In praise of sabbaticals

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Advice From The Heart

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Dancing to the laws in Japan

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$2.00

The Alaska BAR RAG

Volume 13, Number 1

Dignitas, semper dignitas

January-February, 1989

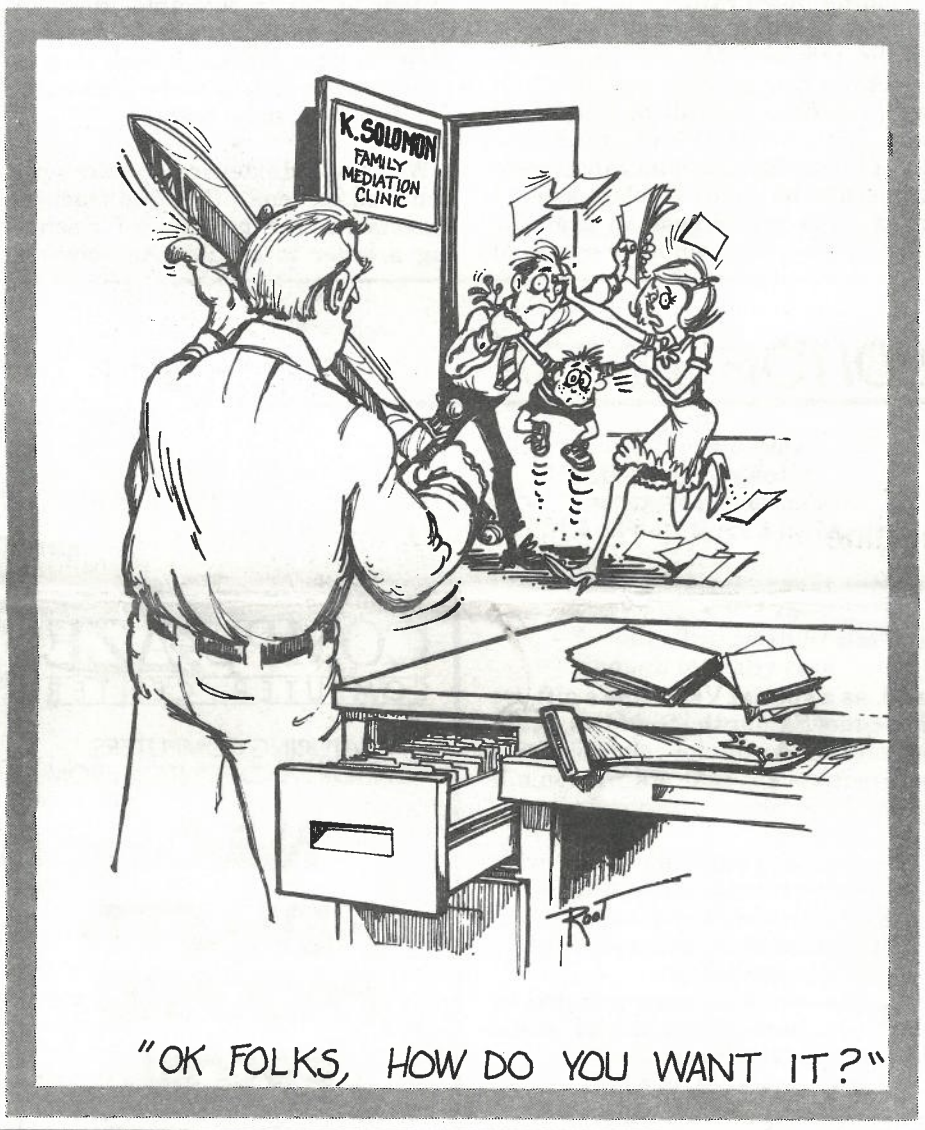
Family mediation works: 60% success rate

By Drew Peterson

Little white lies, big whopper lies and statistics. We are all familiar with the differences between such prevarications and their respective places on the continuum of truthfulness. I must confess to being uncomfortable in attempting to demonstrate the effectiveness of family mediation with statistics. Yet a growing number of people are believers in the advantages of family mediation over the traditional litigation approach to family legal disputes. Statistics are only part of the reason why.

Probably the best known study concerning the effectiveness of family mediation comes from the Denver Custody Mediation Project. Reported in the Winter, 1984 issue of the *Family Law Quarterly* (17 FLQ 497), the Denver study involved phone interviews three and six months after final court orders had been entered with 235 individuals who were involved in mediation, 133 individuals who were offered but rejected mediation as an alternative, and 89 individuals in a control group. The mediation services in question were offered free of charge through court system referrals, and involved lawyer-mental health professional male-female teams of mediators.

Conclusions of the researchers from the Denver study included the following:



- 60 percent of the mediation participants were successful in reaching an a
did r
ation another 60 percent come to agreements before their final court hearings. Thus over 80 percent of those exposed to mediation reached their own agreements outside of court. This compared with almost half of the group not exposed to mediation who let the court determine their dispute.
- Successful mediation clients were more likely to feel they could resolve subsequent problems without resorting to court (70 percent vs. 30 percent).
- 92 percent of successful mediation participants were satisfied with the process. Even 61 percent of those involved with an unsuccessful mediation effort would recommend the process to a friend.
- Over 85 percent of the individuals involved in successful mediation reported that their ex-spouses were generally complying with the terms of their agreement. In contrast, 30-40 percent of remaining groups reported that serious problems had already arisen with the final court orders within three months after they had been entered.
- Successful mediation correlated with a better relationship among ex-spouses. When asked to evaluate how

Continued on Page 11

Federal court implements pro bono program

By John D. Roberts
U.S. Magistrate

Spurred by a continuing increase in federal litigation by pro se litigants, the federal district court, with assistance of the Alaska Pro Bono program, has instituted a pro bono project to assist implementation of the federal *In Forma pauperis* Statute, 28 U.S.C. 1915. The project is designed to screen *pro se* cases and to provide for the appointment of counsel with little or no cost to the litigant.

At the request of the court, Seth Eames, coordinator for the program, reviewed similar programs in other localities, including New York City, San Francisco, Seattle, Los Angeles and Chicago.

According to Mr. Eames, the Alaska program incorporates the best ideas and procedures from each of those programs. The court has adopted nine rules governing procedures for the appointment of attorneys in *pro se* civil actions. Not all requests for court-appointed counsel will be granted. The court will continue to screen such requests. Criteria include consideration of the merits of the action, efforts of plaintiff to secure counsel, and financial means to retain counsel.

Prior to being sent to a volunteer attorney, cases may be referred by the court to the Alaska *Pro Bono* programs (APBPs) district court panel for screening. The screening panel created by the APBP will consist of three attorneys who shall make a recommendation concerning the appointment of counsel to the judicial officer assigned to the action. Members of the screening panel are expected to serve at least one calendar year, and they will not be asked to represent parties in the U.S. District Court as long as they are serving on a screening panel.

The Clerk will maintain current income guidelines which will match those of Alaska Legal Services Corporation and APBP and will be based on 125 percent of the Federal Poverty Income Guidelines as regularly amended. Only those applicants meeting or falling below those guidelines shall be entitled to an appointed attorney through the new rules. *Pro se* applicants not meeting these economic guidelines may still be appointed counsel from the panel as determined by the court. The new rules discuss some of the factors to be taken into account in making this determination.

To date, the APBP has a list of 55 volunteers who have agreed to accept cases under these new rules. An attor-

Continued on Page 5

"Then there was the lawyer who stepped in horse manure and thought he was melting."

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Why does California have the most lawyers and New Jersey the most toxic waste dumps? New Jersey had first choice.

—Skid Marks, Shelter Publications, Inc., Bolines, Calif., 1988.

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FROM THE PRESIDENT

Larry Weeks

At the end of the summer I was approached by a Fairbanks lawyer who indicated that Dr. Irving Rothrock of Fairbanks, this year's president of the Alaska Medical Association, was interested in forming a joint committee to discuss the treatment of medical malpractice in Alaska and ways in which it might be improved.

I've known Dr. Rothrock for some years and believe him to be a reasonable and rational man. I called him and when in Fairbanks he bought me a lunch and we discussed the idea. We agreed to each appoint four persons from our various associations to look at how medical malpractice is treated in Alaska and what might be done to address some of the problems.

We each appointed four persons, one from Fairbanks, one from Ketchikan, and two from Anchorage. I tried to appoint a plaintiff and defense attorney and then other persons who had both plaintiff and defense experience. Ames Luce has chastised me, perhaps quite properly, for not appointing a plaintiff lawyer who actually does medical malpractice work to the committee.

The four lawyers and doctors met on December 12 in Anchorage and talked about how they would proceed. The consensus of the lawyers is that three of the doctors came unwilling to talk about medical malpractice but only about how the tort system in general must be reformed. The doctors believed that the committee's existence itself might keep the legislature from taking some action, and as long as the committee was not willing to address the reformation of the tort system, they didn't want to be a part of it and did not want to seek to address the particular problems of their own profession.

One doctor suggested that it was best that the whole system come crashing down rather than attempt to make changes in small ways.

The lawyers, Millard Ingraham, Co-chair; Donna Willard of Anchorage; Geoffery Currall of Ketchikan and Jim DeWitt of Fairbanks were by all descriptions honorable, courteous, and basically flabbergasted. I relate this nonsuccess so that the membership as a whole is aware of how adamant, even paranoid the medical profession is about what is happening. With the exception of Dr. Doolittle of Fairbanks, all of the physicians present basically wanted to talk with the Bar Association only if we were willing to accept the Citizen's Committee on Tort Reform as our credo.

I don't believe that Dr. Rothrock was trying to set us up and it is my understanding that Dr. Doolittle wrote Dr. Rothrock a letter afterwards telling him that he was embarrassed by the medical participation in the committee. However Dr. Rothrock had indicated to me that he would attempt to appoint the reasonable and respected folks in the profession as opposed to the crazies. If three out of four of the "reasonable" medical people are as fanatic as these folks then we have a great breech that is yawning beneath us and which some day will have to be bridged.

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We have had extensive contact with Sen. Ted Stevens' office and reached agreement on a procedure for sending a letter to all Bar Association members soliciting applications for the federal judgeship and to survey the membership. Senator Stevens' office has indicated that there will be no attempt to try to end the application period before Feb. 15 as it is felt that the Department of Justice, President, and Congress will be taking up other matters than district court judges in the immediate days following inauguration.

We will be soliciting applications for the judgeship, conducting a modified American Bar Association poll and providing the results of that poll to the Alaska delegation. Senator Stevens' office wanted to make it clear that the solicitation would let people know that consideration would be given to persons of any party affiliation.

The annual Bar convention in Juneau continues to build. There will be a one-day seminar on negotiations. There will be a presentation by someone from the American Arbitration Association and we will have some Soviets here for a planning session on the 1990 effort. Linda Rosenthal will give a concert on Thursday night with hors d'oeuvres and an open bar after. The Grateful Dads will undoubtedly give us a performance that will bring everybody to life on Friday night. A great figure for "The Media and the Law" seminar could not come because he's getting an honorary degree but we have some other interesting invitations outstanding.

THE EDITOR'S DESK

Ralph Beistline

This edition of the Bar Rag, the first of the New Year, covers a variety of topics—a hodgepodge if you will. It is representative of the wide variety of themes and subjects that touch the legal profession and the lives of lawyers. Among other things, we report this month on the new pro bono program in federal court; the tax consequences of a foreclosure; and on one attorney's experience with sabbatical leave. We learned, after a year of wondering, who Lee Sparrvohn is, who wrote so wonderfully about life in the bush, and, as a special Valentine's gift, we introduce Samantha Slanders, a nationally known advice columnist who will periodically address problems of special concern to attorneys practicing in Alaska.

