded reptile combatting its own extinction combined with an association dedicated to — well, to something somewhat different.

So in your day-to-day endeavors, ask yourself: What would Barney do? If Barney filed requests for production, wouldn't he begin each one with the word "please?" If the other side complied, wouldn't Barney say "thank you?" If the other side didn't comply, wouldn't Barney be sympathetic and forgiving?

If Barney's client were foundering under an objectionable cross-examination, wouldn't Barney wait his turn for redirect instead of leaping to his feet and interrupting? If Barney filed a motion for Rule 11 sanctions, wouldn't he make sure to find something nice to say about the other side, too? If Barney's gum grew stale during a long hearing, wouldn't he wrap it up and throw it away instead of sticking it to the bottom of the counsel table? And wouldn't Barney respect the finality of a judge's decision instead of filing an appeal and continu-

ing to bother the grown-ups?

There may be members of the profession who are not familiar with Barney's attitudes and platitudes, which may explain a lot. To combat this ignorance, the Bar Association will be purchasing a twenty-cassette series of Barney videos which will be available for loan and will each count for one hour of CLE credit. So do your part. I mean, *please* do your part.

The Alaska BAR RAG

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Daniel Patrick O'Tierney
Steven T. O'Hara
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Sally J. Suddock, Managing Editor

Design & Production: The Alaska Group

Advertising Agent: Linda Brown
750 W. Second Ave., Suite 205
Anchorage, Alaska 99501
(907) 272-7500
Fax 279-1037

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

Wanted

Articles, documents, journals and photos concerning Alaska's legal history. Please contact Deborah O'Regan, Executive Director, Alaska Bar Association, 510 L Street, Suite 602, Anchorage, AK 99501, (907) 272-7469.

Letters from the Bar

Comment on RS-2477

The Federal Government, in particular the Department of Interior has once again shown its true colors. Recently, Bureau of Land Management (BLM) Director George Frampton told a group in Anchorage that the BLM was ready to work with Alaska. Three days later Mr. Frampton introduced proposed regulations regarding Revised Statute 2477 (RS-2477). Actions obviously speak louder than words especially when it comes to the federal government. Today, if you are an Alaskan you have a good idea of how Native Americans feel about signing a treaty.

RS-2477 was a simple law established in Congress back when politicians still believed in the concept of KISS (keep it simple, stupid). "The right of way for the construction of highways over public lands, not reserved for public use, is hereby granted." That is what RS-2477 says, period. We just received from the bureaucrats at BLM, 27 single spaced, typed pages that explain what that statement means.

Their interpretation of what it means under its current form is the rural and urban people of Alaska, if the rural communities survive, will never be united by a road system. This is consistent with federal policy on Alaska, divide and conquer. Even before we became a state, the federal government knew Alaska was going to be a problem. Our people are free spirits; by lower-48 standards they are non-traditional, and many resist the restrictions placed upon them by an intrusive government. The federal government found out that every time they attempted to restrict Alaskans, they resisted collectively. A perfect example of resistance was the recent wolf kill debate.

If they require lower-48 standards be placed on Alaska, that trail you have been using across "public land" to get to your cabin may be off limits. Based on the terms most strongly described in the proposed regulations, "construction," would require evidence of "an intentional physical act" to prepare "a durable, observable, physical modification of land for use by highway traffic." Likewise, "highway" is described as a "public thoroughfare used for the passage of vehicles carrying people or goods from place to place. By the proposed regulations if you have not been using a vehicle to access your house or cabin no rights-of-way will be granted by BLM. The redefin-

ing of "construction" and "highway" is an attempt to eliminate the very purpose and intent of RS-2477. This is especially true in Alaska where most traffic is on foot or by dogsled.

U.S. Circuit Courts have already dealt with, and found different answers to several issues addressed in the proposed regulations. Those decisions involve property right transfers through use. What we refer to as a right-of-way. These regulations also attempt to override Title 17, Chapter 5 of state law, which identifies and allows for different uses of rights-of-way.

The RS-2477 debate is not over. We have until September 28, to let them know our comments on the proposed regulations. Do not let this opportunity go by, not because we plan on building an interstate between Nome and Fairbanks, but because we must prevent further Federal Government restriction on our home land. Even if we may not need access today, we must look to the future and reserve the right for 'construction' later. Given an inch, the government will take a mile. In this case hundreds of miles.

Comments should be mailed to:
U.S. Department of the Interior
Main Interior Building,
1849 "C" Street, N.W. Room 5555
Washington, D.C. 20240

—John B. (Jack) Coghill
Lieutenant Governor

Loves the exam

After reading your article in the last edition of The Alaska Bar Rag concerning the submission standards for articles in the Bar Rag, I figured that even I had a chance of getting an article published (maybe). I enclose a draft of an article for your use in publication.

By the way, I'm a member of three state bars, including those in Oregon and California. Hands down, I prefer reading the Bar Rag to the monthly publications of the other bar associations. The Bar Rag is the only publication of the three not to take the practice of law as seriously as a medieval religious rite, and yet still manages to impart all of the technical information, if not more, than is found in the other bar journals. Keep up the good work.

Please don't hesitate to give me a call should you have any questions about these matters.

—Will Aitchison

(Ed. note: See page 13).

Poet Whittaker

On behalf of the Ketchikan Bar Association I am providing the following information regarding one of our illustrious members, Richard Whittaker. Hopefully you can advise the editor of the *Bar Rag* the recent honors bestowed upon one of our elder members of the Bar. I believe given the current prestige he has achieved, Mr. Whittaker has requested that he be addressed as Richard, rather than colloquial alternatives thereto. With respect to the recent honors achieved please note:

1. Mr. Whittaker has been acknowledged as the "poet laureate of Ketchikan" by receiving the Richard Brautigan award for poetry bestowed at the Ketchikan Blueberry festival in early August. The Ketchikan Bar Association suggested that this might support in his nomination to a state of candidates for "laureate of the Alaska Bar."

2. Whittaker has been recognized for his various political activities by receipt of the Republican Presidential Legion of Merit. Most recently he has been nominated to have his name placed on the Ronald Wilson Reagan eternal flame of freedom which is soon to be erected in Washington D.C.

I believe it is appropriate for this information to be noted in the political section of the *Bar Rag* so that other members of the bar may be aware of these accomplishments.

—Dennis L. McCarty
(Ed. Note: Congratulations to Mr. Whittaker, but what we also want to know is who won the Blueberry slug race this year).

Thanks for the party

Thank you so much for hosting my retirement party on July 8 at the Russian Jack Springs' Chalet.

I thought the party was very nice. It was well attended, tasteful, the food was great and ample, and the setting pleasant.

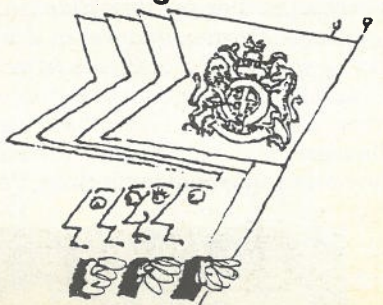
Thanks also for contributing to my retirement gift. The gortex clothing will be put to good use.

Again, I was very pleased with my retirement party. Thank you for making it possible.

—John D. Mason

FINDING AND CHOOSING LAWYERS

Expertise and cost remain top criteria, but firm reputation plays a deciding role.

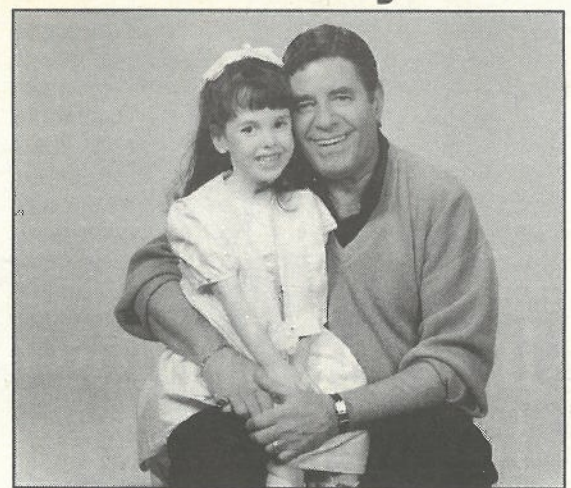


Corporate counsel named these factors most important in their search for law firms

At start of search	In final selection
1 Expertise	1 Expertise
2 Cost/Value	2 Cost/Value
3 Lawyer Reputation	3 Personal Chemistry
4 Innovative Thinking	4 Firm Reputation

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Bar People

Bruce Brown, formerly with **Winner & Associates**, is now with **Fortier & Mikko**. **Ann Benson** will be working with immigration legal aid services in Guatemala. **Jeri Bidinger** has returned from Scotland to Anchorage. **Dan Cooper**, formerly with the D.A.'s office in Kenai, is now with the Office of Special Prosecutions and Appeals. **Blake Call**, formerly

with **Guess & Rudd**, is now with **Hughes, Thorsness, et. al.** in Anchorage. **Connie Carson**, formerly with the municipal prosecutor's office in Anchorage, is now with A.G.'s office. **Cynthia Ducey**, formerly with **Guess & Rudd**, is now with **Delandy, Wiles, et. al.**

William Evans, formerly with **Bundy & Christianson**, is now with

the **Kenai Peninsula Borough**. **Nicole Faghin** has relocated to **Lynnwood, Washington**. **Richard Folta** has relocated from **Hanies to Saipan**. **Gordon Goodman**, formerly with **Robinson, Beiswinger et. al.**, is now with the D.A.'s office in **Kenai**. **Lewis Gordon** and his wife will be traveling for the next year. **Paul Houston** is now with **C.H.I. of Alaska, Inc.** **Barbara Hood** advises that she has left **ALSC** and that she and her family are starting a new whole wheat bakery, the **Great Harvest Bread Co.** in Anchorage in late September. **Margot Knuth** will be working with "Gorilla Watch" in **Kenya**. **Darryl Jacquot** is now with the **AK Workers' Compensation Board**. **Ken Leyba** has relocated from Anchorage to **Wichita, Kansas**, but will still be traveling to Anchorage regularly to practice.

Daniel Lowery, former law clerk to Judge **Fabe**, is now with the P.D.'s office in Anchorage. **Peter Maassen** and **Bill Ingaldson** have formed the law firm of **Ingaldson**

Ingaldson Maassen enters the fray

The international law conglomerate of **Ingaldson Maassen, P.C.**, is proud to announce its discovery of two Anchorage attorneys with the right names to start up the firm's first office in Alaska. The designated **Ingaldson** will be **William H. Ingaldson**, formerly a partner in **Bliss Riordon**, an assistant attorney general in the antitrust section of the **Alaska Attorney General's** office, and an assistant district attorney. The designated **Maassen** will be **Peter J. Maassen**, formerly a shareholder in **Burr, Pease**

& **Kurtz** and an unemployable gadabout. To add an aesthetic sensibility where it is sorely needed, **Maryanne Boreen** will remain of counsel to the firm while she pursues her master's degree in art at the **University of California, San Diego**.

Ingaldson Maassen, P.C., will practice in the area of general civil litigation, with some white-collar criminal defense. Their offices are currently located at **431 W. Seventh Avenue, Suite 203**.



Maassen. **Dwayne McConnell** is now with the A.G.'s office in Anchorage. **James McComas** has become of counsel to **Friedman, Rubini & White**. **Retired Judge Occhipinti** has relocated to **Sun Lakes, AZ**. **Jonathan Rubini**, formerly with **Birch, Horton, et. al.**, has opened the Law Offices of **Jonathan Rubini & Associates**. **Joyce Rivers** has returned to Alaska after a two year absence. **Scott Sidell** has law offices in Anchorage and Bethel. **Charlene Stead** has relocated from Fairbanks to North Las Vegas. **Scott Swan** will be in China for the next year. **Valerie Van Brocklin**, formerly with the D.A.'s office, is now with the U.S. Attorney's office in Anchorage. **Ben Walters** is now with the Municipal Attorney's office in Anchorage. **Denise Wike** is of counsel to **Hosie, Wes, McLaughlin & Sacks** in Anchorage. **William Whitaker** is now with the Law Office of **Charles Winegarden**.

Green Law Offices, P.C. has expanded its real estate and family law practice, and added **Attorney S.J. Lee**. Her areas of practice include real estate, employment law, and divorce. **Attorney Lee** has more than seven years of litigation experience. she will be joining the firm's Anchorage law office location.



S.J. Lee

Keri Clark recently joined the law firm of **Faulkner, Banfield, Doogan & Holmes** as an associate. Ms. Clark



Keri Clark

previously served as a law clerk to the Honorable **James A. von der Heydt, U.S. District Court Judge**. She practices in the firm's Anchorage office with an emphasis in employment law and school law. **Wendy J. Wallace** also recently joined the firm as an associate. Ms. Wallace practices in the firm's Juneau office. **Stuart G. Ross**, long time attorney at **Gorton and Associates** has opened his own law office of **Stuart G. Ross**.

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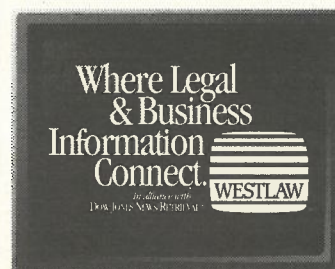
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Bankruptcy Briefs

Surrender, reaffirm, or redeem

A chapter 7 debtor having consumer debts secured by property of the estate faces a multiple choice question: (a) surrender, (b) retain and redeem; (c) retain and reaffirm; or, just perhaps, (d) retain and perform.

A chapter 7 debtor is required to "file *** a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property." [§ 521(2)(A)] The debtor then has 45 days to perform his/her intention specified in the notice given. [§ 521(2)(B)] Consumer debts are those "incurred by an individual primarily for a personal, family or household purpose." [§ 101(8)]

In making the choice, one fact is certain, in the event the debtor chooses to retain the property, he or she must pay the secured creditor for that property. Assuming the debtor lacks either the desire to retain the property or the wherewithal to pay the secured creditor, the debtor's choice is simple - surrender it. On the other hand, should the debtor desire to retain the property, should the debtor redeem, reaffirm or simply continue to perform?

Redemption

A debtor may redeem tangible exempt or abandoned personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt by paying the lienholder the amount of the debt secured by such lien. [§ 722] Redemption is a two-step process: (1) determine the value of the secured claim under § 506(a) and (2) pay the redemption price.