The Bar Rag staff enters 1989 with great expectations and enthusiasm, and with the hope that each of you will continue to contribute to the success of this publication.

Lastly, we wish each member of the Bar a successful, a happy, and a prosperous New Year!

Correction

In the last *Bar Rag* issue (November-December, 1988), the author's byline was inadvertantly omitted from the article on the Bar's recent purchase of movie titles. For the record, J.B. Dell contributed the humorous piece (and he'll be back next issue with another).

The Alaska Bar Rag

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1988-1989

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President Weeks has established the following schedule of Board meetings during his term as president. If you wish to include an item on the agenda of any Board meeting, you should contact the Bar office (272-7469) or your Board representative at least three weeks before the Board meeting.

March 17 and 18, 1989
June 5 - 7, 1989, Juneau
June 8 - 10, 1989, Annual Convention
Centennial Hall, Juneau

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IN THE MAIL

Godzilla could win

The Judicial Council seems to have set itself up as an independent political group using state money to fight for the candidates of its choice.

The council informs and makes recommendations to all Alaskans via the Election Pamphlet. They then take it upon themselves to browbeat us with additional ads re-telling us who is qualified using the people's money against themselves. So what if the Council has formed an opinion that certain judges are qualified. For every judge determined qualified there are probably 5,000 more people in Alaska who also are qualified. Whatever happended to equal opportunity for race, color or creed?

By advertising beyond merely informing the public in the Election Brochure, it gives the strong appearance that some Council members may see some personal political or monetary gain by using the people's own money to push them to vote for certain judges.

The most outstanding value of the Judicial Council seems to be that it possibly provides jobs, useful or not, on a local hire basis. The recent judicial ballot vote shows that the people want someone to vote for regardless of the Council's opinions, information and advertising. Had Godzilla been on the ballot, he would have pulled 70 percent yes votes for judicial retention.

Big change is seriously needed.

While we continue to use the Communist system of only one on the ballot for judicial retention vote, a more realistic acceptance vote of 75 percent should be required.

--Alicia Totaro

Power of Attorneys

If Court Clerks are taking the law into their own hands, defying the legislature and governor without fear of penalty, by refusing to allow non-attorneys to file lawsuits, then it really proves that our government has been taken over by attorneys.

The accepted procedure for citizens has been to follow the laws but attempt to get the government to change them if change is desired.

We can't look into the minds of legislators to see what they intended to pass as legislation, therefore, society must rely on written legislation to determine legislative intent.

For one to act for another is a natural law of man — government may apply restriction to reduce abuse.

The law says that if someone has a power of attorney, from another person, that someone may "in connection with any *legal action,* perform an act that the (person) might perform." To say the legislature and governor did not intend to pass what the law says in the above question is tantamount to declaring them deficient in basic English.

The law does not allow one to impersonate or represent one's self as a lawyer, however, it confirms that one can, with proper power of attorney, act with and/or as another in any legal action that person might perform. Filing a lawsuit is clearly *legal action.*

Legislative laws seem difficult for the judicial branch to accept, but judiciary members should set a faultless example for our young by following the laws.

--Hal Sellick

Girdwood Bar forms

This is to announce the formation of the Girdwood Bar Association. Charter memberships available. Applicants must be members of the Alaska Bar or Bench with a Girdwood residence or those with a bench at the bar in Girdwood (or a stool, at least occasionally).

A $25 membership fee for the 1989 calendar year will include no guarantees but should include official numbered membership cards, a group photo opportunity at the Girdwood Gold Rush held during the Spring Carnival at Mt. Alyeska, April 22, 1989, the right to buy a Girdwood Bar Association T-shirt, a logo design contest, maybe a newsletter, and a group meeting or two, a seasons ski pass and a round trip ticket to Havana, Cuba, where Fidel Castro will personally meet you at the airport with a limousine to escort you and a companion to a Barry Manilow concert. This is your opportunity to be one of the first.

The best part is, you guessed it, it's tax free. Membership fees will go to the Girdwood Gold Rush and pass through to the Four Valleys Community Schools, the Girdwood PTA, and Little Bear's Playhouse.

Wait, there's still more. Your name and the name of your law firm will be prominently displayed at the Girdwood Gold Rush Palace of Skill and Chance. It's a great deal. Don't spend a lot of time thinking about it. Have your secretary write a check out to Four Valley Community Schools and send it to Brooks Chandler, Esq. Gold Rush Chairman, Box 790, Girdwood, AK 99587. Anonymous memberships available.

Disciplinary actions

Attorney A received a written private admonition for engaging in the unauthorized practice of law in Alaska. Although admitted in another state, Attorney A had not applied for admission in Alaska nor had Attorney A qualified under any other Alaska practice rules when he signed a pleading and made a brief appearance before a court.

* * *

Attorney B received two written private admonitions for failing to represent two separate clients zealously. In a domestic relations matter, Attorney B had failed to take timely action to prevent a defualt and, in a foreclosure matter, failed to publish notice of the sale required by the foreclosure statute. Attorney B had no record of prior discipline.

The tax consequences of a foreclosure

By William L. McNall And Jerome A. Erickson, C.P.A.

When the typical condominium or home owner purchased in the early 1980s, he or she relied heavily on financing—probably 95 percent of the price of the home was provided by a lender. Nowadays, in light of market, income declines, or for other reasons, it is common for a home or condominium owner to think of defaulting on the loan.

Such an owner considers the downpayment, and payments made over the years on the mortgage, and closing costs that will never be recovered. He or she naturally assumes that the foreclosure would result in a financial loss. The Internal Revenue Service does not take this view.

The IRS looks at the loan balance that, because of the foreclosure, will not have to be repaid, and considers amounts over the present value of the home or condominium to be income on which a tax must be paid.

As many Alaskans have come to learn, there are two kinds of foreclosures. In a non-judicial foreclosure, the lender's title company sends a two-page document which is usually entitled "Notice of Default under Deed of Trust" or "Notice of Default and Election to Sell" to the defaulting borrower. The notice, in legalese, informs the borrower that he or she has defaulted on the loan and that unless the default is cured, the title company will sell the property on the courthouse steps in approximately three months.

Alaska has what is known as an antideficiency statute. That statute states that after a non-judicial foreclosure, the borrower is no longer liable to the lender for the loan balance.

In a judicial foreclosure, the lender sues the borrower for the full outstanding loan amount and asks for an order to sell the house. The home is sold under court supervision for approximately its market value. The lender then obtains a judgment against the borrower for the deficiency. A judicial foreclosure costs the lender substantially more to conduct than a non-judicial foreclosure.

In 1987, lenders started doing judicial foreclosures with increased frequency. They made the lawyers who handled such foreclosures and lawyers who handled bankruptcies quite prosperous but were largely unsuccessful in collecting money. As a result most foreclosures today are of the non-judicial variety.

Defaulting home owners have tended to focus their attention on the type of foreclosure proceeding the lender will employ and have not realized there could be income tax consequences from a non-judicial foreclosure.

Here is an example of the tax effects of a non-judicial foreclosure. Suppose one purchased a condominium in 1983 for $80,000.00. The current loan balance is $69,000.00. Between the time the owner stops paying and the date of the foreclosure sale $6,000.00 of interest accrues. The value of the condominium is $30,000.00 on the date of the foreclosure.

The IRS acknowledges that the borrower suffered a $50,000.00 loss on the transaction ($80,000.00 purchase price minus $30,000.00 value on the date of the foreclosure) but losses on residential property are not tax deductible. Instead, the IRS looks to the $75,000.00 of principal plus interest owing at the time of the foreclosure that the borrower will not have to repay. In the view of the IRS, the borrower gave up a condominium worth $30,000.00 in exchange for the bank giving up its right, due to the antideficiency statute, to collect on the $75,000.00. Thus, the IRS figures that the taxpayer had ordinary income of $45,000.

Since $6,000.00 of the income results from mortgage interest which is deductible, the borrower's actual "increase" of income from the foreclosure is $39,000.00. If the taxpayer is in the 28 percent bracket, his tax bill is potentially increased by $10,920.00.

The condominium owner who has rented out the unit for more than 18 months is treated more leniently by the IRS. In such a case the IRS will recognize the loss on the sale as being tax deductible because it considers the condominium to be commercial property. Suppose one purchased a condominium for $95,000.00 or moved out of the condominium when it was worth $95,000.00 and rented it out: Such an owner may have depreciated the property by $15,000.00. As in the earlier example, the condominium is worth $30,000.00 and loan balance plus accrued interest is $75,000.00. After a non-judicial foreclosure the borrower, if in the 28 percent tax bracket, would actually save $3,080.00 in taxes because the "loss" from losing the condominium would exceed the "income" incurred by not having to pay off the loan.

The tax effect of such a foreclosure on commercial property is calculated this way: Taxpayer basis of $80,000.00, less the $30,000.00 value at the foreclosure, gives a loss of $50,000.00. Debt forgiveness of $75,000.00, less the value at the foreclosure of $30,000.00, yields income of $45,000.00. $45,000.00 income less the $50,000.00 loss, less the $6,000.00 of interest, means that the taxpayer will have a loss of $11,000.00, which when multiplied by 28 percent equals a tax decrease of $3,080.00.

An owner who is still living in a condominium should not consider renting it out for 18 months before defaulting on the loan as a way to save taxes. The IRS will only accept the market value of the condominium at the time of the "conversion" from residential to commercial property as the starting point in calculating any loss from the foreclosure. Since all condominiums have fallen so much in value already, there would be little in tax savings by an effort to convert a condominium from residential property to a commercial property in order to make the loss tax deductible.

The reader who may have gone through a residential foreclosure in the last year without knowing of the tax effects should not panic. There are two exceptions to the rule stated above. One exception is that the IRS will consider a taxpayer as having income only to the extent he or she is solvent immediately after the foreclosure.

This rather complicated sounding exception works in the following manner. Suppose on the date of a foreclosure sale the residential condominium owner prepared a financial statement accurately stating the market value of all of his or her assets and amounts of all debts and liabilities. If such a balance sheet shows the taxpayer to have a negative net worth immediately after the foreclosure, there is no tax effect as a result of the foreclosure.

Often, when the typical condominium owner prepares such a balance sheet, adding in the value of his or her personal property at garage sale prices and subtracting out credit card debt, car and student loans, there is little, if any, positive net worth. Thus, if in the residential foreclosure example above, the owner only has a positive net worth of, say, $10,000.00 and is in the 28 percent bracket, the tax effect of the foreclosure would only be $2,800.00, no matter how much debt was forgiven by the foreclosure. The taxpayer should include the financial statement with a written explanation with his or her tax return for the year the foreclosure takes place.

The second exception to the rule is when the foreclosure takes place while the owner is in a bankruptcy proceeding. Often individuals have assets such as IRA's, funded pension plans or equity in a new home that have to be counted as part of their net worth but which are exempt from the claims of creditors in a bankruptcy.

A substantial minority of bankruptcies are filed by such individuals solely to avoid the tax consequences of a foreclosure. These individuals reason that any effect on their credit from the bankruptcy is about the same as would be incurred from the foreclosure. A review of the published loan guidelines of institutional lenders suggest this reasoning is correct.

A borrower who is considering avoiding the tax effects of a foreclosure by not reporting it on his or her tax return is advised that the lender is required by the IRS to fill out an IRS Form 1099-A. The form informs the IRS of the foreclosure and amount of outstanding debt, and the lender's estimate of the fair market value of the property at the time of the sale. A copy of this form is also mailed to the borrower's last known address. The IRS says that when it is not busy, after the closing of the tax filing year, it will assemble all the 1099s and program a computer to match the Social Security numbers on them with taxpayers. Individuals caught in this computer dragnet will be liable for the tax, as well as penalties

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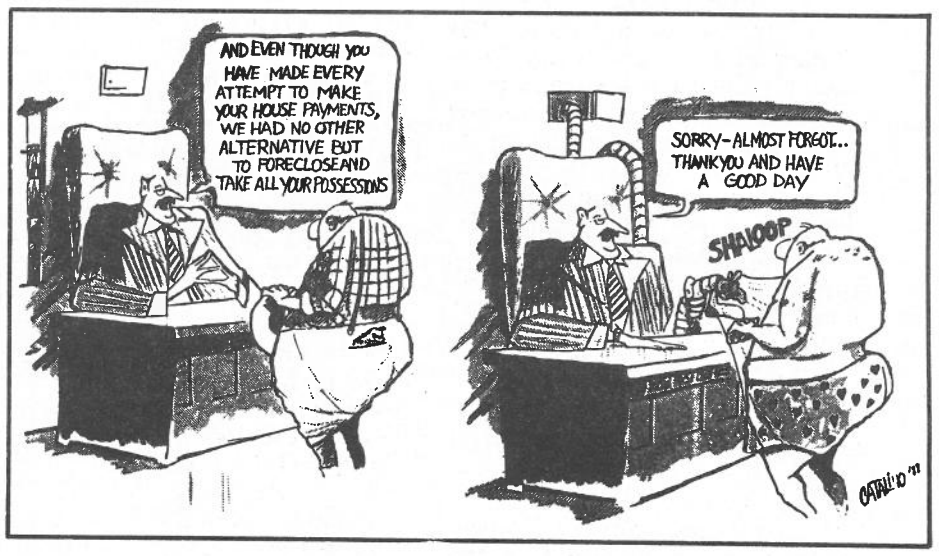

Supreme Court decision notes

Exclusive guide area permits are ruled unconstitutional; fish permit limits ok'd

By Ron Flansburg

The State of Alaska Guide Licensing and Control Board is prohibited from assigning exclusive guide areas under AS .08.54.040(7) and .195 and the regulations because such assignment violates the common use clause, Article VIII §3 of the Alaska Constitution. Justice Rabinowi based the Court's holding on an interpretation that the common use clause established certain trust principles guaranteeing access to the fish, wildlife and water resources of the State and prohibited monopolistic grants or special privileges. *Owsichek v. State*, Guide License and Control Board Op. No. 3389, October 21, 1988.

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The Commercial Fisheries Entry Commission has the Constitutional authority to limit the maximum number of permits for a fishery. The Commercial Fisheries Entry Commission is allowed to set a maximum number of permits for the Southeast Roe Herring Purse Seine Fishery by regulations which are not a violation of the "Equal Protection" rights of fishermen because the exclusivity inherent in the limited entry system was expressly authorized by the Alaska Constitution. *Johns v. Commercial Fisheries Entry Commission*, 758 P.2d 1256, 1264 (Alaska 1988).

•

Attorney's fees cannot be awarded against a nonprofit public interest litigant. The citizens for the preservation of the Kenai River, Inc. challenged the Department of Natural Resources' regulation limiting the horsepower on boat engines on the Kenai River and even though unsuccessful were not required to pay attorney's fees because it was a public interest litigant and satisfied the following Supreme Court four-part test: (1) whether the case is designed to effectuate strong public policy; (2) whether, if the plaintiff succeeds, numerous people will benefit from the law suit; (3) whether only a private party could be expected to bring the suit; and (4) whether the litigant claiming public interest status would lack sufficient economic incentive to bring the law suit if it did not involve issues of general importance. *The Citizens for the Preservation of the Kenai River, Inc. v. Sheffield*, 758 P.2d 624, 626-627 Alaska 1988).

•

Restrictive covenant is abandoned by substantial and general non-compliance when a tree-cutting covenant had not been fully complied with throughout a subdivision. The Supreme Court adopted the rule of law holding that a covenant which applies to an entire tract may be equitably terminated if it has been habitually and substantially violated so as to create an impression that it has been abandoned. *B.B.P. Corporation, v. Carroll, et al*, Op. No. 3377, August 26, 1988.

•

A plaintiff alleging violation of a restrictive covenant must bring suit for injunctive relief immediately or be barred by laches. A developer's suit to enforce a restrictive covenant was ripe once the defendant began to build in apparent violation of the covenant and refused to discuss the problem because a reasonable person would have been galvanized into action seeking injunctive relief and any unreasonable delay in filing suit subjects the plaintiff to laches. *Lamoreux v. Langlotz, et al*, Op. No. 3341, June 3, 1988.

Ronald D. Flansburg practices with the law firm of Boyko, Breeze & Flansburg and devotes a portion of his practice to appellate advocacy.

• Onset date for federal pro bono program set for Jan. 3

Continued from Page 1

ney who is assigned a case through these rules shall not be asked to assume another pro bono case for the duration of the U.S. District Court case. The new procedure should add uniformity to the appointment of counsel in *pro se* civil cases in the federal court.

The onset date for the new program is Jan. 3, 1989. According to Phyllis Rhodes, Chief Deputy Clerk, there are about six cases immediately ready for referral to the screening panel. Panel members representing income-eligible litigants may expect to receive reasonable expense reimbursement, errors and omissions (malpractice) coverage, and "where possible," assistance with arranging for free depositions, process service, expert witnesses, etc., for those cases assigned to them. Upon application by the appointed attorney, the judge may award attorney's fees for services rendered in the action as authorized by applicable statute, regulation, rule or other provision of law. A statutory attorney's fee may be awarded to be paid from retroactive disability benefits in *pro se* Social Security disability cases.

Attorneys who are willing to accept appointment to represent *pro se* parties in civil actions in the district court when such parties lack the resources to retain counsel may apply for designation to the APBP district court panel on forms available from the Alaska *Pro Bono* program by calling Seth Eames at 272-9431. A law firm may apply to participate on the panel as a firm by completing the appropriate forms. In its application, the law firm should set forth, among other things, the number of appointed cases per calendar year the firm is willing to accept, the ability of participating firm attorneys to consult and advise in languages other than English, the firm's specialty or preference for appointment among the various types of actions (e.g., Social Security appeals, employment discrimination action, civil rights actions), and their preference for appointment in a particular geographic region of Alaska. An order of appointment in an action assigned to a participating firm may be directed to the firm so that the assignment of a firm attorney to the action may be made by the managing partner or panel liaison.

A check list of the procedures and a copy of the rules governing procedures for appointment of attorneys in *pro se* civil actions, as well as copies of appropriate forms for litigants may be obtained from the clerk of the federal court. Recently, the Alaska Bar Association passed a resolution calling for all attorneys in Alaska to contribute a reasonable amount of their time toward *pro bono* work. This U.S. District Court panel provides another way for attorneys to fulfill this professional responsibility. The federal judiciary encourages all attorneys who appear in federal court to participate in the program.

NOTHING SUCCEEDS LIKE SUCCESS.

• Taxes & foreclosures

Continued from Page 4

and interest.

Until recently, lenders often reported the value of the property as being equal to the debt or forgot to file the 1099-A. The IRS has recently informed lenders that it intends to crackdown on them unless all foreclosures are properly reported. It is anticipated that 1099-A's will be filed for all present and future foreclosures and will include a "fair market value."

Often individuals who are approaching a foreclosure situation seek the counsel of a lawyer about the effects to them of a foreclosure. Lawyers with experience in real estate can explain the intricacies of the foreclosure process and make some suggestions on how to increase the likelihood of the lender doing a non-judicial foreclosure.

However, lawyers are not generally trained in taxation and should not be expected to have a detailed familiarity with the IRS code. To fully understand the tax effects of a foreclosure, in addition to the legal process, read our lips—see your C.P.A.

93.4 percent employed

Law school graduates employment report

For the law graduates of the Class of 1987, 93.4 percent found employment within six months of graduation, according to an annual survey conducted by the National Association for Law Placement. Eighty-four percent of respondents were employed in a legal position. "Some people have feared that the market for law graduates may be saturated. These figures suggest that this may not be the case," commented Paula S. Linden, NALP Research Co-Chair.

Respondents from 167 of the 174 ABA-accredited law schools in the U.S. represent 32,585 of the total 35,478 law school graduates, with 27,189 of those respondents providing employment status information. A breakdown of where those graduates went follows.

Employment

The survey indicates that the proportion of new graduates choosing private practice as their first job continues to increase. "The proportion of graduates choosing public interest and government service has continued at about the same level for the last few years but is lower than the proportion of graduates who chose these positions in the mid-to-late seventies," observed NALP President, Maureen Provost, Assistant Dean at Fordham University School of Law. She further stated, "this is an area of concern for NALP members and we are continuing to monitor this pattern."

More specific information about employment choices is set out below. Unless otherwise noted, the 1987 figures remained steady over 1986.

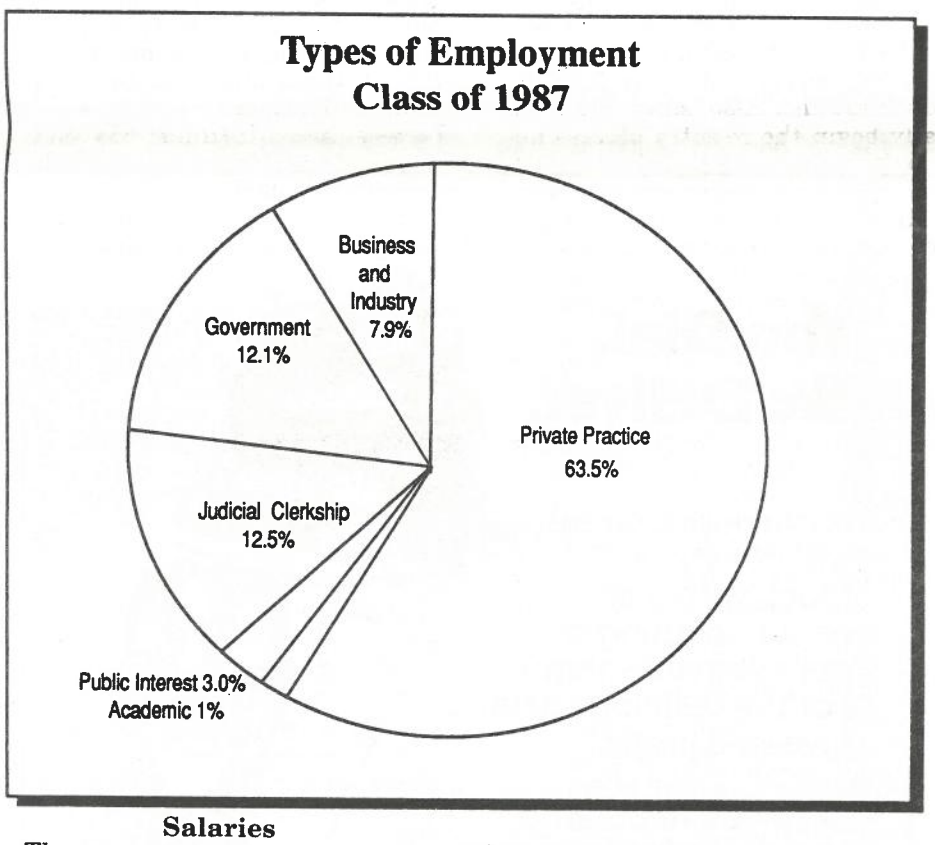
National Association for Law Placement

NATIONWIDE FOURTEEN-YEAR EMPLOYMENT SURVEY PROFILE
1974 TO 1987

Fourteen-Year Comparison of Employment by Field of New J.D. Graduates
(Percentage of Respondents With Job Category Identified)