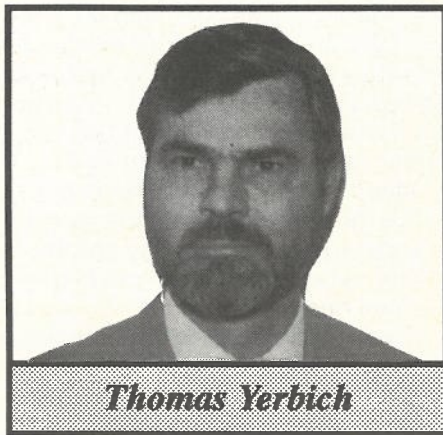
As a rule, although the collateral is to be retained by the debtor, the value of a secured creditor's interest is determined by the value the collateral would have in the hands of the creditor. That value is determined by the probable disposition that the creditor would make of the collateral; in most cases it's wholesale or liquidation value. [See *In re Mitchell*, 954 F2d 557 (CA9 1992)]

When property is redeemed under § 722, the redemption price, the lesser of the debt or the value of the property, must be paid in a lump-sum, it cannot be paid in installments unless the creditor agrees. [In *re Bell*, 700 F2d 1053 (CA6 1985); In *re Polk*, 76 B.R. 148 (BAP9 1987)] Where the value of the collateral has declined below the remaining balance on the secured obligation, redemption can be beneficial to a debtor — he or she does not pay more than the value of the collateral. [The sole "strip-down" available to a chapter 7 debtor]

Reaffirmation

Where redemption is either unfeasible (the debtor lacks the financial wherewithal to redeem) or the value of the collateral exceeds the remaining balance on the secured obligation, a debtor may nevertheless reaffirm the obligation and retain the property.

Reaffirmation is not limited to either consumer or secured debts or to obligations secured by tangible personal property; any debt may be reaffirmed. A reaffirmation agreement must be in writing, made before discharge, and filed with the court; it



Thomas Yerbich

must also represent an informed and voluntary agreement by the debtor, and not impose an undue hardship on the debtor or a dependent of the debtor. [§ 524(c)]

When a debt is reaffirmed, discharge notwithstanding, it is reinstated in its entirety. Thus, a debtor remains liable on the reaffirmed obligation as though no discharge had occurred and must pay the remaining unpaid balance in full. A creditor retains all rights under the loan agreement, including the right of a secured creditor to repossess upon default and, to the extent permissible under otherwise applicable nonbankruptcy law, recover a deficiency.

Perform

Suppose a debtor wishes to retain the property but does not desire to either redeem it or reaffirm the obligation. Are redemption or reaffirmation the exclusive remedies for a debtor who wishes to retain the collateral and continue to make the payments required under the installment contract? Conversely put, can the secured creditor compel reaffirmation or redemption and, in the absence of reaffirmation or redemption, repossess the collateral notwithstanding the fact the debtor is current on all payments and not otherwise in default under the installment agreement? There is no controlling Ninth Circuit authority and case law in other Circuits is in marked conflict on this subject — yes, no and maybe.

Two Circuits have held that reaffirmation and redemption are exclusive remedies — a secured creditor may compel a debtor to either reaffirm, redeem or surrender of the collateral. [In *re Taylor*, 3 F3d 1512 (CALL 1993); *Matter of Edwards*, 901 F2d 1383 (CA7 1990)] One Circuit has held that a secured creditor may not compel reaffirmation, redemption or surrender of the collateral; a debtor may retain the collateral without reaffirmation or redemption by keeping payments current and otherwise complying with the terms and conditions of the loan and/or security agreement. [In *re Belanger*, 962 F2d 345 (CA4 1992); accord 3 King, *Collier on Bankruptcy*, ¶ 521-09A[5] (15th ed. 1992)] Another Circuit has weighed-in with the view that compelling a debtor to reaffirm or redeem is within the sound discretion of the bankruptcy court dependent upon all the circumstances.

[*Lowry Federal Credit Union v. West*, 882 F2d 1543 (CA10 1989)] Bankruptcy courts are also about equally split on the subject (the cases are exhaustively cited in *Taylor* and *Belanger*). Strangely, both *Belanger* and *Taylor* rely essentially on the

"plain meaning" rule — some plain meaning!

Which view is correct? *Belanger* and *Collier's* present the most persuasive argument. Construing § 521(2)(A) as providing nonexclusive options complies with the canon that courts should give effect, if possible, to every word in a statute. The phrase "if applicable" is redundant (or, as the court in *Taylor* characterizes it, "gratuitous") if reaffirmation and redemption are considered to be exclusive. If this were so, § 521(2)(A) would have provided: "and specifying that such property is claimed as exempt, that the debtor intends to redeem such, or that the debtor intends to reaffirm debts secured by such property." The fact that the statutory options are stated in the disjunctive shows that the words "if applicable" are unnecessary under a construction of the statute that makes the options exclusive. But if the phrase "if applicable" is given effect, it plays an important role. A debtor must specify a choice of the options if applicable. But if these options are not applicable, the debtor need not specify them.

Perhaps more importantly, as *Collier's* notes in criticizing *Edwards*, *Taylor* and *Edwards* ignore § 521(2)(C), which provides: "Nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or trustee's rights with regard to such property under this title." *Collier's* characterizes § 521(2)(C) as a "savings clause," preserving to the debtor the right to retain the property provided the terms of the loan and/or security agreement are otherwise fully performed. If, as *Taylor* and *Edwards* hold, reaffirmation or redemption are the exclusive options to retention of the property, § 521(2)(C) is rendered nugatory - subparagraphs (A) and (B) have not only altered the rights, they have, in fact, supplanted them!

Taylor-Edwards opine that the impact of converting debt from recourse to nonrecourse provides a debtor an undue advantage (not only a "fresh-start" but a "head-start"): the debtor has no downside risk for his/her failure to maintain or insure the collateral; the debtor has no incentive to make payments if the value of the collateral declines below the debt or is destroyed.

These arguments are unpersuasive. First, presumptively Congress considered those factors when it rejected the proposition, embodied in earlier bills, that the debtor was required to choose only between the options of surrender, redemption or reaffirmation. [See H.R. 4876, 97th Cong. 1st Sess. § 7 (1981)] Second, in a well drafted security agreement, the debtor should be required to both maintain

and insure the collateral; failure to do so constituting an event of default. Third, the "natural" declination in value below the debt is a function of the "easy-squeasy" credit practices prevalent today. It is the observation of this author that consumer credit problems are to a significant degree engendered by the practices of the retail credit industry, particularly in granting credit to young families. Only too frequently young families succumb to the alluring call of the "0 down and no payments for 1 year" advertisement, without thought to the impact on family finances next year when payments start; or accept and utilize several "unsolicited" credit cards. At least with 20%, or more, down and with payments commencing in a month, or even 90 days, the prospective debtor has to look at the current family financial situation.

Two additional arguments support the "nonexclusive" position. (1) In most cases, redemption is not a viable alternative because seldom does a consumer debtor possess or have access to sufficient cash to effect redemption, placing extreme pressure on a debtor to reaffirm where retention is desired but collateral value has already declined substantially below the amount of the debt. (2) Reaffirmation presumably requires the consent of the creditor who may, for any number of reasons, simply reject reaffirmation or attempt, as a condition of accepting reaffirmation, to extract concessions from the debtor. Both subvert the avowed Congressional intent in enacting §§ 524(c) and 722.

One solution to the problem presenting somewhat of a middle ground would be to authorize (or negotiate) "installment redemption" without resort to chapter 13. [Some creditors already utilize this approach.] In many cases this could prove beneficial to both parties. A debtor would not be paying more than the collateral is worth (using "retail" not "wholesale" values) with, possibly, reduced payments the debtor could handle with greater comfort. The creditor will probably realize more than it would realize if the collateral were repossessed and sold, plus avoid the problems inherent in repossessions, and have a "happy customer." This last factor should not be overlooked. Not only is a "happy customer" a walking, talking advertisement, but because consumer bankruptcies are generally one-time events and debtors do usually become financially viable once again, the "happy customer" may become a "repeat customer."

Consumer or retail creditors might well consider adopting a more prudent approach in extending credit in the first place and a more pragmatic approach should the debtor become "financially challenged" in the second. There are, after all, honest debtors who, due to circumstances beyond their control, have to resort to bankruptcy. In 15 years practicing in the bankruptcy field, my observation has been that by and large debtors approach bankruptcy reluctantly and with trepidation; no one has yet come bouncing into my office all smiles, exuberantly proclaiming "I am going to file bankruptcy."

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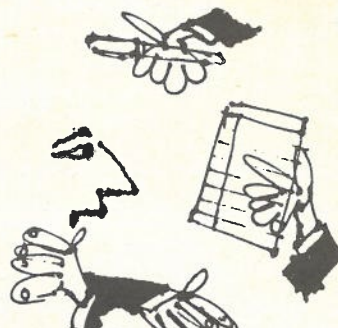
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New IRS audit program to focus on attorneys

The legal profession has recently been targeted for special audits by the Internal Revenue Service. An inside look at how the IRS selects attorneys for these examinations, the questions they ask and what they look for is revealed in the official IRS attorney-audit internal training manual, now available from an Atlanta company. Privately published as "IRS Audits of Attorneys," this report offers interesting disclosures on how the IRS may target you for special attention:

- Identification of the best targets: "Certain areas of attorney specialization (personal injury, criminal, real estate) are more 'productive' than others."
- Special techniques to test for hobby expenses disguised as business expenses and for excessive personal travel and expense deductions.
- Cites that agents will use to get information when attorney-client privilege is invoked.

- Detailed descriptions of IRS asset search procedures, including checks with the FAA for airplanes and the Coast Guard for boats.
- Special objectives in auditing trust accounts and advanced client costs.
- Verification of independent contractor status when examining payments to other attorneys and paralegals who claim this classification.
- A nine-page section on questions to ask and techniques to use in the initial interview with an attorney.
- IRS comments on how attorneys have been overzealous in trying to minimize their taxes - and the penalties that ensued.

"IRS Audits of Attorneys" will be of interest to every attorney who files a tax return (and of even more interest to attorneys who don't). For a copy, send \$25 to Professional Newsletters, Inc., 5582 Peachtree Road, Suite 101, Atlanta, Ga. 30341. Credit card orders are accepted at (800) 846-2202.

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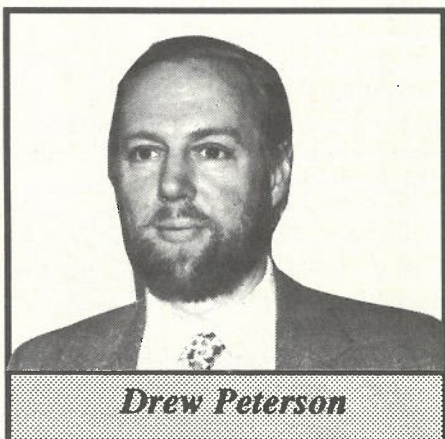
Getting Together

A book for the sake of the children

Steve Erickson and Marilyn McKnight Erickson, of Minneapolis, Minnesota, have been leaders in the movement to change the question of what needs to be done with children upon divorce. They would change the issue from who will obtain custody of the children, to how parents can effectively co-parent their children after separation. Erickson and McKnight, both past Presidents of the Academy of Family Mediators, are pioneers in the field of divorce mediation. They have been practicing family mediators since 1977, when hardly anyone had even heard of mediation as an alternative to litigation in family legal proceedings. In their book *The Children's Book...for the sake of the children*, CRI Publishing, West Concord, Minnesota, 1992, they have provided an important additional tool which can be used by divorcing parents to keep their children out of the middle of their separation or divorce.

The Children's Book begins with an introduction to the concept of co-parenting and of the use of the book as a tool and keepsake towards the goal of such a loving co-parenting arrangement. The Children's Book is intended to be used as a traveling book, moving with the children each time they move from one home to another, so that the parent with the children will have the book for reference. It is also intended as a symbol for the children of the commitment of both parents towards a successful co-parenting arrangement for caring for their kids.

After discussing the concept of co-parenting, the parents are called upon to actively dedicate the book to their particular children. They make a series of commitments to each other and to the children for the future. Both parents promise that they will be parents forever. They promise that they will give their children a good, healthy upbringing from their two separate homes and lives, doing their best to carry out all of the necessary respon-



Drew Peterson

sibilities, challenges and privileges of parenting.

Specific agreements concern;

- Communicating directly, and not through the children.
- Respecting each other's different parenting styles.
- Not disparaging the other in front of the children.
- Seeking the help of a family mediator or expert in family and/or child therapy for assistance in any disputes concerning the children.
- Preserving all parenting agreements in writing, with a copy for each parent, to avoid misunderstanding.
- Respecting each other's boundaries and personal lives.
- Informing the other parent of new relationships that affect the children, and assisting the children in understanding and adjusting to the situation.
- Keeping grandparents and other extended family members as a part of the children's lives.

The Children's Book goes on to discuss parenting schedules, including weekly and annual schedules, holidays, school year and days off, vacations with mom and with dad, and summer vacation schedules. Specific health information is included, such as names, phone numbers, and speci-

alities of various professionals, insurance information, medications, immunizations, medical records, allergies and other health history issues for each child. The book also covers financial information, important friends and relatives of each child, child care, babysitters and others whom the parents trust with their children, school information, extracurricular activities, and important birthdays of special friends and relatives. Finally the book contains a brief bibliography.

On the inside of the back cover of *The Children's Book* there is an inter-house communication envelope. It is intended to hold things such as the children's health insurance cards, membership cards, health records, social security cards, school notices and special papers of the children from the school.

The final half of *The Children's Book* consists of blank pages for the parents to fill out as a narrative of information needed to be exchanged between themselves. Each is to be dated, with a resultant historical record of issues affecting the children after beginning the use of the book.

As a practicing family mediator, I had somewhat mixed feelings about *The Children's Book*. On the one hand, *The Children's Book* is fairly skimpy in information about the process of separation and divorce and their effects upon children. It suffers in comparison with books such as Ricci's

Mom's House, Dad's House (Collier books, 1990, which provide much more information about the practical day to day issues of co-parenting. In the context of having a personal book about and for one's own children after separation, *The Children's Book* is also inferior to a book that would be individually created by the parents together addressing the particular needs of their individual extended family.