Employment Field	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987
Private Practice	52.2	51.0	52.4	53.0	53.0	54.0	55.1	57.9	59.6	60.4	57.4	60.2	61.6	63.5
Public Interest	5.3	5.6	5.0	5.3	5.9	5.4	4.3	3.4	3.0	3.1	3.1	3.3	3.0	3.0
Business/Industry	9.2	9.6	10.0	10.0	10.6	10.5	11.0	11.3	10.8	10.8	10.8	10.4	9.2	7.9
Government Military	16.2 [2.5]	17.6 [2.4]	17.5 [1.7]	16.7 [1.8]	15.5 [1.9]	14.7 [1.7]	14.0 [1.8]	12.0 [1.7]	10.9 [1.7]	11.5 [1.8]	10.9 [1.5]	12.7 [1.6]	12.0 [1.5]	12.1 [1.3]
Judicial Clerkships	8.2	9.6	9.1	8.9	8.9	9.8	10.1	10.4	11.0	11.7	10.1	11.9	12.5	12.5
Academic	3.3	3.4	3.4	3.3	3.5	3.0	3.1	3.1	3.1	1.5**	1.8	1.5	1.7	1.0

** In 1983, the academic category excluded those pursuing an advanced degree. These individuals are counted separately in the report.



Salaries

The average starting salary for this class of graduates (66 percent of respondents answered this question) was $35,814, a 9.3 percent increase over 1986 and a 22.5 percent increase over 1985. Law firm salaries ranged from an average of $26,679 (firms with fewer than ten attorneys) to $53,683 (firms with more than 100 attorneys). Salaries for business and industry averaged $37,985. Government salaries averaged $28,054 in the federal sector, $24,938 in the state sector, and $25,169 locally.

Specific breakdowns of salary information for law firms of varying sizes and by major cities are as follows:

• Nationwide, average starting salaries (with the percentage increases over 1986 after each) varied according to the size of the firm as follows: very small firms (2-10) - $26,679 (7.5 percent); small firms (11-25) - $34,226 (11 percent); medium firms (26-50) - $40,845 (12.4 percent); large firms (51-100) - $46,005 (11.5 percent); very large firms (over 100) - $53,683 (11.7 percent).

• The survey found that 63.5 percent secured their first jobs in private practice; a 1.9 percent increase over 1986 and a 10.5 percent increase over 1978 figures.

• Very small firms (2 to 10 attorneys) accounted for the largest percentage of graduates in private practice (19.6 percent), followed by very large firms (over 100 attorneys) at 15 percent; small firms (11-25 attorneys) at 9.5 percent; medium firms (26-50 attorneys) at 8 percent; and large firms (51-100 attorneys) at 7.9 percent. [1.5 percent of respondents did not designate firm size].

• 2 percent of those reporting jobs became self-employed in law practice.

• 12.5 percent accepted judicial clerkships.

• 12.1 percent opted for government service while 3 percent chose public service/public interest work.

• Business (7.9 percent) decreased 1.3 percent from the 1986 figure and military (1.3 percent) and academic careers (1 percent) also experienced slight decreases over the 1986 statistics.

• 5.4 percent of respondents accepted full-time nonlegal positions, a decrease from 1986 which was 7.8 percent.

To place the employment percentage in perspective, it is relevant to note that the number of lawyers has increased from 220,000 to over 720,000 in less than 30 years.

• Public interest organizations offered average salaries of $23,199 (6.4 percent increase). This category includes such job types as civil legal services ($20,302) and public defenders ($25,221).

• Academic positions averaged $31,083.

Age

Again this year, the results showed that the largest percentage of students were between 25 and 26 upon graduation. The youngest graduate was 20 and the oldest graduate was 67. "It is interesting to note that the number of people choosing a law career after pursuing one or more jobs continues to increase," said Gail Peshel, NALP Research Co-Chair. In the three years age at graduation has been tabulated by NALP, the number of graduates 30 years old or older has steadily increased. In 1987, 27 percent of all graduates were 30 or over, a 5 percent increase over 1986 and a 6.3 percent increase over 1985.

Geographic Location

The states in which the largest numbers of Class of 1987 graduates found positions were: New York (3,606, a 10 percent increase since last year); California (2,156, a slight decrease); Texas (1,423, a 19 percent increase from 1986); Illinois (1,357, virtually the same as 1986); Pennsylvania (1,264, steady); Florida (1,156, steady); Washington, D.C. (1,152, a 12.9 percent increase); Massachusetts (1,078, steady); Ohio (976, an 8 percent increase) and New Jersey (917, a slight increase).

The NALP Employment Report, published annually, is conducted by means of surveys that are collected six months after graduation from placement directors at ABA approved law schools in the U.S. The percentages reported by NALP are based upon survey respondents rather than the total number of law school graduates.

The entire report on the Class of 1987 will be available in April 1989 and will contain a more detailed analysis of these results. Other topics included in the report cover:

• Employment location and regional patterns.

• Salary reports.

• Analysis of types of employment.

• Employment patterns and rates of respondents grouped by sex and race.

The 1986 Employment Report and Salary Survey is available for $50 from the National Association for Law Placement, Inc., Suite 302, 440 First Street, NW., Washington, D.C. 20001.

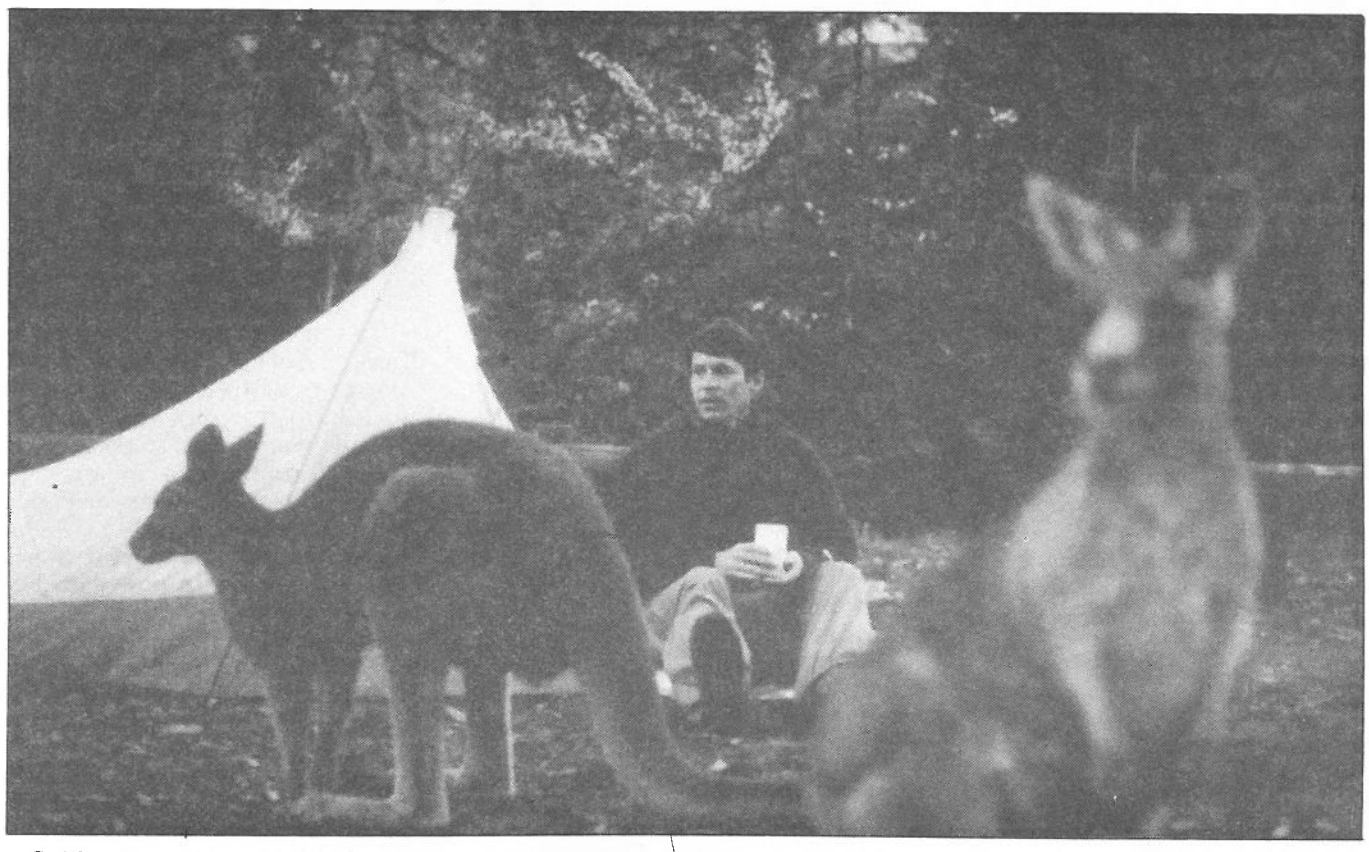
Very Large Firms
(Over 100 Attorneys)

	1987 Salary	1986 Salary	1985 Salary
New York	$66,068	$61,203	$49,027
Los Angeles	$52,995	$47,216	$41,453
San Francisco	$52,630	$47,047	$39,527
Washington, D.C.	$55,163	$47,188	$42,237
Chicago	$53,267	$44,565	$39,727
Boston	$56,196	$48,172	$42,688
Philadelphia	$48,079	$40,571	$38,370
Houston	$47,232	$43,666	$39,336
Atlanta	$48,569	$42,399	$39,102

I never met one I didn't like

Sabbaticals worth it, but have some rules

BY BOB GROSECLOSE



Getting to meet new friends in foreign places is another way to pass a sabbatical. The author discovers more than shade while camped under a coolabah tree in the Australian outback.

The late Jim Croce sang about bottling time, and Johnny Cash sings of doing time.

This article is about making time.

That is, making time to explore your potential outside of the office drudgery of chasing deadlines, and snarling at clients, judges and adversaries. Quality of life is what a sabbatical is about. It's also about recharging your battery and doing the things you have wanted to do, but alas, couldn't find the time to do.

You don't have to spend your sabbatical at Oxford

Men of scripture long ago recognized the need for a Sabbath for rest and worship. Teachers are credited with pioneering and sabbatical leave concept for travel and study. The concept of a sabbatical leave, i.e., pair leave, is also encountered in private industry and is not fashionably discussed as part of judicial compensation packages. Although its laudable to dedicate a sabbatical leave to eradicating hunger in the Third World or studying the mating practices of warble fly afflicting Seward Peninsula reindeer, the requirements of a sabbatical program are amply satisfied by anything disassociated from the pressures of the work place.

As lawyers, we don't need a list of the pressures or drudgeries of practicing law to know why we want a break from it all. If you're one of those riding the wave of excitement and enchantment with legal practice, who miraculously finds therapy in practicing law, this article is not for you. At least, maybe not yet. For those who have surfed the breaking waves year in and year out, who have suffered their share of "wipeouts," and who are lethargically approaching the next breaking wave with the excitement level I reserve for warm milk and toast, the you are probably a candidate for a sabbatical.

Yes, sabbaticals cost money

Here's how it works. You can do what Fairbanks lawyer Bill Boggess pioneered 20-odd years ago by associating with other attorneys to handle your clients in your absence, hang a "gone fishing" sign on the door, and retire to the warm beaches of Florida to write the great American novel and bake away the accumulated legal snakes and cobwebs. By the way, Bill reports he would not have traded his experience for anything, even if he didn't complete the novel while on sabbatical (note: after a number of years of retirement, Bill reports that his novel has just recently gone to the publisher).

If you are a member of a law firm or in partnership with numerous attorneys, you might consider a structured sabbatical program which sets such ground rules as 1) the number of years of employment which qualify for sabbatical leave, and 2) a compensation format.

My firm adopted the Biblical yardstick of "sevens." After seven years as a partner, you are entitled to one year's sabbatical. Compensation was arbitrarily set at three quarters (75 percent) of the annual average of three years' earnings.

As is apparent, sabbatical programs are not without their costs. Not only do you need to consider the income drain of the lawyer on sabbatical but there are also the intangible costs of 1) loss of business (i.e., clients may choose to go elsewhere during the sabbatical leave), and 2) the shut-down/start-up costs of the attorney who is departing and later returning from sabbatical. These costs have been sufficient for my firm to place an indefinite hold on the notion of a repeat sabbatical.

How long is long enough?

Because of the disruption factor associated with sabbatical leaves, one long sabbatical is perhaps better than numerous, short sabbaticals. Furthermore, for a sabbatical to accomplish its goal of letting the attorney grasp what it is like to get away from the practice, a period of six months to one year is desireable.

Although any time away is better than no time away, because of the winding-down and gearing-up component to a sabbatical leave, it generally takes at least a month before you feel like you're divorced from the office routine. Also, since you mentally begin the re-entry process approximately a month prior to starting back, this means if you budget only two months out of the office you are basically taking an extended vacation, not a sabbatical leave, where "Sabbatical leave" connotes getting away both body and soul.

When balanced against the cost of "burn-out," career changes precipitated by frustration with the practice of law, or early retirement from the legal work force, a sabbatical program is certainly cost-effective. Of course, one unresolved concern is whether you can keep the boy down on the farm after he's seen Paris. Out of the seven people in our firm who have participated in the sabbatical program, all returned on schedule, singing praise for the opportunity to experience time away and inspired to resume the practice of law.

The option to a structured sabbatical leave is an *ad hoc* program of leaves without pay. Certified workaholics have to undergo considerable soul-searching to embark on a voluntary "leave of absence," whereas a structured sabbatical, which can be made compulsory if desired, offers the hard-charging legal practitioner the solace of knowing that his or her absence from the work force was mandated from on high.

Therefore, those psychologically dependent upon the work place have an "out"; they can blame their leave upon their employer and not suffer the self-guilt which might emotionally cripple the workaholic taking a voluntary leave of absence. It is easier to explain that you are away from work "on assignment" than otherwise. Besides, it is the sort of "assignment" that you don't decline. Phrased differently, it is a dirty job, but someone has to do it.

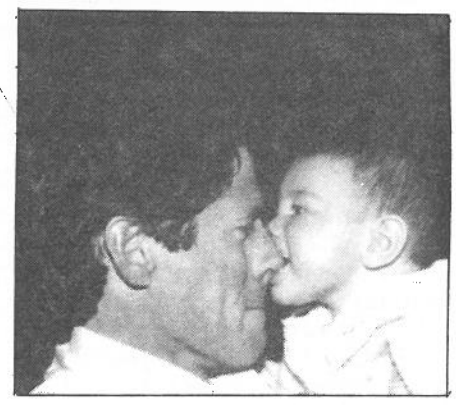
Avoiding meltdown upon re-entry

Apart from the social ignominy of being "off work," the next hurdle confronted is coping with re-entry to the work place. I know of no support groups dealing with this particular syndrome, although I am considering chartering one denomnated "Letting Each Terrific Sabbatical Purge Lots of Anxiety Yearly" (L.E.T.'S. P.L.A.Y., for short).

The first thing you need to do upon rejoining the work force is to dispell rumors of your untimely demise. There are two recognized methods of doing so, those pioneered by Mark Twain and Lazarus:

Lawyer acquaintance: "Haven't seen you in court for some time, Bob. Thought you'd died."

Bob: "Nope, reports of my death have been greatly exaggerated."



Refining parental skills is also a worthy sabbatical pursuit. Here, the author demonstrates how not to confirm whether his daughter is teething.

or

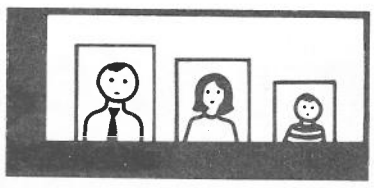
"Yes, you're right, but given society's demand for my unmatched talent, legal abilities, and good looks, I was resurrected."

Secondly, you need to remain aloof from stinging accusations and insinuations that taking a year away from practicing law is hedonistic, unAmerican, and (worse yet) unlawyerlike. The best method I have found for responding to such an abusive barrage is to adopt a sheepish appearance (i.e. hands in pockets, head modestly bowed, feet shuffling slightly), grin broadly, and mutter:

"Yes, it is all of those, and I'm damn glad I did it."

The author recharged his legal battery by expending himself in the 210-mile Iditiski cross-country ski race, placing 6th in a time of 47 hours 48 minutes. This was his best showing in the four years he has participated, a testament to either the maxim of "practice makes perfect" or "craziness is incurable."

When not preaching the virtues of sabbaticals, or gainfully pursuing one himself, Bob Groseclose also practices law in the Fairbanks office of the law firm of Staley, DeLisio, Cook and Sherry, Inc.



BAR PEOPLE

The law firm of Bailey & Mason is now the firm of **Ashburn & Mason.**

Kevin Anderson, formerly of the Birch, Horton firm, is now with the firm of Preston, Thorgrimson, et. al.

Judith Andress is working for Alyeska Pipeline Service Co.

Fred Arvidson, formerly of Hughes, Thorsness, et.al., is now with the firm of Perkins Coie.

Dan Branch has relocated from Aniak, and is now an assistant attorney general in Ketchikan.

Sidney Billingslea, who was a state assistant P.D., is now with the Federal Public Defender Agency.

James S. Burling relocated from the Anchorage office of the Pacific Legal Foundation to its Sacramento office.

Former 4th Judicial District **Judge James Blair** is now with the Fairbanks office of Bradbury, Bliss & Riordan.

Ray R. Brown, formerly a P.D. in Juneau, is now the D.A. in Palmer.

Scott Brandt-Erickson is with the Anchorage office of the Municipal Attorney.

Robin O. Brena has opened his own law offices in Anchorage.

Loretta Cieutat is now with the office of William G. Azar.

Sharyn G. Campbell is now living in Memphis, TN.

Linda Cerro is with the firm of Reese, Rice & Volland.

Laurie Otto is currently working as an attorney with the Department of Law in Juneau.

Steven Constantino is engaging in the private practice of law as Constantino & Associates.

Susan Daniels, former Discipline Counsel with the Alaska Bar Association, in now associated with the firm of Russell & Tesche.

William J. Donohue, formerly with Kennelly & Donohue, has opened his own law office in Anchorage.

Deitra Ennis, a former associate with Burr, Pease & Kurtz, is now with the U.S. Bankruptcy Court.

Wendy Feuer has completed her clerkship with Justice Compton and is now an associate with Perkins, Coie.

Richard Hompesch, who was with Call, Barrett & Burbank, has opened his own law office in Fairbanks.

Susan Kery and **Craig Erickson** are now in Albuquerque, NM.

Marilyn May, a former associate with Bradbury, Bliss & Riordan, is now with the Attorney General's office in Anchorage.

Richard McVeigh, formerly with McVeigh & Melaney, is with the Office of the Municipal Attorney in Anchorage.

Charles Merriner, former Dillingham D.A., is with the firm of Pletcher, Weinig, Lottridge & Moser.

Richard Ullstrom and **Renee Manes** have become associated with the Firm of Stephen D. Routh.

Gordon Schadt has opened law offices in Anchorage and Wasilla.

Walter Stillner, formerly with Lynch, Crosby, et.al., is now with Advocacy Services of Alaska.

Nan Thompson, who was with Bailey & Mason, has opened her own law office in Anchorage.

George Trefry, former Partner in Trefry & Kasmar, in now with Perkins Coie.

Louis James Menendez is now the D.A. in Dillingham.

Gordan Tans has left the firm of Hughes, Thorsness, et.al. and is now with the firm of Perkins Coie.

Guess & Rudd has closed their Juneau office.

Susan Williams is with the firm of Clark, Walther & Flanigan.

C.R. Kennelly is now a partner in the firm of Stepovich, Kennelly & Stepovich.

Gordon Evans is leaving Guess & Rudd and opening the Law Offices of Gordon E. Evans. His address and phone number remain the same.

Federal judge Fitzgerald takes senior status

On Jan. 1, 1989 James M. Fitzgerald, Chief United States Court Judge for the District of Alaska, took Senior Status. Judge H. Russel Holland succeeds him as Chief Judge.

Judge Fitzgerald was appointed United States District Judge for the District of Alaska by President Gerald Ford on Dec. 20, 1974; he became Chief Judge on July 15, 1984. He was President of the Ninth Circuit District Judges Association, 1983-1985 and is a graduate of Willamette University, receiving a B.A. degree in 1950 and an LL.B. degree in 1951. He also attended the University of Oregon and the University of Washington. He served in the United States Army, 1940-1941, and in the United States Marine Corps, 1942, 1946.

Prior to his appointment to the federal bench, Judge Fitzgerald served as a Justice of the Supreme Court of Alaska, 1972-1975; Superior Court Judge of Alaska, 1959-1972; Commissioner of Public Safety, 1959; Legal Counsel to the Governor of Alaska, 1959; City Attorney for Anchorage, 1956-1959; and Assistant United States Attorney for the First and Third Districts of Alaska, 1952-1956.

Judge Fitzgerald is married to the former Karin Rose Benton and has four children: Dennis James, Denise Lyn Trefry, Debra Jo, and Kevin Thomas.

Boyko & Princiotta to present Hawaii CLE

Edgar Paul Boyko and Josef Princiotta will present "Unorthodox Trial Techniques" during a 3-day seminar to be held 9 a.m. to 12 noon, Tuesday-Thursday, March 7-9, 1989, at the Sheraton Kauai.

Registration will be $195 before Feb. 15, and $225 after. The registration fee includes course materials, coffee services, and the PuPu Party scheduled Monday evening, March 6. Registration fees, minus a $25 nonrefundable processing fee, will be given to reigstrants who cancel by Monday, Feb. 20.

This seminar has been approved for 9.6 CLE Credits. If you belong to a mandatory bar, check with it for requirements.

A travel package has been arranged by the Bar Association's official travel agency, Executive Travel, for Bar members attending the Hawaii Program.

Itinerary: Depart Anchorage Saturday, March 4/Return Anchorage Saturday, March 11.