Such perfect vehicles do not exist, however. All in all *The Children's Book* is a wonderful addition to the tools available to assist separating families in placing their primary focus upon the needs of the children. The commitments which *The Children's Book* asks parents to make to their children and to each other are essential to the process of minimizing the negative effects of parental separation upon children. I intend to make future use of *The Children's Book* in my mediation practice, and believe many parents will find it useful, with or without mediation.

Steve Erickson uses comments about the language of divorce which I use in my own mediation practice. He tells parties that the only time he has heard the word "custody" used, other than concerning children, concerns the custody of prisoners. Similarly, the only other time he has heard the word "visitation" used is in the context of funeral parlors. Erickson advises us to use words that emphasize a family's continued mutual needs after separation rather than those that emphasize difference. All children have the same needs to be loved and nurtured by loving and responsible parents.

The Children's Book provides a useful tool for parents reaching towards such an end. It will be a beneficial addition to the backpack of any child moving between the homes of separated but still loving parents.

Federal immigration judge meets with local Bar members

On Tuesday evening, August 23, 1994, federal Immigration Judge Kenneth Josephson met for two hours with several members of the Alaska Bar at the law offices of Atkinson, Conway & Gagnon. Judge Josephson is a Seattle immigration judge who rides circuit to Alaska; he presides over all deportation and asylum hearings in Alaska.

Judge Josephson discussed the problem of unrepresented aliens appearing in immigration court, and urged the bar members to continue their efforts to assist unrepresented parties. The judge then went on to explain immigration court procedures and documentation in some detail. Everyone had the opportunity to ask

questions about specific procedures and the presentation of certain types of cases. Those who attended found the discussion invaluable for both new and experienced practitioners.

Alaska Bar members present included Keith Bell, Ann Benson, Nils Christiansen, Seth Eames, Jim Glaze, Ken Gutsch, Heather Kendall, and Margaret Stock. Ingrid Varenbrink, a paralegal with the Alaska Bar Association, also attended. The Immigration Law Section of the Alaska Bar Association plans to provide members with a written outline of the information given by the judge at a future date. For more information, please call Margaret Stock at Atkinson, Conway & Gagnon, 276-1700.

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Designing and installing legal imaging hardware

By JOSEPH L. KASHI

In the previous issue of the *Bar Rag*, I discussed in basic terms how optical imaging can benefit the law office. In this article, I will suggest some imaging hardware. These must be carefully thought through before you spend your first dollar.

In the law office, imaging is most useful when it is instantly available to

under heavy use. These products would be the appropriate approach for a new network transmission capability by upgrading their basic wiring hubs to switching Ethernet hubs, an emerging technology that provides full Ethernet performance to existing computers without bogging down under heavy load. Switched Ethernet hubs are still expensive, but make sense in

use will depend upon your personal circumstances. Some document imaging systems are only certified to work under the dominant Novell Netware 3.1x or higher. Other will work with simple peer to peer networks such as Windows for Workgroups or Lantastic. Before installing an imaging product, be sure that it works with your existing network operating system, or alternatively, if installing a new network operating system, be sure that it is compatible with your preferred document imaging program. For example, my preferred document imaging program, LaserFiche, requires Novell Netware because it does most of its processing on the file server itself, not at your desktop.

If you are using a client-server product like LaserFiche, then you will need a very powerful file server, preferably a 486-50DX or Pentium class computer equipped with a very fast hard disk and a much RAM as you can afford. LaserFiche, for example, requires at least 8 megabytes RAM above and beyond the amount necessary to run the underlying network operating system. This translates to 16 mega-

market. The Phillips CCD 521 is common, although slightly dated, and works reliably in connection with products like Corel SCSI Pro. The higher end Yamaha CD-ROM recorder is very nice if you can afford it.

The computer operating the CD-ROM recorder will require 16 megabytes RAM and a very fast one gigabyte SCSI hard disk, such as the Conner CFDDIO60. It is important that the hard disk feeding the CD-ROM recorder not interrupt its data stream for any reason, including any internal recalibration. Otherwise, your CD recording

There are two basic ways in which you can mount multiple CO-ROMs on a Netware file server. The first is to buy 6 or 10 individual CD-ROM drives and stack them in a tower. Such arrangements typically cost about \$500.00 per drive. Thus, to hold and use simultaneously 6 CD-ROM disks, you can expect to spend perhaps \$3,000.00 for the hardware. This arrangement does have one overriding advantage. When multiple people are attempting to access different CD-ROM volumes, mounting each disk in

"Almost all imaging products work under a graphical user interface, usually Microsoft Windows or, less frequently, IBM OS/2."

every user who might need it either for litigation support or to simply look up a document without retrieving the file from upstairs. This, obviously, implies a network environment. Thus, you must consider not only the imaging hardware itself, but your delivery mechanism, the network hardware. A slow network will quickly bog down when confronted with frequent requests for necessarily large document image files.

A basic shared media Ethernet network, using a simple hub, does not have the inherent transmission speed to provide satisfactory imaging support to more than about five frequent users. Thus, while basic Ethernet may be suitable for the very small office, it would quickly become immobilized by heavy usage. 16 megabit Token Ring or 100 megabit TCNS networking products provide high speed, cost effective networking hardware for the larger office that doesn't bog down

the context of retrofitting existing networks. Prices for these sophisticated hubs should drop substantially over the next year or so.

Almost all imaging products work under a graphical user interface, usually Microsoft Windows or, less frequently, IBM OS/2. You will need a computer capable of running these operating systems. For Microsoft Windows, a reasonable minimum user desktop system would be a 486-33DX computer with 8 megabytes RAM, a reasonably fast hard disk, a Super VGA video card, and a 15 inch or larger color monitor. 17 inch and 20 inch monitors are preferred for clarity. A few stations will need good quality laser printers with enough RAM to print full page graphical images. The station that scans documents and converts magnetic data into CD-ROM disks requires some additional hardware, as noted below.

The network operating system you

"Once your optical drive is full, you will want to move the volume to a CD-ROM disk."

bytes RAM on the small office file server and at least 32 megabytes for the larger office. If you are going to be mounting some optical drives and CD disks, then plan on using more RAM.

Because document imaging is useful primarily in the network context where the data is available to anyone, you will need to have a lot of disk storage for those numerous and large document image files. Merely using a large magnetic hard disk on the file server is not adequate or cost-effective. You'll need some sort of rewritable optical drive connected to the server and accessible to all imaging users. I prefer the 1.3 gigabyte optical drive because they are the current state of the art, more reliable, and hold about 650 megabytes per side, a storage amount that closely approximates data of a CD-ROM disk. This simplifies transferring image databases from the network optical drive CD-ROM archive. I like the Hewlett-Packard 1.3 gigabyte and IBM 1.3 gigabyte series. You will need to pay attention to Netware support for these drives. They each require special interface software. For example, the HP drive works best with MicroDesign's SCSI Express software. Consider spending about \$200.00 more and buying an external optical drive. You will find it to be more flexible and useful. Typically, I use an Adaptec 1542C SCSI controller to connect CD-ROM and rewritable optical drives to a file server containing not more than 16 MB RAM. If more than 16 MB RAM is installed, I'll typically use an EISA system board and an Adaptec 1740 SCSI EISA controller.

Once your optical drive is full, you will want to move the volume to a CD-ROM disk, both for long term usefulness and because using several optical hard disks becomes cost-prohibitive unless you buy an optical "jukebox". In order to convert your optical hard disk data into a CD-ROM, you will need a specialized CD-ROM recorder. These typically cost \$4,000- \$5,500. There are three or four such units on the

a separate drive results in much faster access. A CD-ROM changer costs about 1/3 as much for the same 6 CD-disk capacity but it will be slower when multiple users attempt to simultaneously use the same drive to read different volumes. The drive will spend most of its time mechanically loading and unloading disks from the reading heads. My own suggestion for the very small, cost-conscious office is the fast Pioneer DRM-604X CD-ROM changer, connected to Netware with SCSI Express software. For larger offices with several simultaneous users, I suggest buying as many individual drives as you might need.

A Hewlett-Packard ScanJet II will work with most imaging programs, but is rather slow and uses a proprietary interface card. I prefer the Fujitsu M3096 ScanPartner 10, a fast and reliable scanner that costs only a few hundred dollars more. You can attach the Fujitsu Scanner to a desktop computer using an Adaptec 1522 card and Adaptec's EZ-SCSI software. Load the driver ASPI2DOS.SYS with the /D and /Z command line switches. In addition to the ScanPartner 10, you can attach to the same SCSI adapter card other local SCSI devices like a CD-ROM drive.

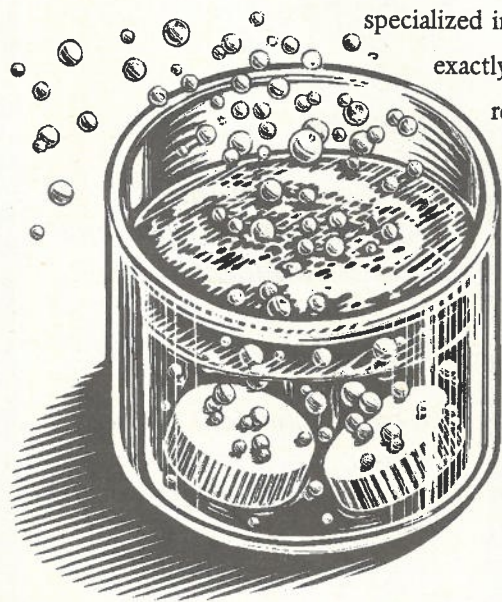
Setting up a network designed around efficient optical imaging can be dauntingly complex and frustrating. It will be expensive. Expect to spend about \$10,000 or \$12,000 for the basic hardware alone, not counting any necessary network upgrades and consultant set up fees. If you make your own CD-ROM disks, then add another \$6,000 or \$7,000. Document imaging requires a significant long term commitment but will pay long term dividends. I believe that imaging is the next revolutionary wave in office automation, a giant step toward an efficient paperless office, and a fundamental enabling technology that will both carry us into the 21st century and help us reduce long term overhead support staff costs.

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Retirement celebration

Continued from page 1

learning when trying a case in Nome against Judge von der Heydt (who was then an attorney). First, never try to outwit him; and second, never do a jury trial in Nome. After statehood, John recalled how much Judge von der Heydt helped, by proxy, in establishing a judicial system for the state. Because of Judge von der Heydt's experience with the last territorial legislature and John's position in the first state legislature, the Judge offered insight and ability during the transition phase from territory to state. John believes that because of Judge von der Heydt's contribution, Alaska is today a better place to live.

Introduced as the captain of the Republican party, the next speaker, Cliff Groh, spoke of the person he knows as Judge von der Heydt. He described him as a gentleman with a sense of humor, who is also an author, painter and poet. During the Judge's tenure on the federal bench, Cliff recalled the numerous cases Judge von der Heydt handled which helped to mold Alaska as a state and those numerous cases which concerned ANCSA and ANILCA. The one most memorable for Cliff was the *Gambell* case where the United States Supreme Court, reversing the Ninth Circuit Court of Appeals, agreed with Judge von der Heydt's decision 9-0. Cliff's first visit to Nome occurred while serving with Judge von der Heydt on the Board of Governors from 1955-1959. Quoting from Judge von der Heydt's recent book, "Mother Sawtooth's Nome," Cliff's impression of Nome is succinctly summed up in Judge von der Heydt's words: "Oh, the romance of it all!" In closing, Cliff read one of Judge von der Heydt's poems which he dedicated to Verna, Judge von der Heydt's wife.

The audience was then treated to a musical interlude by the Sweet Adelines. As mentioned, the song dedicated to the Judge was "Unforgettable." The group also performed a song by the Beach Boys which makes one think of retiring to a tropical paradise. The last song, "The Battle Hymn of the Republic" was a special request by the Judge and there was not a dry eye in the house.

Judge Thomas Stewart then recalled Judge von der Heydt's lifelong contributions to the state: first as a territorial legislator from 1957-1959, and later as a superior court judge in Juneau from 1959-1966. Judge Stewart found the Judge distinctive, distinguished and distinguishable. He recalled taking the bar exam with him and retiring to a local Juneau establishment, Mike's Place, to commiserate with fellow examinees. Later that evening, while still at Mike's Place, the test takers received a phone call to inform them they had passed the exam.

Needless to say, the commiseration turned into celebration.

For those in the audience who have not lived in Alaska since statehood, most seemed a little surprised when the next speaker, Judge James Fitzgerald, brought out his green card. This was issued to those traveling through Seattle to Alaska. Court personnel were issued the cards in order to speed the process through immigration. In a way, the card symbolized what the speakers had been addressing all evening. Each had been a part of the transition from territory to statehood; each underscored the contribution of the guest of honor in that transition and beyond.

One date always remembered by Judge Fitzgerald is November 27, 1959. Eight new state superior court judges were appointed, including Judge Fitzgerald and Judge von der Heydt. Of the eight, only those two remain. It must be remembered that at the time of appointment, there was no state court system in place; there were no courts, no clerks, no law libraries. The eight newly appointed judges traveled to the east coast to learn what they could about state pre-trial procedure the way it was done in Essex County, New Jersey. Upon return to Alaska, the judges soon discovered that much of what they learned did not apply to their situation. And apparently, as it later turned out, Essex County decided it did not work well there either because they scrapped the procedures.

On November 3, 1966 President Lyndon Johnson appointed Judge von der Heydt to the federal bench. He succeeded Judge Hodge, who was the first Article III judge in Alaska.

As a young state, there were many controversial issues presented to Judge von der Heydt during his time on the bench. Judge Fitzgerald remembers his fairness and even-handedness, no matter the issues involved. As his colleague for over thirty years, Judge Fitzgerald best knows Judge von der Heydt as a compassionate man.