Contact executive Travel at 276-2434 or statewide toll free 800-478-2434 for further travel information.

Please call Barbara Armstrong, CLE Director, at (907) 272-7469 for further seminar information. Seminar brochures have been sent to Bar members.

Catching up with the TVBA

Minutes of the Tanana Valley Bar Association, Aug. 28, 1988.

President Randy Olsen's first order of business was to congratulate her honorableness, Niesje Steinkruger, on the occasion of her ascension to the bench. Congratulations were offered as well to Larry Zervos, who had the bad timing to be out of town and who therefore lost out on the opportunity to bask in the accolades. Zervos look-alike Mark Andrews offered to accept congratulations on Zervos's behalf.

Art Robson offered the day's practice pointer on the topic of amendments to court rules, including the observation that the rulesmakers have abandoned their practice of littering the calendar with random effective dates for rules and have deigned to make rules changes effective as of either Jan. 15 or July 15, to coincide with the publication of the softbound rules book and the supplement thereto.

Robson also shared his poetic invective against the IRS's decision to assess a $120 penalty against him for overpaying his federal withholding deposit by 75 cents; copy attached. Mark Andrews, failing to sympathize with Robson's plight, opined that he was glad to see that the IRS was finally cracking down on chronic overpayers. Judge Kleinfeld added that, according to the 9th Circuit, the IRS is even empowered to assess penalties to taxpayers who cannot resist the temptation to scribble a nasty note or two on the bottom of their income tax returns.

Inspired by the topic of artistic expression in the law, Randy Olsen read the text of *Brown v. State*, 216 S.E.2d 356 (Ga. Ct. App. 1975), in which an appellate court took seriously a trial judge's offer to pen an opinion in rhyme.

Susan Paterson, Clerk of the Trial Courts, reminded those present that domestic relations complaints must be accompanied by a proposed order regarding dissipation of assets and custody of the little monsters. Paterson added that her office would eventually even have a copy of the standing order which imposes this requirement, which became effective several days earlier.

Judge Savell commended departed judge Jim Blair on his new area of practice, which, according to the announcement being run in the News Miner, is "civic" law. Savell also suggested that anyone who wants him to read a pleading or memorandum should see to it that the print is large enough to be read by someone whose eyes aren't what they used to be.

Respectfully submitted,
Gail M. Ballou
Secretary

CLE Honor Roll 1989

We want to acknowledge the contribution of and participation by the following Bar members as faculty, program coordinators, planning committee members and/or video replay coordinators for our 1988 CLE program. Without their hours of volunteer assistance, the Bar CLE Program would not be possible.

William Bankston
Jonathan B. Blattmachr
Bruce A. Bookman
Edgar Paul Boyko
Peter Brautigam
Julius J. Brecht
Robert C. Brink
Kenneth F. Brittain
Keith E. Brown
Andrew Brown
Daniel L. Callahan
James H. Cannon
Judge Victor D. Carlson
Mickale C. Carter
David S. Carter
David S. Case
William T. Christian Jr.
Cabot Christianson
Don Clocksin
William Cotton
Susan L. Daniels
David Devine
Ralph E. Duerre
James E. Fisher
Maryann E. Foley
W. Richard Fossey
Raymond M. Funk
Stephen E. Green
Elizabeth J. Hickerson
Barbara Hood
Mary K. Hughes
Judge Karen A. Hunt
Karla Huntington
Chris Foote Hyatt
Elizabeth Ingraham
Matthew D. Jamin
Bernard P. Kelly
Dennis D. Kelso
Judge Andrew Kleinfeld
Erik LeRoy
Joseph R. D. Loescher
L. Ames Luce
Robert L. Manley
Mark C. Manning
William F. Mede
Lloyd B. Miller
Thomas Miller
Don Mitchell
James R. Moore
Laurel J. Peterson
Matthew K. Peterson
Janet Platt
Robert T. Price
John Reese
Stanley H. Reitman
Judge J. Justin Ripley
Richard M. Rosston
Peggy A. Roston
Eric T. Sanders
Judge Richard D. Savell
Sandra K. Saville
Dave G. Shaftel
Scott Sidell
Eric Smith
Aileen Smith
Judge Niesje Steinkruger
Richard S. Thwaites Jr.
Jonathan K. Tillinghast
Stephen J. Van Goor
Leon Vance
Robert L. Vasquez
Lawrence E. Volmert
Kirk Wickersham Jr.
Clay A. Young
All the Bar Section Executive Committees.

CLE Committee 1988-89

Bruce A. Bookman, Chair
Helene M. Antel
William J. Bonner
Deirdre D. Ford
Brian E. Hanson
Joseph R.D. Loescher
Thomas A. Miller
John W. Peterson
Judge Douglas J. Serdahely
Joseph R. Skrha
Leon T. Vance
Larry C. Zervos

Members Whose Terms Expired June 1988

Jeri L. Bidinger
Ray R. Brown
James L. Bruce
James H. Cannon

We regret any omissions or errors.

Alaska Bar Association CLE Calendar, 1989

The programs are full day unless otherwise noted.

1989

Jan. 26. Lunch program, Review of the New Recording Act, Hotel Captain Cook.

Feb. 15. Forensic Engineering: Testimony, Demonstrative Evidence and Exhibits, Anchorage Hilton.

Feb. 17. AM Miniseminar, Wrongful Discharge, Part I (ABA Tape Series & local commentary), Hotel Captain Cook.

Feb. 24. AM Miniseminar, Wrongful Discharge, Part II, Hotel Captain Cook.

March 7-9. Hawaii CLE: Unorthodox Trial Techniques (changed from March 6-8), Sheraton Kauai.

March 14. Loan Documentation, Hotel Captain Cook.

March 16. Loan Documentation (live repeat of Anchorage program), Sophie's Station, Fairbanks.

March 27. Half day, Securities Law for Non-Securities Lawyers, Hotel Captain Cook.

April 14. Half Day, Adoption Issues, Hotel Captain Cook.

April 20-22. Half Day on Thursday and Friday, full day on Saturday, Bridge the Gap, Hotel Captain Cook.

May 25-26. 5th Annual Alaska Tax Conference (With APU and Alaska Society of CPAs), Anchorage Hilton.

June 8-10. Annual Convention — CLE: Negotiations Skills (1 day) plus other topics to be announced, Juneau.

Please call 272-7469 for further information. Brochures on all the above programs will be mailed to bar members.

Shine joins Hughes Thorsness et al

James M. Shine has joined Hughes Thorsness Gantz Powell & Brundin. He was previously a partner in the Juneau law firm of Robertson, Monagle & Eastaugh. Shine's practice will continue to emphasize commercial, corporate, banking, tax and bankruptcy law.

Prior to joining Hughes Thorsness, Shine suffered a serious spinal sprain while vacationing in Florida last summer. Fortunately, his prospects for full recovery are excellent.

THE MOVIE MOUTHPIECE

Edward Reasor

Henry Camarot, the dean of old time trial lawyers, likes to say: "if one side hires an expert, you have to get one, too."

Mr. Camarot's observation seems to be that there are experts and then there are experts. Expert prosecution testimony played the major role in the true life trial and conviction of Lindy Chamberlain as the movie "A Cry in the Dark" so effectively shows.

Lindy Chamberlain, a Seventh Day Adventist mother, was actually tried and convicted by an Australian jury

Meryl Streep portrays Lindy Chamberlain, a bereaved mother who is accused of murdering her baby and becomes the most despised woman in Australia in the powerful drama "A Cry in the Dark," A Warner Bros. release.

for murdering her 10-week-old daughter Azaria while on a family vacation near the black monolith known as Ayers Rock in 1980.

Chamberlain was convicted even though there was no motive, even though the mother testified that the child had been carried off by a dingo (an Australian wild dog), even though the child's body was never found, even though other witnesses were within shouting distance of the mother all the while, even though Lindy (played by Meryl Streep) and her minister husband (played by Sam Neill) were happily married with two other children. How could this happen? Watch the movie for the simple, honest answer from expert witnesses and the media.

As a sad result, the innocent Lindy Chamberlain served three and one-half years of a life sentence and was only completely exonerated Sept. 15, 1988, well after all of the footage of this well-done film was completed.

The courtroom scenes in "A Cry in the Dark" are quite authentic, down even to the black robes and coifs of all participants, lawyers and judges. This is the English tradition, followed still in Australia.

The experts are really not lying, although since they are being called by the government, they give opinions that the government wants. Watch carefully the skillful cross-examination of the blood expert by Streep's defense counsel (played by Neil Fitzpatrick) and the logical, common-sense destruction of another expert on scissors.

From watching the film (with dialogue actually gleaned from the courtroom transcripts), which shows the fairness of the judge, the skillful defense; one would say before the judge retired that the verdict surely would be not guilty. What happened — besides the experts?

As director Fred Schepisi carefully and graphically shows, this story of a religious family and accusations against Australia's native wild dingo was good news. Audiences bought extra copies of newspapers, listened to radio reports and devoured all the television coverage the media could produce.

The Chamberlains made the cardinal mistake of talking to the press; and as Streep accurately portrays what happened was that neither father nor mother won public support.

Camberlain did not cry enough, appeared stoic, and her faith kept her from outbursts in public. And only after she was formally charged did she show anger but then only in her face, which jurors and the Australian publc interpreded as bitterness.

Clients who say publicly as the Chamberlians did: "the Lord Jesus Christ is a friend of ours," and "there is an opportunity to be at peace with the Lord" after tragedy strikes them are clearly suspect, and not just in Australia. This story could well have happened in Los Angeles or Spenard.

We hear so much about Meryl Streep's language abilities. Yes, here she does indeed conquer the Australian dialect and pronunciation.

We also hear how Streep is an actress who "gets" into the character. Really, Meryl Streep in "A Cry in the Dark" is much better than that. This is another Oscar-winning performance as Best Actress. She doesn't just "get" into the character; Streep uses her own strength, creativity and genius to bring the real Lindy Chamberlain to life on the screen. Don't miss this one.

It should improve your movie pleasure in watching "A Cry in the Dark" to note the following excellent movie techniques:

• Cross-Cutting — Director Fred Schepisi shows one image on the screen and then smoothly follows with an entirely different image ot graphically illustrate a stronger point, i.e., sunset on Ayers Rock followed by a playful dingo, later a shot of a dingo catching a mouse.

• Use of the Familiar to Tell Us the Unfamiliar — The Chamberlains are back home in their own bedroom but while husband and wife are in bed, Sreep is reading out loud from the Bible: "God gives graciously to all," the reading is then interrupted by a howling, wild dingo.

• Use of the Establishing Shot as Closing Shot, Too — "A Cry in the Dark," through the use of a country Australian church scene (believers with pipes and cigars) early in the film, establishes the religious fervor of Lindy Chamberlain that could and did become tragic. The closing church sing along with praises to "Father, Son and Holy Ghost" causes us to wonder if the Chamberlains have changed — or have we, the movie-going public?

Dancing to the Laws in Japan - Page 16

Mediation: it's wise to structure it

Continued from Page 1

the mediation process impacted various aspects of their relationship with their ex-spouse, 71 percent of the successful mediation individuals interviewed stated that it helped improve communications, 59 percent said it helped with anger levels, 74 percent with cooperation, and 52 percent with understanding each others' positions; 25 percent of the unsuccessful mediation participants agreed that the process led to improvements in such areas even though they were unable to reach an agreement in mediation.