A former law clerk, David Stebing, provided an overview of the daily goings-on inside chambers. The only part of the job that David didn't find pleasant was having to clean the thumb-screws after each settlement conference! Other than that, the job was a delight. Each day, the law clerk would meet with the Judge to discuss the pending motions, up-coming trials or general case management. What David most remembers is that the daily talks were not limited to court matters. The Judge, always interested in life about him, took time to inquire and discuss matters beyond the law. The discussion could cover current events, the arts, sports, or one's own family matters or personal challenges. There was no topic that could not be

addressed. The relationship was more than just a law clerk working for a judge. The relationship the Judge had with each of his clerks is on-going. This is evidenced by the bi-monthly law clerk luncheons, hosted in turn by a former clerk or the Judge. The luncheons provide the opportunity to continue the close relationship with the Judge, keep up with family matters, as well as to make new friends with other former clerks. There are times when a former clerk from out of state will come to Alaska and host a luncheon. This tradition is a testimony to the Judge's graciousness and geniality. In addition to having the Judge as a friend, the clerks also came to know his wife, Verna. If a clerk thought the Judge to be a special person, each was further inspired by the relationship of the Judge and Verna. Little did one know how a life would forever be enriched when the job as law clerk was offered by Judge von der Heydt.

When the Judge took senior status in 1984, Judge Holland was appointed to the bench. He is now presiding Chief Judge. Feeling like the youngster among all the other distinguished speakers, Judge Holland recognized the continuing source of support and guidance that Judge von der Heydt provided to the court, even after tak-

ing senior status. Maintaining an active case load meant fewer cases than the other full-time judges had to handle. Further, his well-renown facility at conducting settlement conferences meant fewer cases that had to be tried. As testimony to Judge Holland's recognition and appreciation for Judge von der Heydt's contributions, Judge von der Heydt has continued use of his chambers from which to conduct settlement conferences.

Bill Tobin introduced the guest of honor as a man he knows as a personal friend. He described Judge von der Heydt as a gentleman with wit and charm, one who makes for wonderful companionship, a man of grace, a poet, an author, an artist.

Judge von der Heydt assured the audience he would not recount each progression of his history in Alaska after recounting his arrival in Valdez in 1943 on the Otsego and his subsequent work on the Alaska Highway. He did mention that his six month contract in Nome stretched into 15 years. That has now stretched into fifty-one years in the state.

Of the many decisions he has made in his life, Judge von der Heydt believes that one of the most important was to make Alaska his home. His most important decision, however, was to ask Verna to marry him. As the Judge introduced his wife to the audience, one was not sure who was guest of honor. What one was sure of is the love and admiration each have of the other. It is a true lesson to witness the visible depth of their relationship. Upon hearing Verna address the audience, one fully appreciates her charm, her grace and her wit. It is no surprise that the Judge considers his proposal the most important decision he's ever made.

John Rader had begun the evening describing Judge von der Heydt as a young man who possessed humor, wit and a sense fairness. Continuing throughout the evening, each spoke of similar qualities: kind, distinguished, gentlemanly, elegant, fair, charming, compassionate; and yes, unforgettable.



Judge von der Heydt and his wife, Verna von der Heydt, share a card of well wishes.



From left to right, Judge von der Heydt, Verna von der Heydt, Chief Judge H. Russel Holland, and Diane Holland enjoy the retirement dinner's head table.

MIOGE Death March 1994

By WILLIAM SATTERBERG

It began innocently enough. Another one of those highly touted Alaska-Russia trade missions. This time, destination: Moscow, Russia. True Russia. East of the Urals Old Europe.

Moscow, the capital of the largest nation in world. It was April of 1994, and our tour guide was to be an inimitable individual codenamed "Rhonda." Nickname: "Mother Hen." And the ten or so of us little chickadees.

Our parties first met at the international terminal in Anchorage, Alaska. We were destined to fly Aeroflot—pride of the Soviet and later Russian airlines fleet. It was the national airline. In point of fact, the only international airline. It had a flight training program which was extensive, beginning with Airbus 300 aircraft at age twelve.

"Where's Rhonda?" someone asked.

"Don't sweat it," Kevin, the veteran of nine to Moscow, responded. "Rhonda will make it. She always does." Little did we know that Rhonda was firmly ensconced in a cocktail party halfway across the city, engaging international negotiations and an exercise in protocol.

We were the first time Moscow rookies. Anxious, yet questioning, yet confident in ourselves. After all, it would only be a week. What conceivably could go wrong?

Eventually, our bags were checked. Our visas were examined and verified by an English speaking Aeroflot clerk. Our passports were examined. Everything seemed copacetic. We only had one hour to go. Rhonda had yet to arrive. Who cared? It was off to the local bistro in Anchorage for a quick dose of liquid courage prescribed by

my physician, who is also a pilot. After all, he reasoned, we would be flying on Aeroflot.

It was April 15 which, ironically, was tax day. Because the airport post office is adjacent to the international terminal in Anchorage, there materialized a long line of late IRS filers. This line, it would later turn out, would prove to delay our re-arrival at the



terminal. But, as the Russians state, "no problem." After all, Aeroflot was predictably late on its scheduled arrival. And so was Rhonda.

Ultimately, we cleared customs and proceeded to the boarding area. I should have sensed something wrong when I noted that our travel agent also begged the security guard to allow her through the gate to bid us a fond farewell on our adventure. This seems somewhat unusual, since travel agents normally don't take that great an interest in the activities of their clients, unless they are engaging in some sort of control experiment. "Is this her first time?" I asked Kevin. Initially, I thought that she would be accompanying us, which set my mind at ease. It later became apparent, however, that she had no such intentions of ever boarding an Aeroflot jet. Rather,

she stood at the gangplank, laughing and waving happily, with somewhat sinister overtones, as we filed onto our jet.

At about the same time, Rhonda materialized, in all her glory, with a bean bag sleeping pillow that she had even given a name, "Bucky."

As indicated, Aeroflot had arrived, and the bar now swarmed with passengers also seeking liquor fortification. This caused me a certain amount of consternation, since I felt that the passengers should not be so desperate to drink. I felt it was time to do some duty free shopping. Although matters were cheaper at Costco, I had no chance to go shopping at this point. So much for duty-free. We boarded the aircraft, and raced to get to our assigned seats.

Apprehensive at first, I tried to shake hands with my fellow passengers, but they didn't seem to want to pry their fingers from the armrests. The jet hadn't even started. Not to worry.

No problem. In time, the engines did start, and the jet was pushed back from the gate. A rather archaic demonstration of life vest, overhead oxygen masks, and other safety equipment was given by the crew, who had difficulty speaking English. They fortunately had mastered one word, "Vodka," a/k/a "Wodka," which would prove most important in the hours to come.

The takeoff roll began, and the jet gathered speed. The first thing I noticed is that the tires were severely out of balance. The jet shook worse than my wife's washing machine on spin cycle. "Who balanced these tires?" I thought. I turned to my seat mate, Kevin, and asked, "Is that normal?" He looked at me, nonplussed, and responded, "That's normal." "Nerves of steel," I thought. But I could be tough too.

The jet rotated, proving that it had not been overloaded per common rumor. The climb-out was also a unique experience, consisting of what could only be termed a very wiggly undulating method of lift-off, prompting me to think that the pilots were perpetually "walking the rudders." I again looked at Kevin and asked him if the wiggle effect was normal. "That's normal," he again responded, unaffected.

The question and answer session went much the same as power settings changed, wheels came up, flaps came up, and trees rushed by.

I began to familiarize myself with my surroundings, and noticed that I had a reclining seat, something which was new to capitalist class, as opposed to proletarian class in the back of the aircraft. I pushed the button, and was promptly catapulted into the tray table in front of me. "Is that normal?" I asked Kevin. "That's normal," he again responded.

About one hour out of Anchorage, the jet went through what could only

be described as a very violent shaking maneuver, and pitch up. Our stewardess let out what could only be termed a blood-curdling scream, and leaped into the seat closest to her. She didn't even seem to care that the seat was already occupied by a passenger, who chose not to let go of the armrest in order to hang onto her.

By then, I was a veteran of this flight, and realized that it was probably just another one of those little ironies, like leveling off at altitude. Who cared if the air had been totally smooth before the incident, and became immediately smooth thereafter. I smiled and looked at Kevin, "I suppose that's normal too?" His wide-eyed response, his quaking voice, and his immediate order for a fifth of Wodka convinced me otherwise. "That's not normal."

At that point, the stewardess had

"I realized that it was probably just another one of those little ironies, like leveling off at altitude."

climbed out of the seat, and was once again pushing her Wodka tray up and down the aisle, a task she had obviously mastered. Having chosen not to drink on the flight, realizing the dehydrating ravages which alcohol can have on a nine and one-half hour journey, I also quickly realized that I had eight and one-half hours of travel to go before arrival in Moscow. I ordered a double, and promptly followed it for the rest of the flight with whatever was handy.

Remarkably, the rest of the flight was largely uneventful. Although I had certain questions regarding the quality of the cooking, since the steak was totally rare, I found the service to be rather unique. In point of fact, contrary to most American airlines which allow you to sleep during the evening and do not wake you up, this particular aircraft crew went out of its way to wake you up at every chance. Even if that wake up call was simply to announce that we had passed some momentous location, such as the Arctic Circle, or a frozen island someplace below the clouds.

Eventually, we arrived in Moscow, and boarded a shuttle bus to take us to the terminal, located fifty feet away. Following arrival at the terminal thirty minutes later, we proceeded through the customs clearing procedure, which was somewhat delayed because our bags were delayed approximately one

Continued on next page

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Continued from previous page

hour. Despite my greater fears, none of my bags were opened, and I was quickly cleared through customs to the waiting arms of four Russian guests.

Then came my next dilemma. A personal matter. Too much Wodka. I clearly had to vee vee. Through wild gesturing, I was able to communicate this age old plight to at least one person in the terminal, who motioned to me that I needed to proceed down a set of steps into a rest room area. It was there that I learned that the first vestiges of capitalism had struck Russia. Pay toilets.

A stern lady sat outside of the rest room, reading a book, and suspiciously glancing up at me as I approached her with a look on my face which could only be termed extreme distress. She pointed at a sign in front of her with the figure 200 written on it. "\$200?!" I quietly questioned myself. Things have really gotten out of hand. I began to look around for a tree or a bush. I then realized that I was dealing in the Russian currency system, where \$200 really meant about 12¢. Although I still considered negotiating with her over the price of relief, I also recognized that she had the upper hand. I gave an American dollar to her which immediately drew cries of protest. Without waiting for change, I had my first experience with the Russian plumbing system.

Upon exiting the rest room, I was surprised to learn that my one dollar had resulted in almost \$1600 Russian. Not a bad trade, I reasoned.

The ride to Moscow was unevent-

"I then realized that I was dealing in the Russian currency system, where \$200 really meant about 12¢."

ful, although somewhat exciting, even by Alaskan standards. A concept of center lines, lane changes, stoplights, and other traffic control devices commonly expected in the west, has been largely abandoned for what can only be termed to be a great burst of independence. Driving is more like negotiating in Russia, although I do recall that the style of negotiations commonly termed Russian negotiations calls for a winner and a loser.

Following a harrowing drive, we arrived at the hotel, with a name which took me almost four days to learn to pronounce. The guest clerk did not appear to be too excited with the rush

of twelve patrons, but ultimately did sign us in and tell us where our rooms were. We were all placed on the eighteenth floor in rather nicely appointed rooms consisting of a suite, complete with a toilet and a bathtub. I quickly learned that the real trick to staying in that particular room was to allow someone to get up ahead of you in the morning and take their bath or shower first, in order to allow the hot water to

"Eventually, we rendezvoused and proceeded to head to the Moscow International Oil & Gas Exhibition, affectionately known as MIOGE."

reach floor level. Needless to say, my first day in Russia did away with any primordial urges which one might have, since I was the first person to take the shower. Jetlag being as it was, I had been awake at 3:00 a.m., bright-eyed and bushy-tailed, to begin doing business in Moscow.

Little did I realize that I was not alone, and that all of my fellow travelers had undergone the same awakening experience. We all sat in our rooms for approximately three hours reading books, or doing whatever, with the exception of myself, who chose to take the first cold shower.

Eventually, we rendezvoused and proceeded to head to the Moscow International Oil & Gas Exhibition, affectionately known as MIOGE. The Alaskans, it turned out, had leased a booth at the exhibition on a cooperative basis, allowing eleven different competing Alaskan enterprises to exhibit their wares to the international community. Accordingly, tucked within the network of such large giants as Exxon, Marathon, and others, was the Alaska trade booth. Some forward thinking individual had, in fact, placed us only scant feet from the Iranian exhibit, which was occupied by a bunch of Hezbollah types, who seemed more intent upon blowing us up than anything else. Fortunately, we had brought our liquid courage along - the ubiquitous Wodka.

Of course, the first day, like any day, required locating the exhibition hall and the site of our particular exhibition booth.

I have often heard that the Russians do things on a grand scale, and I can attest that most everything that I viewed in their country, at least, had

a tendency to be on the big side. When we left the hotel with our entourage of personnel and exhibits, we traveled in three taxi cabs on a weaving course through Moscow to the exhibition site. We reached a point on the outside of the gates of the site, where we were informed by our drivers that they simply could proceed no further, and that we would have to walk. No problem. (No problem, incidentally, is a term which is very common in Russia. Whenever you hear someone say, "no problem," you had better assume that you have got a big problem coming.)

The exhibition grounds in Moscow are quite large, indeed, which we were soon to find out. In point of fact, it was over one-quarter mile down a parade ground to the first exhibition hall. Rhonda, our den mother, was quite helpful and encouraging, indicating to us that we only had to walk that distance to get to the exhibition hall. And so began the MIOGE Death March of Muscovy, 1994.

The Alaskans, true to form, brought along various gifts to give away, and approximately eighty pounds of brochures, each, for their booth. Russia, only now beginning to enter the vestiges of capitalism, is a strong believer, apparently, in the resourcefulness of the individual. Stated simply, there wasn't a handcart to be found anywhere in the world. What that meant was that the boxes had to be carried by hand over the scant distance of one-quarter mile. No problem.

The only possible complication was the fact that the first exhibition hall was not the exhibition hall where our particular exhibit was being held. Our exhibition hall, as it later developed, was in exhibition hall number five, approximately one more mile that direction. (It should be noted at this juncture that the distances which one perceives often tend to grow directly proportionately to the amount of

weight which one is having to carry.) Our ragtag group gathered its wares and set off - boxes on shoulders, footlockers carried double, and Rhonda dragging her wheeled suitcase behind her, dumping Vern's cargo, which was perched on top of it, every time she started to accelerate. All the men, meanwhile, complained of lower back pain. So much for middle age machismo.

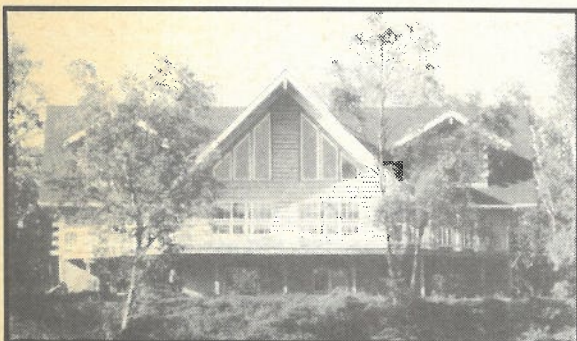
Approximately one hour later, we staggered into exhibition hall number five. It was a haggard group of adventurers, but the freight arrived intact. In approximately one more hour, we were able to locate our booth, the Iranians, and proceed to do the setup. Exercising typical American resourcefulness, we proceeded to steal chairs, scissors, strapping tape, and anything which was necessary to set up the booth. A world war almost erupted, but Wodka saved the day.

The next five days of the exhibition went well, I am told, although I spent most of my time touring Moscow. Vladimar Zhirinovsky did show up at the booth on the second day, and proudly announced to all that would listen that he owned Alaska. The Alaskans reciprocated in kind, however, acknowledging that Russia probably should own Alaska, greeting him warmly, and hoping that he would come over for a visit to Fred Meyers.

Otherwise, it was not until the day that we left that things once again became more than usually hectic. When it came time to board the plane, Rhonda was predictably late. By then, however, we had recognized that this was standard for the course. No problem.

Only this time, Rhonda didn't make it. Her reservations were for the following week. Shortly after we left Rhonda behind, we learned that Mr. Zhirinovsky began reconsidering his plans to take Alaska. No problem.

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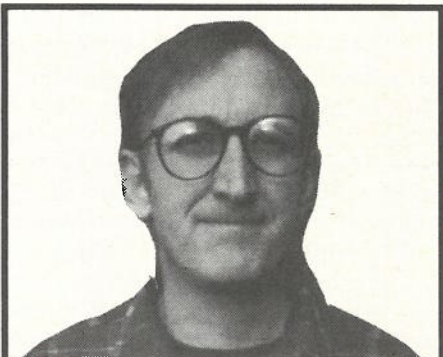
Parents know a few basic truths. One is that kids grow too fast, drifting away from home like salmon smolt heading to sea. Another is that only fools or grandmothers willingly pass through the toy section of Tongass Trading Company with children.

Not all common childcare wisdom is correct. I had always been told to never take a young child on vacation that are not centered on an amusement park. Last Summer, in foolish defiance of this advice, Susan and I took our five-year-old to Southern Europe. Without regard to public safety we planned to hit some big art museums. It worked out.

Anna is a typical Kindergarten candidate, heavy into Barbie and feature-length Disney animated features. She hates eating green things even when grown in daddy's garden. Even so in July we jammed a suitcase full of books and Aladdin toys and boarded an SAS jet for the Old World like foolish pilgrims.

Traveling with children does take some negotiation skills. Lawyers without children may want to survey the ranks of colleagues known for their settlement styles. They probably all have children. You can learn a lot about settling a case from your five-year-old. Winning concessions from Anna about personal hygiene has prepared me for negotiations with Exxon.

To understand this, picture the Branch family in a Roman *restaurante* on a hot night. Locals sipping house



Dan Branch

wine surround our table while a fiddler plays bars from Jingle Bells, Blake's Jerusalem and Lilly Marlaine as he tries to guess our nationality. Anna loudly refuses to eat another bite of fetticini until we buy her a fizz drink. Dante would have written us into hell.

To change the subject I ask my daughter to tell me what she liked best about the day. I expected her to name the rich bowl of Gellato ice cream she enjoyed in Vatican City. Instead she tells me she liked best the little church with pictures on the ceiling (Sistine Chapel). She gets her can of Sprite but only after eating six bites of pasta and a tomato wedge.

Anna's surprises continued in Florence. During siesta time one afternoon, we found ourselves wandering that city's charming if narrow streets, looking for a toilet. We were experi-

encing a potty emergency. Stress was high as were the risks. A kind person directed us to a public square which sported a cylindrical pay toilet. We were only 100 *Lire* away from resolution.

A heavy door slid open upon deposit of the coin allowing Anna and her mother entry to the WC. I waited outside, trying to ignore two art students conducting an independent anatomy study on the seat of their Vespa scooter. In minutes the door opened allowing Susan egress. Anna, staying behind to study the international symbols for toilet use lining the WC, was trapped when the door slid shut.

A terrible racket followed which greatly inconvenienced our neighbors on the Vespa. We were out of 100 *Lire* coins. While we turned, palms extended, to the lovers, Anna freed herself by pressing the floor pedal.

Wondering if my health insurance package would cover post traumatic toilet stress disorder, I carried our child past the academy housing Michelangelo's David. There was no one in line so we paid the tariff and walked in. Anna was taken with the David. I told her about the Hebrew king and how, when a child, he slayed a fierce giant. Asking for paper and pen she sat down and drew an age-appropriate illustration of the great statue.

The Academy also has other treasures. Anna stopped in front of one. It was a painting of the Baby Jesus' mom being taken into heaven by rose-scattering angels. After asking 30 minutes

of questions, Anna pulled out the paper and drew the BVM as a Barbie in a bathtub being carried to the top of the page by stick-figure angels.

Life on the trip was not always so pleasant. There was a night train to the French/Spanish border on which we baked in an Italian coach while listening to wild young men shout insults at innocent bystanders out their compartment window. They sang too, though badly, and perhaps for our benefit screamed the words "Coca Cola" on the half hour. I like to think they were trying to include us in their fun.

At 6 a.m. we pulled into Port Abu for passport control and transfer to a Spanish train. Our boisterous Italian neighbors joined us on a crowded shuttle train to Barcelona. A fistfight was narrowly averted when the Italians yielded to some Germanic demands to honor seat reservations.

We spent a sweaty day in Barcelona learning about Gaudi and other local saints. At 7 p.m. we took reserved seats in a sleeping car for the 16 hour ride to Malaga. Minutes into the trip our neighbors shouted "Hey, Coca Cola" at the sunset. I panicked, thinking the Italians were following us to the Costa Sol. They hadn't. This new fan of the American icon was Moroccan. "It's a rule, Dan," my wife advised, "every train has to have a Coca Cola guy."

The Moroccans turned in early, allowing us a delightful sleep until a half-hour before sunrise when the Coca Cola chants began again. At first light they started Moslem morning prayers. Out our window clean light was finding white in even the most faded farm house walls. Looking across at Anna's couchette, I saw her stir in a dream.

Maybe, I thought, someday she will remember hearing these ancient prayers thrown towards Mecca from a Spanish train window and the little church with a ceiling painted by Michelangelo.

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The Alaska Civil Pattern Jury Instructions are available on diskette or printed version from the Bar office. These instructions have been prepared by the Alaska Court System's Civil Pattern Jury Instruction Committee.

The diskettes contain the instructions only, while the printed instructions include the commentary. The diskette version may be ordered in many common word processing formats.

Article 24 (Contracts) has recently been extensively updated. In addition, the diskette version of Article 24 now includes revised commentary for Article 24 only as well as the instructions.

Use the order form below to order either the Article 24 update or a new set of instructions that includes the updated Article 24. Most IBM-compatible word processing formats will be available September 15, 1994. Call the Bar Office at 272-7469 for Macintosh availability. Printed versions of both the update and the complete set are also available.

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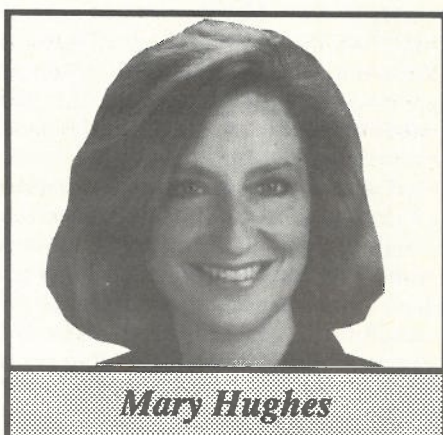
Solid Foundations

The IOLTA deficit — what can we do?

The Trustees of the Alaska Bar Foundation have been unable in 1993 and 1994 to fully fund IOLTA-eligible programs simply because of a lack of monies. The decrease in IOLTA generated funds is mainly a result of lower interest rates and has affected IOLTA programs nationwide.

As reported in the 1993 Annual Report, the Trustees distributed \$170,000 in 1993. Less funding, \$136,500, was provided in 1994. In both years, the organizations funded received much less money than they requested and other eligible programs received no IOLTA support. The choices made by the Trustees were difficult because of the excellent quality of the applicant programs.

The dilemma was discussed in April at the ABA Pro Bono Conference entitled, "Leveraging IOLTA Dollars for



Mary Hughes

Pro Bono in the Face of Serious Declines in IOLTA Funding." Various alternative funding sources were discussed, including obtaining and using "buy-in" money from attorneys or firms wishing to contribute money to pro

bono in lieu of hours of service. Specific suggestions were provided to pro bono programs which are helpful for focusing of discussion:

- IOLTA funding is cyclical and always will be. Don't depend on it one hundred percent.
- IOLTA funding can be used to lend credibility to your program with other funding sources.
- The IOLTA program can direct you to other potential funding sources.
- Legal services and pro bono programs provide meaningful local public services, and the recipients of those services are voters. Encourage continued state and local support of these services.
- IOLTA funds can be useful as matching funds for community foundation grants.
- While the United Way traditionally

has not funded pro bono programs, it may be, with severe reductions in IOLTA revenues, more receptive.

- Pro bono programs can be helpful in assisting IOLTA programs in their efforts to reduce charges and increase interest rates in IOLTA accounts.¹

We all must do our part; 765 attorneys and 96 law firms in Alaska participate in the IOLTA program. Many members of the Alaska Bar Association give selflessly of their time to render pro bono services. Other participants as committee, board or organization members promoting pro bono representation. Bank of America, Denali State Bank, First Bank, and, most recently, National Bank of Alaska, do not charge the Alaska Bar Foundation an administrative reporting fee. However, there is more to do. Each of us should continually be mindful of the funding decline and provide suggestions and ideas as opportunities present themselves. Our efforts will result in stronger and more vital legal services programs important to Alaskans.

¹ Suggestions offered by Barbara Clark, Executive Director of the Legal Foundation of Washington.

Some humble suggestions for the Bar exam

By WILL AITCHISON

I just passed the first anniversary of my taking the Alaska bar examination. After observing the moment with the appropriate degree of solemnity, I found the resolve to publicly exorcise the whole process no less vigorously than it had been when I eagerly fled through the doors of the Egan Center after three days of frivolity last July.

A bit about my background. I've been a lawyer in Oregon for more than 16 years, and have been admitted to the bar in California for 15 of those years. I've never been disciplined by either bar. Over the years, I've participated in the usual range of bar-related activities, including sitting on a smattering of bar committees, serving as a volunteer arbitrator in civil cases and attorney fee disputes, and sitting as a pro-tem district court judge.

For the last 14 years, I've practiced in exactly one area of law — labor relations. Ask me a question about corporate law, the UCC, or, heaven forbid, estate planning, and I'm stumped. I cheerfully and readily admit that I've handled the last divorce case of my career, and even moderately complicated real estate contracts give me a new appreciation for the word "referral."

But I think I know labor law, or at least public sector labor law. Over the years, I've handled hundreds of arbitrations, negotiated countless contracts, written seven books plus a part of a CLE publication, and repeatedly lectured, all on just one area of the law — labor law. Talk to me about a unilateral change in a mandatory subject of bargaining and I get interested; talk to me about the doctrine of after-acquired title or the maze of tortfeasor contribution rules, and my eyes glaze over.

When the Anchorage Police Department Employees Association hired me six years ago as part of its process of girding itself for *l'assault du Fink*, I was in a firm with lawyers admitted to the Alaska Bar and did not need to worry about taking the bar exam. In 1993, however, I went into semi-retirement and became of-counsel to my firm. Because of the relationships I had made with the wonderful and embattled people in the Anchorage Police Department, one of the two clients I intended to continue repre-

senting was the APDEA. After a good deal of hemming and hawing mixed with a healthy dose of procrastination, I knew I had to take the Alaska bar exam.

There was only one problem. The only area of law I really knew anything about — labor law — wasn't on the bar exam. And, since Alaska doesn't have decent reciprocity rules with ei-

ther Oregon or California, I was going to have to take the full bar exam, two and one-half days of questioning on legal topics I hadn't encountered since long before I noticed my first gray hairs and the intolerable tendency of my pants to shrink while hanging in my closet. To make matters worse, as a newly-sole practitioner I knew I was going to have precious-little time to study for the bar. Of course, my clients at APD were extremely thoughtful, delighting in regaling me with horror stories about how only approximately 2.75% of those who take the Alaska bar actually pass the test and how every lawyer they knew had failed the bar exam at least several times before finally passing. And then there was this story that they kept telling me

about this one guy . . .

As I weeded my garden at home while preparing for the exam by listening to barely audible bar-review cassette tapes (why was the Alaska bar review held in a church with choirs singing and bells ringing in the background?), the bizarreness of the Multistate exam once again burned itself into my brain. "Which of the following answers is least correct?" Now that's a question my clients normally ask. In fact the bizarreness of the whole process once again hit home.

In a bar exam, we're asked to answer a wide variety of questions with complicated fact situations in an absurdly short period of time, all without consulting a single law book or speaking with anyone else. Try doing that in the real live practice of law and see where your malpractice insurance rates go. *That's a good question. Just for the heck of it, let me try to answer your question without looking at any of the applicable statutes or any relevant case law. Is that OK with you? Please? Can I try it just once?* Come on, they don't even allow you to use Westlaw during the bar exam (and why not?).

The actual bar exam was a doozy. The essay question on civil procedure dealt with the procedures and rules used in small claims court, something lawyers obviously encounter every

day. The essay question on contracts had a fact-pattern about a contingent fee agreement purportedly breached by a client who had inappropriately (at least in the judgment of his lawyer) rejected a settlement offer, and the lawyer who wanted his full fee even though the eventual recovery was much less than the offer, and asked us to analyze the legal issues *without* any recourse to the ethical implications of the situation. And the Multistate was, well, the Multistate.