• Family mediation favors joint custody arrangements. Nearly 70 percent of those who reached agreements in mediation opted for joint custody, compared to less than 30 percent of the non-mediated outcomes.

• Such joint custody arrangements were often more conventional than the label implied, however. Only 27 percent of the joint custody agreements involved in the project called for regular alteration of the children between the parents. More typically the joint custody agreements recognized both parents as fit for the legal responsibility for the care and upbringing of their children, while delegating the majority of the day-to-day care to the mother.

• Where a mediated agreement was reached, six months after the divorce the children were seeing their non-primary custodial parent an average of 8.8 days per month. With the unsuccessful mediation group, the average was 7.6 days. Children in the control group and the group rejecting mediation were seeing their non-primary parents 5.6 and 5.2 days per month respectively.

• Mediation appeared to translate into small savings in attroneys fees, although the savings were not great. The average legal fee paid by the successful mediation group was $1,630. For the unsuccessful mediation group it was $2,000. For the rejecting group it was $1,800, while it was the highest of all, $2,360, for the control group.

The Denver mediation study noted a number of its findings were consistent with the general body of literature in the field of alternative dispute resolution, to wit: even free mediation services are rejected by about half of those to whom they are offered; about 60 percent of mediation cases result in a mediated agreement; family mediation encourages joint custody; individuals who mediate are generally pleased with the process whether or not an agreement is reached; individuals who reach agreements through mediation are more apt to perceive the result as fair than are those whose cases are decided by the courts; and individuals who enter into mediated agreements are more likely to comply with the agreements than are those whose disputes are otherwide determined.

More recent studies on family mediation, as reported in the September 1, 1988 issue of the Alternate Dispute Resolution Report (2 ADR Report 303) continue to make findings consistent with those of the Denver study.

As reported by Joan Kelly, director of the Northern California Mediation Center at the July, 1988 annual meeting of the Academy of Family Mediators, recent studies on the impacts of divorce upon children demonstate that predictable and frequent contact with the non-primary-custodial parent (generally the father) is associated with better adjustment by children, unless the non-custodial parent is very poorly adjusted himself. This association is particularly strong when the mother approves of the father's continuing role in the child's life and when the child is a boy.

A study from the Northwest Mediation Center indicates that children whose parents undergo a mediated divorce are less likely to engage in delinquent behavior than are those whose parents were non involved in mediation.

A study from the New Hampshire Mediation Program found that within the first five years after divorce 31 percent of non-mediated divorcing couples had returned to court to relitigate issues of custody or support, while only 12 percent of parties who had been through mediation had returned.

And 71 percent versus 41 percent of the mediated iindividuals reported harmonious relationships with their ex-spouse. Fewer than 1 percent had experienced late or missing child support payments, versus 14 percent of the non-mediated group who reported late payments and 20 percent who reported no payments at all.

Most impressively, 73 percent of the mediated group had visitation by the non-custodial parent with the children on more than six days a month. This compares with only 14 percent in the non-mediated group who visited five or more days a month, while 27 percent visited for less than three days. In the mediated group less than 1 per cent of the non-custodial parents visited their children less than three days a month.

So there is a lot of good news about family mediation if you like review statistical studies. The bad news is that the studies are subject to differing interpretations and may be flawed by the difficulties involved with controlling research in such a setting.

One of the more intelligently stated commentaries on the problems to be found with studies on family mediation is contained in the article by Professor Robert J. Levy of the University of Minnesota Law School published in the same issue of the Family Law Quarterly cited above, 17 FLQ at 525. Professor Levy's criticisms of the Denver study were valid ones and cannot be ignored. Thus statistics about family mediation must be viewed skeptically.

And yet this writer, like more and more individuals around the country involved with the field, remains convinced of the effectiveness of family mediation. While a review of the statistical evidence certainly has had some part in this, a greater portion comes from the more subjective experience of seeing the family mediation process at work.

Parhaps a way to convey this subjective feeling is to compare family mediation to the process of two experienced family law attorneys meeting at the negotiating table with their clients. This is where the traditional family law system works at its best. Indeed in many cases experienced attorneys at the bargaining table may come up with an equitable settlement faster and at less overall expense than will the parties themselves through the mediation process.

The critical difference between the family mediation process and negotiations led by lawyers, however, is in the emotional investment of the parties themselves in arriving at the settlement. Certainly it is true that experienced family attorneys are generally knowledgeable about the effects of divorce on children, and the realities of family law in their particular jurisdiction.

All too often, however, decisions can be made at the bargaining table based upon what the attorneys know and feel to be fair, with only minimal understanding by the parties themselves. This is often true even after the parties have assented after a patient and comprehensive explantion. How many times have we had divorce clients come back to us months later, and an apparently amicable settlement, to ask what in the world did we ever mean by this or that particular clause of legalese in their final stipulation?

In family mediation it is the participants themselves who make the decisions. The mediator's job is to empower them, by helping to make sure they have sufficient information to arrive at their own decisions; to make sure that all items of potential dispute are fairly on the bargaining table; and to facilitate the decision-making process by structuring it.

The parties to the mediation educate themselves, get their own independent legal and other expert advice, and enter into their own agreements based upon what feels right to them in their particular case, not on what their advisors think is right, no matter how enlightened their advisors might be. And in the process of arriving at such a settlement the mediation participants are presented with a model whereby they can also solve future disputes.

In sum, family mediation feels better, or so it seems to one individual who has been directly involved with both approaches to resolving family disputes. It doesn't work in all cases, requiring as it does the active cooperation of both parties to succeed.

Family mediation does work in a great many cases, however. It provides an alternative to the traditional litigation model for dealing with family legal disputes that responsible family practitioners should be aware of. And if the statistics can be believed even an unsuccessful family mediation effort can result in substantial long term benefits for the family, by increasing cooperation between the participants and focusing them upon their mutual interests and the needs of the children rather than their own emotional state.

Yellow Pages hustle ...

Going to extreme lengths to get name first

BY TED VOGEL

If you let your fingers do the walking among the attorneys listed in the Yellow Pages, you'll come across one with a listing of eight "A's" in a row. When I saw them, I thought the lawyer listing himself was getting ready to sneeze.

Wrong! It's the way a guy named Wiviott gets his firm listed ahead of others in the same work. His A AA AA AA Able Attorney Service aced out A AA AA Aaron's Legal Service by a whisker.

The fight between the a-a-attorneys for recognition takes place for the most part between lawyers west of the Milwaukee River. One of my "progressive" counterparts in this column, a lawyer, has dealt effectively with this alphabetic struggle for prominence. He lists himself as A. Heitzer, not Arthur. By using only his initial he moved himself up 18 pages in the Yellow Pages from which he boldly proclaims that even working people have civil rights. Wow!

There are 41 pages of lawyers listed. That compares with only 28 pages of people selling new and used cars. Ted Warshafsky's firm comes right out and admits that there are 10,673 lawyers in Wisconsin. Ironically, the city's largest, most prestigious law offices forego the now permissible advertising.

Some ads are interestng. One such is run by the American Academy of Matrimonial Lawyers, which sports a Latin motto, not "Semper Fidelis," but "Fiat Lux" (Let there be light). These matrimonial lawyers, also known as divorce lawyers, are, also they claim, "dedicated to preserving the welfare of the family and society." They sure fool some of us.

Attorney Linda Leaf advertises economy rates for "no hassle" divorces. Burt Polansky will reduce his fee if you do the "leg work," whatever that means. Lucy Cooper and Sandra Edhlund advertise "low bills — no frills," which makes them sound like Jesse Jackson writes their copy.

One of the law firms, Kravit, Wasbren & DeBruin, is not only east of the river but it advertises the schools and good grades of its partners. Attorney Burt Goltz doesn't say where he went to school, but he promises to "listen to you," "speak for you," and to accept MasterCard or Visa. How about that?

Ted Warshafsky has offices on the sixth floor of a building five blocks east of the river. Robert Habush has offices on the 22nd floor seven blocks east of the river. Both of their law firms advertise a nurse on the premises. Considering their high rent and the fees if they win a case, having a nurse around the office appears to be prudent.

I was pleasantly surprised to note that none of the advertisers claim to be a "caring" law firm. One lawyer, Richard Zaffiro, does, however, mention his compassion.

Judging from the hoopla in the Yellow Pages, it may be safest to pick a lawyer whose offices are on a low floor as close to the east side of the river as possible. The farther east they are, or the higher above ground they get, the more robust their fees are likely to be.

Move over catalogs! Now that it's OK for lawyers to solicit by direct mail, it won't be long until our mail boxes are chock full of legal tips and warnings. They'll want us to know the law, that if we've already been injured it won't hurt to call them.

It shouldn't be long before direct telephone solicitation is approved, too. I can hear it now. The phone rings at dinner time. "Hi there. I'm Debbie from Begin, Bergen and Bullwinkle. We want you, etc. ..."

Unless we slow down law school output, it's going to take some snazzy marketing techniques to keep all the new lawyers busy.

Ted Vogel is president of Vogel Associates, a Milwaukee, Wisc.-based executive search firm. The above is reprinted from the Milwaukee Journal.

The case for arbitration

BY TIM MCKERNAN

In the past few years this country has experienced an explosion of litigation in its court rooms. Ever-mounting expenses, often including endless and prolonged discovery proceedings, are commonplace. These lengthy and costly delays have prompted clients, particularly in the corporate area, to search for ways to reduce their legal expenses. There are also those who fear a break down in the judicial system, caused by the over burdening case load.

As a result, Alternative Dispute Resolution, or "ADR," as it is commonly referred, has made a significant impact on the way law is now being practiced.

In an address to the American Bar Association, U.S. Supreme Court Chief Justice Warren E. Burger said, "the notion that most people want black-robed judges, well-dressed lawyers and fine paneled courtrooms as a setting to resolve their disputes is not correct."

ADR includes a variety of options; the best known, however, are arbitration and mediation. In mediation, the adverse parties attempt to arrive at a mutually agreeable solution through negotiation and compromise. With arbitration, the case is presented by each side to a neutral individual, followed by the arbitrator's final and binding decision.

While arbitration has been very successful, there has been a reluctance on the part of litigators as they are leery of a system without strict rules of evidence and appellate review. Yet to say that arbitration has no rules is inaccurate.

Arbitration Forums, Inc., a national nonprofit organization in the ADR field since 1943, developed a program in 1984 to resolve insurance disputes of any type, regardless of amounts from all areas of tort litigation. Included in the rules and regulations of this facility are method of panel selection, location of hearing, exchange of documents and strict time frames.

As in all arbitration programs, the party initiating the arbitration invites the opposition. Upon acceptance, the parties sign and submit an "Agreement to Arbitrate," and include with this an administrative fee of $100.

The local AF branch office administering the program submits a slate of three prospective arbitrators to the parties. Each has the right to strike one name from the slate and return the slate to AF. There is a 10-day time frame for the parties to complete the panel selection. The first unstruck name on the slate is designated the arbitrator/mediator.

The only qualification generally associated with an arbitrator is that he or she be neutral. Arbitrators usually do not have a background or training in matters of law, but may have experience in the matter of dispute. With Accident Arbitration Forum, however, only former judges from higher trial and appellate courts of general jurisdiction may serve as arbitrators/mediators. After the panel has been selected, the arbitrating parties will submit a brief summary of the facts and matters at issue within 30 days after notice of panel selection.