There's got to be a better way. For individuals just out of law school, the combination of an apprenticeship plus a reasonable practical skills test makes a whole lot more sense than the bar exam. For attorneys licensed in good standing to practice in other states, the oath of office coupled with a few mandatory CLE's in Alaska law should suffice. Let the marketplace control the rest of the process.

I've got no ax to grind now. I've taken the last bar examination I'll ever take in my life, a change in plans and reciprocity willing. It just seems that we, as practicing lawyers, have an obligation to make sure that the process to admit our successors to the bar is a fair and rational one. I'm not convinced that what exists in Alaska (and California and Oregon) meets those criteria.

ALASKA BAR ASSOCIATION

ALASKA BAR EXAMINATION

Questions 4, 5, 6, 7, 8 & 9

Answer all six of the questions given at this session.

Answer according to the principles of law as applied in Alaska.

No credit will be given for discussing everything you know in a field of law.

Time Allotted - Three Hours

Second Essay Session

Tuesday Afternoon

ther Oregon or California, I was going to have to take the full bar exam, two and one-half days of questioning on legal topics I hadn't encountered since long before I noticed my first gray hairs and the intolerable tendency of my pants to shrink while hanging in my closet. To make matters worse, as a newly-sole practitioner I knew I was going to have precious-little time to study for the bar. Of course, my clients at APD were extremely thoughtful, delighting in regaling me with horror stories about how only approximately 2.75% of those who take the Alaska bar actually pass the test and how every lawyer they knew had failed the bar exam at least several times before finally passing. And then there was this story that they kept telling me



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Estate Planning Corner

Shifting trustee's distribution power

To the extent an individual has a so-called general power of appointment over a trust, that individual is generally considered the owner of the trust for tax purposes (IRC Sec. 2041(a)(2), 2514(b), and 2652(a)(1)).

An individual is considered to have a general power of appointment over a trust if he has the power to distribute property to himself — that is, in general, unless the individual's distribution power is limited by an ascertainable standard relating to his needs for health, education, or support (Treas. Reg. Sec. 20.2041-1(c)(2) and 25.2514-1(c)(2)). So as drafters we often use ascertainable standards to avoid deemed ownership under the general power of appointment rules.

It appears possible for a beneficiary to shift a distribution standard from nonascertainable to ascertainable where the beneficiary wants to serve as trustee.

For example, consider a residuary bequest under a Will in which the client is using a disclaimer form of estate plan. Under the residuary bequest, the client basically gives everything to a trust for the benefit of his surviving spouse. This trust has an unrelated trustee, so the trustee's discretion over distributions of trust principal can be unlimited.

The Will goes on to provide that to the extent the surviving spouse disclaims this initial trust, then one or more disclaimer trusts are funded with the disclaimed property. The surviving spouse is trustee of the disclaimer



Steven T. O'Hara

trusts, and her discretion over distributions of trust principal is necessarily limited by an ascertainable standard.

In other words, the disclaimer regulations do not have a problem with a disclaimant retaining power, such as in a trustee capacity, to distribute disclaimed property, as long as the trustee's discretion is limited by an ascertainable standard (Treas. Reg. Sec. 25.2518-2(e)(1)(i) and 25.2518-2(e)(2)).

Thus at least in the disclaimer area, it appears a beneficiary can shift a distribution standard from nonascertainable to ascertainable without adverse tax consequences. The reverse also appears possible — shifting a distribution standard from ascertainable to nonascertainable without adverse tax consequences — in the disclaimer area.

Outside of the disclaimer area, it may be more difficult to shift a distribution standard without adverse tax consequences. For example, if a beneficiary could expand an ascertainable distribution standard into an unlimited standard by resigning as trustee or by appointing an unrelated co-trustee, the IRS might challenge that ability as itself being a power of appointment or a transfer subject to gift tax (Adams and Abendroth, "The Unexpected Consequences of Powers of Withdrawal," 129 *Trusts & Estates* 47 (August 1990)).

Of course, the creator of the trust could set a fixed time for the shift. For

example, suppose the grantor creates a trust for the life of a child beneficiary. While the child is under age 25, the trustee's discretion over distributions is limited by an ascertainable standard. But after the child reaches age 25, the trustee's discretion is unlimited.

By contrast, consider a trust that is set up to last potentially for the life of the child beneficiary. When the child reaches age 35, the child is authorized to remove the incumbent trustee and appoint himself as trustee. Here the trust would need to provide that when the child turns 35, if not before, the trustee's discretion over distributions is limited by an ascertainable standard relating to the child's needs for health, education, or support. Otherwise, the child could be considered the owner of the trust for tax purposes.

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U.S. District Court announces rules change

H. Russel Holland, Chief Judge of the United States District Court for the District of Alaska, today announced proposed revisions to the Local Rules of that Court. The proposed changes will be discussed at the District Conference to be held in mid October and, if approved, will take effect on Tuesday, January 3, 1995. Beginning Monday, September 26, 1994, interested parties may review the proposed Local Rules at the offices of the Clerk of the District Court which are located in the federal courthouses at 222 W. 7th Avenue, Anchorage, Alaska; 101 12th Avenue, Fairbanks, Alaska; 709 W. 9th, Room 979, Juneau, Alaska; and 648 Mission Street, Ketchikan, Alaska. Copies can also be reviewed at all state and federal law libraries. Those wishing to review the rules at a particular location should check on office hours to determine when the facility is open to the public.

The proposed revisions are the result of five years' work by an advisory committee of Alaska lawyers currently chaired by R. Collin Middleton, Esq. The committee was previously chaired by Judge Andrew Kleinfeld until his election to sit on the Ninth Circuit Court of Appeals. Presently sitting on the Committee are Harold M. Brown, Esq., Gary Zipkin, Esq., and U.S. District Court Judge James K. Singleton. Alaska Superior Court Judge Ralph Beistline, Robert Bundy, U.S. Attorney, Sue Ellen Tatter, Esq., and Millard Ingraham, Esq., have also contributed their time to this Committee.

The goal is to make the local federal rules as similar to the local state rules as possible in order to avoid confusion for those who litigate in both court systems. The Local Rules, when

adopted, will govern practice and procedure in the United States District court for the District of Alaska and supplement the Federal Rules of Civil Procedure which govern civil litigation in federal courts throughout the United States. The Local Rules were last substantially revised in 1981. These proposed Local Rules include major changes in local practice which includes new discovery rules patterned on those recently adopted by the Alaska Supreme Court, which in turn are patterned on Federal Rules of Civil Procedure 26, *et seq.*, which went into effect in December of 1993. The discovery rules require parties to make significant disclosures regarding their claims and defenses without court intervention. A rule adopting The Alaska Rules of Professional Conduct is also proposed. Other proposed changes include a rule permitting participation in civil proceedings by telephone with the permission of the court; a rule permitting videotaping of depositions; a rule providing for supervision of minor settlements; and a rule based on the state rule regarding alternate dispute resolution and mediation.

Chief Judge Holland encourages the public, and particularly members of the Alaska Bar Association, to comment on the proposed rules and suggest worthwhile modifications or changes. In order to be considered by the court, comments should be in writing and should be delivered or mailed to the Clerk of the United States District Court, 222 W. 7th Ave. No. 4, Anchorage, Alaska 99513. Comments must be received on or before **Monday, November 28, 1994, at 12:00 p.m.** in order to be considered.

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If your desire is that a more in-depth search is not warranted in your case, then your maximum financial liability is the \$75.00 file maintenance fee, no matter how much time has been spent by our agency in attempting to locate your subject. **No further fees will be billed under this search request unless authorized.**

Over the past 14 years, we have compiled a 83% success record for our clients. Some investigations, though, are more complex and may need advance procedures to uncover details which lead to the person who intentionally conceals their whereabouts.

*Limited Nation-wide Skip Trace Service Only

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Dallas, Texas 75380

Changes to Alaska Rules of Civil Procedure

The Alaska Supreme Court has adopted new rules on discovery and disclosure in civil cases. These rules are based on the new federal discovery and disclosure rules that went into effect last year.

The new Alaska rules are effective July 15, 1995. A complete set of the new rules and the accompanying forms will be distributed to active members of the Alaska Bar Association in October or November. Anyone who would like an advance copy of the rules (not the forms) should contact the office of the Court Rules Attorney, 303 K Street, Anchorage, AK 99501, (907) 264-8240.

The Public Laws

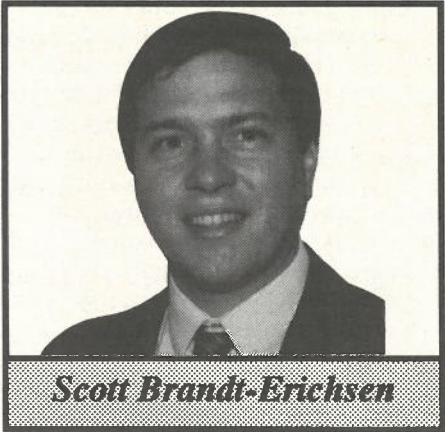
By what measure should American civilization be judged?

"The degree of civilization in a society is revealed by entering its prisons."

— Dostoevsky
"More than one student of society has expressed the view that not the least significant test of the quality of a civilization is its treatment of those charged with a crime, particularly those which arouse the passions of a community."

— Justice Felix Frankfurter

I don't know if it is as a result of CNN or if it is just that I am more in tune to international struggles, but it certainly seems like there is an awful lot of misery and live illustrations of man's inhumanity to man around the world. Examples of other countries,



when contrasted with our own, make our complaints about our government seem ridiculously trivial.

In the Kingdom of Juneau Minutes of the Royal Bar Association of Juneau



Present:

Bruce B. Weyhrauch, Micheal A. Barnhill, Gerald K. Davis, Jr., Dr. Joseph A. Sonneman. The duly elected officer and other esteemed members not be present, the meeting was brought to order and substitutes appointed as follows:

Bruce B. Weyhrauch, Chair Protem
Michael A. Barnhill, Secretary Protem

There being no business pending, the following motions were made, seconded, and reserved for discussion and vote at next week's meeting.

I. The positions of officers in the Juneau Bar Association are abolished.
II. The name of the Juneau Bar Association shall be changed to the Royal Bar Association of Juneau effective immediately.

III. The Royal Bar Association of Juneau adopts a benevolent monarchy as its form of government.

IV. This benevolent monarchy is divinely ordained.

V. The Royal Bar Association of Juneau recognizes Judge Rodger Pegues as Pop Most High.

VI. The official and divinely ordained positions in the Royal Bar Association of Juneau are:

1. King/Queen
2. Archduke
3. Count of Royal Treasury
4. Lord High Secretary

VII. The members of the Royal Bar Association of Juneau shall be known hereafter as knaves.

VIII. The non-member esquires in the realm shall be known hereafter as peasants.

IX. Ann Vance is nominated as Queen.

X. Sarah Felix is nominated as Archduke.

XI. Gerry Davis is nominated as Count of the Royal Treasury.

XII. Dan Wayne is nominated as Lord High Secretary.

The above motions being made and seconded, the Royal Doctor Sonneman made the following announcements:

1. The picnic of the Royal Bar Association of Juneau shall be held on Sunday, August 27, 1994, between the hours of 12 noon and 4 pm at Auke Rec. Dome for delicious lamb barbecue.

2. The law library reports that certain publishers of loose leaf services will be discontinuing their hard copy service in favor of CD-ROM. The law library's PC, however, is apparently incompatible with the new CD-ROM.

3. The Alaska Committee meets Thursdays at 4 pm in the Behrends Building near the offices of Olmstead & Conheady.

4. Jamie Fisher is in Kenai through the end of the summer. This means that there is no one who is presently volunteering to round up candidates for public office to address our royal gathering. The Royal Doctor suggests that someone volunteer to arrange for speakers at our meetings so that attendance will increase.

There being no other business before those gathered, the meeting was adjourned.

Imprimatur
Micheal A. Barnhill
July 25, 1994

The situation in Rwanda is unfathomable by American standards. Both Yugoslavia and Rwanda the past two or three years have given us powerful visual images of the suffering which can be inflicted for little more reason than differences in religion or ethnic background.

In the United States however, religion, national origin and race (among other demographic conditions) are protected against discrimination in housing, employment, education and other areas. Essentially, this means a person living in Rwanda, Serbia or Croatia might be killed based upon their physical appearance as being part of a given group, while the same person in the United States could not be denied a cup of coffee on the same basis.

The problems are not limited to Third World countries either. In Russia or even southern Italy, Judges, prosecutors or business figures and their families may be at great personal risk from organized crime attacks. Russian hockey players making it in the NHL may be extorted through threats to their families. Even the common (i.e. not ideological) hoods in the United States are not generally so brazen.

Official oppression is not uncommon, either. When it comes to democracy and the expression of ideas, Haiti and Cuba are not favored locations. I recently read of an Iranian writer being arrested, tried, convicted, and executed for putting to paper ideas which were unacceptable to the Islamic regime. All of this judicial process occurred within a 16-hour time span on his wedding day. When contrasted with the protections afforded free speech and accused criminal defendants in the United States, our system seems much preferable.

Seeing the contrast between the treatment of the citizenry in the United States and elsewhere, at the hands of either the government or their fellow citizens, at times I wonder whether, as humans, we are striving too hard for an unrealistic level of equality and mutual respect for the rights of others.

But then there are countries with even more "advanced" or "civilized" practices which recognize as rights some things which we in the United States do not treat with such reverence. In many Western European countries universal health care is standard. In several of these countries striking one's own children, even as a

form of discipline, is prohibited. Where the appropriate balance point lies between the government protection of individual rights and the freedom of individuals to manage their own affairs is difficult to define.

One consideration with which we struggle when it comes to protecting or recognizing rights is the opportunity cost, the cost to the society as a whole of creating a new "right" or "entitlement" as an additional collectively protected value. A good example may be seen with the idea of universal health care. Few would oppose universal health care if it were free. Were it not for the economic issues which are involved with paying for health care, we would likely have established such care long ago.

We do not seem to have the same hesitancy about the opportunity cost of our system of judicial procedures designed to protect the individual from oppressive government action. Police costs are increased as procedures are refined to better protect the rights of the accused. Vast amounts of public resources are expended in the defense of indigent persons accused of capital crimes, and large resources are expended defending those accused of lesser crimes. The resources allocated to private defendants may be even greater. It is reported that \$ 5 to 7 million in resources may be expended to defend O.J. Simpson. That level of resources could save several lives if allocated to medical resources or food either in Rwanda or even here in the United States.

Sometimes I am troubled by the societal benefits foregone in order to afford criminal defendants their full complement of rights, and wonder whether the measure of resources is appropriate to the importance of the societal value served.

I find myself compelled to conclude that allocation of significant resources to protect the citizenry from abuse of government power is appropriate, if for no other reason than because it is this allocation of resources which separates us from Iran or Rwanda or Serbia.

But I can't help hoping that our societal values which support allocation of such significant resources to protect the individual from oppression by the government might also support protecting the individual from the oppression of easily treatable diseases going untreated or neglected due to lack of health insurance.

SOLICITATION OF VOLUNTEER ATTORNEYS

The court system maintains lists of attorneys who volunteer to accept court appointments. The types of appointments are listed in Administrative Rule 12(d)(2)(B). Compensation for these services is made pursuant to the guidelines in Administrative Rule 12(d)(2)(E)-(I).

Attorneys may add their names to the volunteer lists by contacting the area court administrator(s) for the appropriate judicial district(s):

First District:

Kristen Carlisle
415 Main St. Rm 318
Ketchikan, AK 99901-6399
(907) 225-9875

Second District:

Mike Hall
303 K Street
Anchorage, AK 99501-2099
(907) 264-8250

Third District:

Al Szal
303 K Street
Anchorage, AK 99501-2083
(907) 264-0415

Fourth District:

Ron Woods
604 Barnette St. Rm 202
Fairbanks, AK 99701
(907) 452-9201

January 1

**Deadline to transfer to inactive status
Contact the Bar Office
272-7469**

NEWS FROM THE BAR



At the Board of Governors meeting on August 18 & 19, 1994, the Board took the following action:

- held a long range planning session with Lynne Curry-Swann and set goals for the next year;
- heard public testimony from Tom Obermeyer and Theresa Obermeyer;
- heard a request from a member for a dues waiver or an amendment to the bylaws regarding dues waiver criteria and declined to grant the request or amend the bylaws;
- briefly discussed the concept of mandatory malpractice insurance and mandatory disclosure of malpractice insurance and the president reported that a committee would be meeting on this issue on August 22 with Bob Minto, President of ALPS;
- held a hearing on an admissions appeal;
- was advised by President Winfree that a committee had been set up to consider the disciplinary enforcement rules;
- reviewed a letter from Supreme Court Clerk Jan Hanson comparing the disciplinary decisions by the Board and the court;
- adopted proposed rule amendments 1 (b) (60) regarding immunity;
- decided to set up a committee to consider the unauthorized practice of law proposed rule;
- discussed a letter from Judge Holland regarding the selection of the 9th circuit lawyer representatives;
- approved the requests of Dwayne McConnell, Jill de la Hunt, Kathryn Skendzel and Edward Hein to go from inactive to active status;
- approved the Board minutes as amended;
- authorized a resolution to amend the pension plan;
- voted to publish an amendment to the Bar Rules changing the deadline for bar exam reapplicants;
- approved the admission of seven reciprocity applicants;
- heard a request for action to be taken on an application for admission; following discussion by the board, the applicant withdrew his request for action at this time;
- gave direction to the Executive Director on a policy regarding requests for contribution for social events;
- held a hearing in the Disciplinary Matter involving Fred Triem;
- heard a report by the CLE Director that the 1994 convention finished in the black (\$36,000 revenue and \$34,000 expenses), with 187 people attending at least some portion of the convention;
- were advised that the 1995 convention dates have been changed to May 11-13 at the Princess Hotel in Fairbanks;
- accepted a stipulation for public censure, with the Board's recommenda-

- tion now going to the supreme court;
- approved the formation of an Immigration Law Section;
- heard the report by Bar Counsel that there are now 92 open discipline cases involving 74 lawyers, and that there are 69 open fee arbitration cases;
- approved \$5,000 reimbursement as provided by Bar Rule 31 for Trustee Counsel Jo Kuchle in the matter of Franklin Fleeks;
- denied a request to resign from the Bar Association by a member with disciplinary matters pending;
- reviewed a request to consider adopting a trust account overdraft notification rule and decided to defer this until the January agenda;
- discussed the new security system in the Anchorage courthouse;
- declined to allow West to use the bar logo in promotion of the CD-ROM program;
- took no action on the proposal to participate in a bank card program;
- briefly discussed the materials provided on the Keller issue (unified bars and lobbying)
- referred the suggestion to amend Rule of Professional Conduct 4.5 (to allow non-lawyers to have a financial interest in a law firm) to the Model Rules Committee;
- declined to take action on a suggestion from the Washington Legal Foundation to amend the rules concerning contingency fees;
- heard reports from Section Chairs Fran Purdy (Family Law), Glenn Cravez (ADR) and Carol Daniel (AK Native Law);
- was advised by Lynn Allingham that the Journal of Law was going to a monthly supplement and the status of the Alaska Bar page was on hold;
- heard a report by Lynn Allingham on the Unified Bar meeting in New Orleans and approved taxi and one night hotel expenses for this.

Anchorage Attorney Jon Wiederholt Disbarred

The Alaska Supreme Court on July 8, 1994 ordered that attorney Jon E. Wiederholt of Anchorage be disbarred. Although Wiederholt was originally charged with misconduct in eight grievances, the disbarment order focused on his intentional deception of the court and other parties in one case, and on his forgery of a client's name in order to negotiate a settlement check in another case. In re Wiederholt, No. S-5736, slip op. at 6, 7 (Alaska July 8, 1994).

Following investigation of the grievances and presentation of formal charges by Bar Counsel, a hearing committee found that Wiederholt engaged in a variety of ethical misconduct in the eight cases. The misconduct, in addition to the deception of the court and the forgery, included a threat against a client to disclose confidential information, abusive conduct toward opposing counsel (including profanity at a deposition and a physical assault), abusive discovery tactics, and improper communications with represented and unrepresented opposing parties. The hearing committee recommended disbarment. On appeal, the Disciplinary Board of the Bar concluded that the forgery and threat to disclose confidences in one case and deception of the court in another case by themselves warranted disbarment.

The Supreme Court accepted the recommendation to disbar. In doing so, the court rejected Wiederholt's contention that the eight grievances should not have been consolidated for hearing and appeals. The court explained that de novo review by the Disciplinary Board and the Court minimizes any danger that multiple grievances unduly affect a hearing committee's perception of a respondent's credibility. The court also noted that consolidated hearings conserve Bar Association disciplinary resources.

The disbarment order pivoted on the deception and forgery findings. In the first instance, Wiederholt informed the court and adverse parties that his client, a judgment creditor, was entitled to assets of the judgment debtor because the judgment debt had not been satisfied; in fact, as Wiederholt knew, the judgment debt had been extinguished at an execution sale. In the other case, Wiederholt forged his client's endorsement on a settlement check so that he could negotiate it and gain leverage in a fee dispute. The court held that this constituted fraud.

The public record is available for inspection at the Bar Association offices in Anchorage. Under Bar Rule 29(b)(5) Wiederholt is not eligible for reinstatement to Bar Association membership for at least five years.

Proposed Amendment to Alaska Bar Rule 3, Section 6

The Board of Governors is proposing an amendment to the Bar Rule 3 which would set the deadlines for reapplicants to reapply to take the Alaska Bar Exam at January 15 for the February exam and July 1 for the July bar exam. The Board welcomes comments or suggestions from the membership. This proposal will be reviewed by the Board again at their October 28 & 29, 1994 meeting. Please address any comments to Deborah O'Regan, Executive Director, Alaska Bar Association, P.O. Box 100279, Anchorage, AK 99510.

Rule 3. Section 6. An applicant who has failed to pass a bar examination required by Rule 2 may reapply for admission to take a subsequent bar examination.

Reapplications shall be made by:

(a) **Filing a reapplication form as required by the Board by January 15 for the February bar examination and by July 1 for the July bar examination.** [SENDING WRITTEN NOTICE OF INTENTION TO REAPPLY TO THE BOARD WITHIN 60 DAYS FOLLOWING NOTICE OF FAILURE. SUCH NOTICE SHALL INCLUDE A DESCRIPTION OF THE APPLICANT'S INTERIM EMPLOYMENT AND ANY OTHER CIRCUMSTANCES AFFECTING THE APPLICANT'S SUITABILITY FOR ADMISSION TO THE PRACTICE OF LAW IN ALASKA;

(B) PROVIDING SUCH ADDITIONAL INFORMATION AS MAY BE REQUIRED BY THE BOARD.]

Applicants for reexamination shall be required to pay *the reapplication fee* [SUCH ADDITIONAL EXAMINATION AND APPLICATION FEES] as may be fixed by the Board. An applicant who does not comply with this Section must reapply pursuant to Sections 1 through 5 of this Rule.

**Circle these dates for the
1995 Alaska Bar Association
Annual Convention**

**Thursday, Friday and Saturday
May 11, 12 and 13**

in FAIRBANKS,
The Golden Heart of Alaska

The Alaska Judicial Conference will also be held during this week in Fairbanks

**THE UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF ALASKA
HEREBY GIVES NOTICE FOR PUBLIC COMMENT ON
THE ADOPTION OF AMENDMENTS TO LOCAL RULES
OF PRACTICE AND PROCEDURE**

Public comments must be in writing directed to Wayne W. Wolfe, Bankruptcy Clerk of Court, 605 West Fourth Avenue, Suite #138, Anchorage, Alaska, 99501. Public comment period will run through October 14, 1994. Unless abrogated by the Ninth Circuit Judicial Council, the amendments will be adopted effective November 1, 1994. Copies of proposed amendments to Libraries, and Bankruptcy Clerk's offices in Anchorage, Fairbanks and Ketchikan.

IOLTA OVERVIEW

Alaska's IOLTA program was established by the Alaska Supreme Court on November 20, 1986, through the adoption of amendments to DR 9-102. The program became operational in March 1987. On July 15, 1989, it became "opt out," requiring each attorney to file a Notice of Election. Funds from the Alaska Bar Foundation's IOLTA program have been designated solely for the following purposes:

1. THE PROVISIONING OF LEGAL SERVICES TO THE ECONOMICALLY DISADVANTAGED.

The Alaska Bar Foundation is committed to improving access to legal services. IOLTA support is given to projects and organizations which provide legal services to persons or groups who find it difficult to obtain such services. Particular consideration is given to projects and organizations which assist the legal needs of the economically and socially disadvantaged.

2. IMPROVING THE ADMINISTRATION OF JUSTICE.

The Alaska Bar Foundation supports projects and organizations which seek to improve the legal system and the administration of justice. Special emphasis is given to projects that contribute to the substantive understanding of the legal system and to organizations which advocate improvement.

PARTICIPATING BANKS

The IOLTA program is made possible by the cooperation of the banks serving Alaska's law firms throughout the state:

- Bank of America

Denali State Bank

First Bank

First Interstate Bank
- First National Bank of Anchorage

Key Bank of Alaska

National Bank of Alaska

Northrim Bank

IOLTA GRANT RECIPIENTS

ALASKA PRO BONO PROGRAM

The Alaska Pro Bono Program (APBP) involves private and public sector attorneys in the delivery of free legal services to Alaskans. It is jointly sponsored by the Alaska Legal Services Corporation and the Alaska Bar Association.

In 1993, a \$135,000 grant was provided from IOLTA funds for several purposes. In addition to providing the economically disadvantaged with free legal representation, the APBP offers the following services to the community statewide: free monthly *pro se* classes which provide information and assistance concerning uncontested divorces, uncontested custody, and support orders for unmarried parents; Chapter 7 bankruptcy classes; advice-only question and answer clinics called Tuesday Night Bar; a special landlord/tenant law *pro se* and advice-only educational clinic; assistance in the area of wills, estate planning, housing, and consumer matters through the Elderlaw project for low-income clients over sixty years of age; and appointments for low-income *pro se* plaintiffs filing U.S. District Court civil cases.

CATHOLIC SOCIAL SERVICES

Many immigrants to Alaska, in addition to the other problems they face in attempting to enter the United States, speak little or no English. They require special assistance with the often confusing immigration laws. Catholic Social Services (CSS), through its Immigration/Refugee Program, provides the only non-profit legalization assistance available in Anchorage to aid immigrants with the immigration laws. The Immigration/Refugee Program does not refuse service to anyone, regardless of ability to pay. In 1993, \$30,000 in IOLTA funds were contributed to assist the CSS Immigration/Refugee Program.

ANCHORAGE YOUTH COURT

Anchorage Youth Court (AYC) is a non-profit organization which supports an alternative preadjudicatory system for Anchorage youth. Through this program, juveniles accused of breaking the law are allowed to submit their case to the AYC and to be represented and judged by their peers. Those convicted within this system are required to perform community service instead of receiving a criminal record. This allows the youth to atone for the wrongdoing without damaging his/her future and lessens the traffic of juvenile cases in our courts.

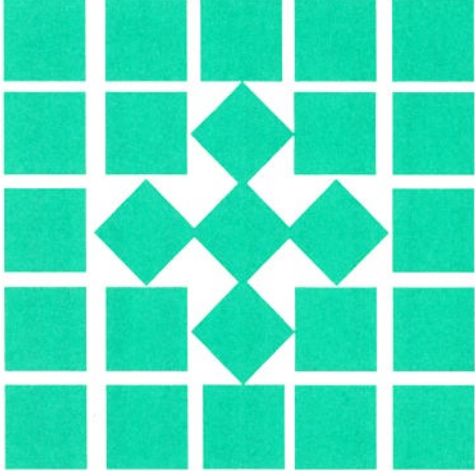
This program also benefits the students in junior and senior high schools who are trained in many facets of the legal system and receive hands-on trial experience as attorneys, judges, bailiffs, clerks, and jurors.

In 1993, \$5,000 in IOLTA funds were donated to AYC to help maintain its operation and expand its services to more students.

IOLTA LAW FIRMS

- John W. Abbott
Law Office of Louis E. Agi
Alaska Legal Services Corporation
Alaska Native Law Consulting
Daniel W. Allan
Law Offices of Lynn M. Allingham
Law Office of Ella A. Anagick
Artus & Choquette, P.C.
Ashburn & Mason
Ashton & Dewey
Atkinson, Conway & Gagnon, Inc.
Law Office of Karin Bago, Ph.D.
Law Office of Ronald L. Baird
Baker, Bratlain, & Huguelet
Law Office of C. R. Baldwin
Law Office of Joyce Bamberger
Bankston & McCollum, P.C.
Barker & Hellen
Barokas & Martin
Batchelor, Brinkman & Pearson, P.C.
Baxter, Bruce & Brand
Margaret W. Berck
Birch, Horton, Bitner & Cherot
Arona S. Blackman
Bledsoe & Knutson, P.C.
Bliss & Wilkins
Richard L. Block
Bogle & Gates
Law Offices of William J. Bonner
Edgar Paul Boyko and Associates
Law Office of Gregg B. Breisford
Carol A. Brenckle
Law Office of Victor D. Carlson
Law Office of Linda M. Cerro
Robert C. Brink
Law Office of Helene M. Ariel Brooks
Woody Brooks
Burr, Pease & Kurtz, P.C.
Law Offices of Rex L. Builer
Jeri D. Byers
Call, Barrett & Burbank
William B. Carey
Law Office of Victor D. Carlson
Law Office of Linda M. Cerro
Swan T. Ching
Charles W. Coe
Bonnie J. Coghlan
Cohen & Associates
Law Office of Kathryn M. Coleman
Cook, Schuhmann & Groseclose, Inc.
Craig A. Cook
Gregory F. Cook
Copeland, Landye, Bennett & Wolf
Marshall K. Coryell
Kenneth L. Covell
Glenn E. Cravez
Law Offices of Robert Crowther
Law Office of Dennis P. Cummings
Ronald E. Cummings
Law Offices of Ralph B. Cushman
Davis & Goerig, P.C.
Davis Wright Tremaine
Law Office of Jill K. Dean
Delaney, Wiles, Hayes, Reitman & Bruker, P.C.
Delisio Moran Geraghty & Zobel, P.C.
Law Offices of Dan E. Dennis
Dillon & Findley, P.C.
Law Office of Vincent M. DiNapoli
Dittman & Kell, P.C.
Loren Donke, P.C.
Downes, MacDonald & Levensgood, P.C.
Richard L. Eckert
Eide & Miller, P.C.
Richard D. Ellmers
Ely & Havelock
William D. English
Deitra L. Ennis
Virginia M. Espenshade
Law Office of Charles G. Evans
Farleigh & Shamburek
Fautner, Banfield, Doogan & Holmes, P.C.
Thomas E. Fenton
James E. Fisher
Foley & Foley, P.C.
Law Office of Maryann E. Foley
D. Kenneth Ford
William T. Ford
Carl C. Frasure, II
Friedman & Bros.
Friedman, Rubin, & White
Peter A. Galbraith
Leslie S. Gara
Garretson & Esch
Giannini & Associates, P.C.
Gilmore & Doherty
- Thomas S. Gingras
Gissberg Law Office
James E. Gorton & Associates
Law Offices of James B. Gottstein
Stewart A. Grant
David E. Grashin
Gray, McLean, Cole & Razo, P.C.
Brian Mark Gray
Stephen E. Greer
Marc Grober
Gruenberg & Clover
Gruenstein, Hickey & Stewart
Guess & Rudd
Patrick J. Gullusen
Carmen L. Gutierrez
Donna M. Habermann
Law Office of Stan Halferman
Hagans, Moran, Ahearn & Webb
J. Glen Harper
Law Offices of Richard L. Harren, P.C.
Kathleen M. Harrington
Hedlund, Fleischer, Friedman, Brennan & Cooke, P.C.
Michael P. Heiser
Heller Ehrman White & McAuliffe
Andrew M. Hemenway
Hintze & Wright
Law Offices of John L. Hoffer, Jr.
Hofstad & Lewis
Law Offices of Lee Holen
Michael W. Holman
Law Offices of Alan J. Hooper
James C. Hornaday
Houston & Henderson
Kay L. Howard
Hughes Thorsness Gantz Powell & Brundin
William H. Ingaldson
Kenneth P. Jacobus
Jamin, Ebell, Bolger & Gentry
Thom F. Janidlo
Jermain, Dunnagan & Owens, P.C.
Law Office of Robert John
Law Office of J. Mitchell Joyner
Michael Jungreis
Kalamandis & Associates
William W. Kantola
John S. Kaufman
Michael J. Keenan
Kempel, Huffman and Ginder, P.C.
Law Office of Elizabeth P. Kennedy
Amrit Kaur Khalsa
G. Rodney Kleedehn
Law Office of Byron B. Kollenborn
Koval & Featherly, P.C.
Robert W. Landau, Attorney at Law
Lane Fowel Spears Lubersky
Larson, Tumbers & Van Winkle, Inc.
LeDoux & LeDoux
Karl F. Lehr
Erik J. LeRoy
Kenneth P. Leyba
Lynch, Wright & Blum
Dick L. Madison
David D. Mallet
Maloney & Haggart
Mark C. Manning
Martin, Bischoff, Templeton, Langslet & Hoffman
Matthews & Zahare
J. Jeffrey Mayhook
Law Office of Stephen A. McAlpine
Law Offices of James Wyant McGowan
Stephen F. McKee
McNail & Associates, P.C.
Mendel & Huntington
Law Offices of Douglas K. Mertz
Law Offices of Dennis M. Mestas, P.C.
Richard J. Mietz
Law Office of Melinda D. Miles
Ronald W. Miller
Molloy & Landry
John M. Murtagh
Phil N. Nash, Attorney at Law
Thomas G. Nave
Raymond A. Nesbett
Richard P. Newman
Robert S. Noreen
Olmstead & Conneady
Law Office of Paul E. Olson
Jan S. Ostrovsky
Owens & Turner, P.C.
Shelley K. Owens
Law Office of William C. Pace
Herbert M. Pearce
- Pearson & Hanson
Perkins Cole
A. Lee Petersen
Frederick P. Pettyjohn
Stephen R. Porter
Keenan Powell
Steven Pradell
Preston Gates & Ellis
Law Office of Chris Provost
V. Fate Putman
Colleen A. Ray
Law Office of Patrick J. Reilly
Rice, Volland & Gleason, P.C.
Law Office of Julian C. Rice
Law Office of John Rich
Robertson, Monagle & Eastaugh P.C.
Rose & Figura, P.C.
Law Offices of Patrick G. Ross
Stuart G. Ross
Rove & Brain
Ruddy, Bradley & Kolkhorst
Law Offices of Sandra K. Saville
Law Offices of Gordon F. Schadt
Schendel & Callahan
Ernest M. Schlereth
Schleuss & McComas
Martha C. Shaddy
R. W. (Dick) Shafer
Law Office of R. Brock Shamburg
Wesley William Shea
Law Offices of Alan G. Sherry
Aleen M. Smith
Julie A. Smith
Law Office of Michael R. Smith
Steven D. Smith, P.C.
P. Marcos Sokkappa
Sonosky, Chambers, Sachse, Miller, Munson & Clocksin
Jon Sportsman
Paul D. Stockler
Law Offices of Dana Robert Stoker
Robert E. Stoller
Stump & Stump
R. N. Sutliff
Law Offices of Sue Ellen Tatter
Taylor & Hanlon, P.C.
Robin A. Taylor
Janet K. Tempel
Valene M. Therrien, P.C.
Linda S. Thomas
Colette G. Thompson
G. Nanette Thompson
Michael A. Thompson
Law Office of S. Brent Thompson
Tucker S. Thompson
Richard S. Thwaites, Jr.
Harold W. Tobey
Law Offices of Frederick Torrisi
Fred W. Triem, Attorney at Law
Julia Tucker
Warren A. Tucker
Charles E. Tulin & Associates
Law Office of Vincent L. Uera
Law Office of Cesar O. Velasquez
Law Offices of Vincent P. Vitale
Frank J. Vondesaar
Wade & DeYoung, P.C.
Wadsworth & Associates
Paul W. Waggoner
Wagstaff, Pope & Katcher
Walker Oldham
Law Offices of David T. Walker
Karl L. Waller, Jr.
Walther & Flanagan
Daniel C. Wayne
W. David Weed
Daniel W. Westenburg
Dennis A. Wheeler
Vanessa H. White
Wickersham & Associates
Law Offices of Donna C. Willard
Richard J. Willoughby
Law Office of Charles Winegarden
Wintree & Hompesch, P.C.
Tonja Woelber
Wohlforth, Argetsinger, Johnson & Brecht, P.C.
Brett M. Wood
Law Offices of Steve K. Yoshida, P.C.
Young, Sanders & Feldman
Law Office of Clarke L. Young
Michael J. Zelensky
Ziegler, Cloudy, Peterson, Woodell & Seaver
Elizabeth A. Ziegler

ALASKA BAR FOUNDATION



1993 ANNUAL REPORT

PRESIDENT'S REPORT

The Alaska Bar Foundation suffered a severe drop in revenue in 1993. Declining interest rates dramatically impacted the revenues obtained from the IOLTA (Interest on Lawyers' Trust Accounts) program. This drop in revenue affected the number and dollar amounts of grants that the Foundation was able to disburse in 1993. Nevertheless, grants totaling \$170,000 were distributed which made possible the continuation of the very successful Alaska Pro Bono Program, as well as the maintenance of the Immigration/Refugee Program sponsored by Catholic Social Services and the highly acclaimed Anchorage Youth Court Program.

The funding crisis currently threatening the Alaska Bar Foundation also is affecting other IOLTA programs nationwide.

The Trustees are currently looking into alternative funding methods to meet the needs of the programs which the Foundation currently assists, as well as the needs of other worthy programs which the Foundation is presently unable to fund. While IOLTA revenues are down, membership in the IOLTA program is steadily increasing. Currently, 765 attorneys and 96 law firms in Alaska participate in the program.

The Trustees are thankful for the support of the members of the Alaska Bar Association and hope to continue support of programs important to Alaskans.

Mary K. Hughes

IOLTA GRANT PROCEDURES

The Trustees defer to the following guidelines and procedures for reviewing applications and awarding IOLTA grants:

1. An applicant shall submit its request for an IOLTA grant by supplying the information and documents requested in the IOLTA application supplied by the Alaska Bar Foundation.
2. All applications for IOLTA grants shall be submitted to the Alaska Bar Foundation by April 15 of each year.
3. The Trustees of the Alaska Bar Foundation shall review each IOLTA grant application to determine the application's appropriateness for IOLTA funding.
4. If the application can be funded, the Trustees of the Alaska Bar Foundation shall meet as a committee of the whole for consideration and approval of IOLTA grant applications. The Trustees meeting shall be prior to June 30.
5. Funding shall be available to successful IOLTA applicants on a fiscal year basis (July 1 through June 30).
6. The President of the Alaska Bar Foundation shall communicate to each applicant the action taken by the Trustees.
7. An approved IOLTA applicant shall submit such evaluation reports as requested by the Alaska Bar Foundation.
8. Grant applications are the property of the Alaska Bar Foundation.
9. Applications for emergency IOLTA funds shall be made to the Alaska Bar Foundation through its President. The request will be forwarded to the Trustees who may call a special meeting to consider the same.

ALASKA BAR FOUNDATION TRUSTEES

WINSTON S. BURBANK
JOHN M. CONWAY
MARY K. HUGHES
WILLIAM B. ROZEIL
SANDRA K. SAVILLE

FINANCIAL STATEMENTS

ALASKA BAR FOUNDATION

Financial Position as of December 31, 1993

ASSETS:

Cash and Investments:

Operating Account

Ready Assets

Total

9,875

47,210

57,585

Accounts Receivable:

Alaska Bar Association

Total

3,438

3,438

Fixed Assets:

Donated Property (Art)

Total

4,500

4,500

TOTAL ASSETS:

\$65,523

LIABILITIES AND

FUND BALANCE:

Liabilities:

Accounts Payable:

TOTAL LIABILITIES:

00

144

144

Fund Balance:

George F. Boney Endowment

Justice Dimond Endowment

Wendell P. Kay Endowment

Scholarship Fund

Undesignated Capital

Gain/Loss

TOTAL FUND BALANCE:

5,000

3,600

490

(6,000)

54,430

7,859

65,379

TOTAL LIABILITIES AND FUND BALANCE:

\$65,523

FINANCIAL STATEMENTS

ALASKA BAR FOUNDATION IOLTA PROGRAM

Financial Position as of December 31, 1993

ASSETS:

Cash and Investments

TOTAL ASSETS:

154,433

\$154,433

LIABILITIES AND CAPITAL:

Current Liabilities:

Accounts Payable

Payroll Taxes Payable

TOTAL LIABILITIES

577

00

577

Capital:

Funded Capital

YTD Gain (Loss)

Fund Balance

TOTAL CAPITAL:

300

(64,890)

218,446

153,856

TOTAL LIABILITIES
AND CAPITAL:

\$154,433

ALASKA BAR FOUNDATION

Income Summary for the Twelve-Month Period Ending December 31, 1993

INCOME:

Donations

Interest

TOTAL INCOME:

9,190

1,330

10,520

EXPENSES:

General Projects

Grants

Board Meetings

Alaska Legal Net

Accounting Services

Supplies and Miscellaneous

990 Information Return

TOTAL EXPENSES:

00

00

00

510

1,744

87

320

2,661

NET GAIN (LOSS):

\$7,859

ALASKA BAR FOUNDATION IOLTA PROGRAM

Income Summary for the Twelve-Month Period Ending December 31, 1993

INCOME:

IOLTA Interest

Interest on Investments

Miscellaneous

TOTAL INCOME:

159,842

3,749

7,374

\$170,965

EXPENSES:

IOLTA Grants:

Alaska Pro Bono Program

Anchorage Youth Court

Catholic Social Services

Total Grants

Administration:

Staff Expense

Bank Fees

Accounting Services

Annual Report

Miscellaneous

Total Administration Expense

TOTAL EXPENSES:

150,000

25,000

28,545

203,545

1,710

17,772

7,078

5,191

559

32,310

\$235,855

INCREASE (DECREASE):

\$164,890