At the expiration of 20 days, following panel selection, with or without the aforementioned summaries, the arbitration parties will receive a minimum of three weeks notice of the date. The notice will specify the date, time and place of hearing.

As the parties will have fully explored the issues in prearbitration negotiations and have the protection of the time frames set out in these rules for the progression of the case to a hearing, there will be no adjournment of a schedule hearing date, unless both parties consent in writing, or unless the arbitrator grants it for good cause. In any event it will not be longer that 30 days.

The time frame set out in this program can guarantee a case be heard within 51 to 100 days. Because of the confusion, overlap and redundancy in some court enforced arbitration programs, many lawyers prefer that privately sponsored arbitration facilities administer their case.

The most important commodity of an attorney is time. That's why more and more lawyers are choosing arbitration rather than litigation than ever before.

Tim McKernan is marketing manager of AF, Inc.

ANN OMINOUS, J.D.

By Nancy Walseth

IOLTA

By Mary Hughes

The Alaska IOLTA program has been in operation a little over 18 months and has generated, as of Nov. 30, 1988, total revenues in excess of $78,000. Alaska's program joins the programs of 48 other jurisdictions and contributes to an annual IOLTA income of over $47 million.

With such success on a nationwide basis, the American Bar Association endorsed both the comprehensive (mandatory) and opt out IOLTA Plans. At the Oct. 21, 1988, meeting, the Alaska Bar Association Board of Governors reviewed Alaska's voluntary program and determined an opt out program might better serve the members of the Alaska Bar and the recipients of Alaska IOLTA monies. The opt out rule was published in the November issue of the *Bar Rag*. The nexis of the opt out rule is an opting out of the Alaska IOLTA program rather than an opting in. The rule accords a lawyer or law firm an opportunity to elect not to maintain an IOLTA account with the proper filing of a notice of election. Further, a lawyer or law firm may withdraw from participation from the Alaska IOLTA program on a yearly basis.

The conversion from a voluntary to an opt out IOLTA Program is one which is proceeding nationwide. Eighteen of the 29 voluntary programs are being studied in their states to determine whether a comprehensive (mandatory) or opt out plan would better serve the purposes of the state bars as well as the IOLTA program recipients. Conversion has become an extremely timely topic for the following reasons:

IOLTA Statistics
(April 8, 1988)

No. Approved IOLTA Programs	49
No. Comprehensive Programs	10
No. Opt-out Programs	9
No. Voluntary Programs	30
Total IOLTA Income	$149,561,929*
Total IOLTA Grants	$113,604,303*

*Without current reports from Washington, D.C., Hawaii, Illinois and Utah.

- Lawyers have a professional responsibility to support the provision of legal services. Participation in IOLTA is a reasonable means to this end.
- All legal challenges regarding the program's constitutionality have been satisfactorily resolved.
- Comprehensive (mandatory) and opt out IOLTA plans have been endorsed by the American Bar Association.
- Increased income benefits the qualifying programs and purposes for which IOLTA was established.
- Increased income allows for the establishment of an endowment or reserve fund to prepare for future contingencies.
- Increased assets can result in more favorable banking relationships for the program and its members.

Pursuant to the Alaska Bar Rules, the Board of Governors of the Alaska Bar Association will review the opt out IOLTA program rule and determine whether to recommend the rule to the justices of the Alaska Supreme Court for adoption.

Advice on filing claims against contractor bonds

The Division of Occupational Licensing, Department of Commerce & Economic Development, is encountering some problems with paperwork being presented by members of the Alaska Bar Assocation to the division in making claims against a construction contractor bond.

When filing a claim against a contractor's time certificate of deposit (cash deposit in lieu of a surety bond), we ask that ABA members refer to the provisions of 12 AAC 21.130 (entitled "Claims Against Cash Deposits"). Likewise, when securing a judgment, the provisions of 12 AAC 21.140(b) and (c) must be met.

The Division of Occpational Licensing cannot honor a judgment that does not meet the criteria established in 12 AAC 21.140(b) snf (c). If the division receives an improperly prepared judgment, the plaintiff's attorney will be asked to obtain an amended judgment. The time involved in obtaining an amended judgment may lessen a client's chance for payment if other valid claims and judgments are submitted before the division receives the amended judgment.

Should you have any questions regarding proper filing form for a claim and/or judgment against a contractor cash bond, please free free to contact Judy Weske, Licensing Examiner, at 465-3035, or write Department of Commerce & Economic Development, Division of Occupational Licensing, P.O. Box D-Lic, Juneau, Alaska 99811-0800.

--Division of Occupational Licensing

CLE videotape replays offered

Following is a listing of group videotape replays of live CLE seminars scheduled for Anchorage. The Anchorage date is listed first, followed by the replay city and dates.

To register for a group video replay, call the Bar Association office at 272-7469. Be sure to indicate the program, date and city. CLE credit is awarded for group replays.

Juneau location: Attorney General's Office, Assembly Building conference room

Kodiak location: Law Offices of Jamin, Ebell, Bolger & Gentry, 323 Carolyn Street

Fairbanks location: Fairbanks Regency Hotel

Straight Talk for Attorneys - Part II Fairbanks Jan. 20, 1989

Preserving the Settlement Fairbanks Feb. 10, 11, 1989

Forensic Engineering Anchorage Feb. 15, 1989; Juneau Feb. 25, 1989, 9 a.m.-5 p.m.; Kodiak Feb. 26, 1989 full day beginning at noon; Fairbanks March 17, 1989 9 a.m.-5 p.m.

Wrongful Discharge Anchorage Feb. 24; Juneau March 11, 1989, 9 a.m.-12 noon; Kodiak March 5 beginning at noon; Fairbanks March 24, 1989, 1 5 p.m.

Loan Documentation Anchorage March 14; Juneau March 25 9 a.m.-5 p.m.; Kodiak April 2 full day beginning at noon; Fairbanks Live Program March 16

Adoption Issues: Anchorage April 14; Juneau April 22, 9 a.m.-5 p.m.; Kodiak April 23 full day beginning at noon; Fairbanks to be announced.

Delta Blues No. 4

Copiers ease travail of work in Bush

By Dan Branch

I was thumbing through a gadget catalog from New York City the other day. There, squeezed between Camcorders and PC clones, was a page of desktop plain paper copiers. The catalog touted their low cost and reliability. These features revolutionized the delivery of law in the bush. Life was grim out here before the Canon PC 25.

Way back, before the airplane even, the feds sent commissioners out to the gold camps armed only with court seals and fountain pens. Selected for their handwriting deportment, these guys spent most of their time hand copying deeds onto the land registers. They also acted as coroner and district court judges, using the written hand to record all the testimony presented at their hearings.

The government paid them a set amount for each document recorded, witness sworn, and warrant issued. Sometimes the commissioners were forced to use their hand writing skills under very adverse circumstances. The case of the Holitna River Inquest proves that point.

One morning, in the early 1920s a miner rushed into the Georgetown commissioner's cabin. In breathless tones he described the death of his partner on the Holitna River. "I left the body at our camp." The miner advised. "He should keep for awhile." Since his thermometer registered 30 below zero, the commissioner had to agree with that statement.

Soon, the U.S. Marshall was out in the streets of the village rounding up a couple of dog teams for the trip. Using a technique developed by the British Navy during the Napoleonic Wars, he also pressed seven innocent miners into service as jurors. After lunch they set off in subzero weather for the Holitna River. A couple of days later, the commissioner held court at the sand bar camp where the unfortunate miner took his last cup of tea.

Given the temperature, and the brevity of the written record of the hearing, it probably didn't take long for the jury to find that the man died of natural causes. The most remarkable thing about the case is that the commissioner's handwriting remained readable throughout the ordeal.

Life became more complicated when progress moved into the bush. The old handwriten court reporting techniques couldn't cut it any more. Soon typewriters started showing up in rural courts. Big surplused Underwoods replaced the fountain pen. Their noisy clacking diminished the quality of life for commissioners. I think the noise, and perhaps lack of training, caused a lot of the old timers to move on. They were replaced with judicial officers more in tune with modern technology.

The typewriters helped but the true legal revolution began when the first copying machines were unloaded from Seattle barges. These foul smelling things copied in less time than typewriters and reproduced signatures and court seals. Unfortunately, they broke down and spent more time in transit to urban repair centers than in actual service.

IBM shook things up when they shipped big multi-talented duplicating machines to the bush. When they were up and running, these babies could collate multiple copies of legal documents. They also broke down a lot. This made the IBM man one of the most sought after persons in the bush. Once a month he would mysteriously appear in places like Bethel, plane ticket in pocket, and bring the copiers back to life. News of his arrival would spread through town via word of mouth. Known only as "The IBM guy," this mechanic had to serve as repairman, teacher, and PR man. He left signs in his wake warning users to keep paper clips, staples, and coffee out of the copying room.

Sometimes brave souls would experiment with cheaper alternatives. These machines were the forerunners of the PC copiers of today. Unfortunately they were hard to use, and harder to repair. The IBM guy wouldn't fix them for you. Secretaries spent hours on the phone with Anchorage sales representatives trying to keep the machines running. The new desk top models were welcome replacements for these machines.

Now the Canon PC 25 has spawned a whole series of desk top copiers. They work well, have a small footprint, and don't break down. I like the way they politely request more toner by ringing their chimes. A subtle warning light goes on when they misfeed.

Misfeeds used to be more feared then a bounced fee check. If a misfeed jammed up a big copier, the key operator had to put on his hard hat and crawl around between the drum and rollers until all the offending paper was removed. They caused total melt down of some of the smaller machines.

One law office in Bethel owned an early Xerox PC. Copier paper had to be hand fed into the thing one sheet at a time. The original disappeared into the machine returning only at the end of the copying process. The thing had long ago outlived its usefulness but refused to die. Finally, after a tense settlement conference it happened. An unfortunate attorney was feeding the signature page of the settlement agreement into the machine when it showed misfeed. The hard earned document was locked in the machine, and opposing counsel showed signs of backing out of the deal. In a panic he pushed the start button again. Smoke started pouring out of the copier. They carried the machine out into the snow where it died taking the settlement agreement with it.

There you have the history of office machines in Western Alaska. It's a pretty story of how advancing technology can steadily improve your life. Now if someone would just get off their duff and fix the phones out here. The voice echo that bounces back off the satellite during long distance calls is driving me nuts.

Dan Branch formerly went by the nom de plume of Sparrvohn.

More from your computer: life in easy lane

By Pamela R. Kelley

Many practitioners are finding computers help us get more out of our work products. Others are finding computers on their desktops, and have no clue what to do with them once there.

Few could go wrong with a good outliner program.

An outliner, like Think Tank or MORE, develops outlines, documents and presentation materials. It is built around an idea most of us grasp intuitively, the inverted pyramid outline that moves thoughts from general to specific principles.

An outline of this article, for example, would be entitled "More from your Computer," and would be divided into three subheadings: Introduction, Body and Conclusion. The Body would have several subparts to it: Premise, General Explanation, Examples, Presentation Tools, Productivity Tools. Within the "General Explanation" topic, there would be three features introduced: Outlining Documents, Word Processing, and List Making.

The two outliner programs discussed here, Think Tank and MORE, are written by Living Videotext, a software company in California. Think Tank is an outliner that can be used with IBMs and compatibles using MS-DOS. MORE is an outliner with some special features designed to be used with Apple's Macintosh computer. Other outlining programs are available, either as memory resident desk accessories available from within other applications, or as a feature within certain word processors, like Microsoft Word 3.0.

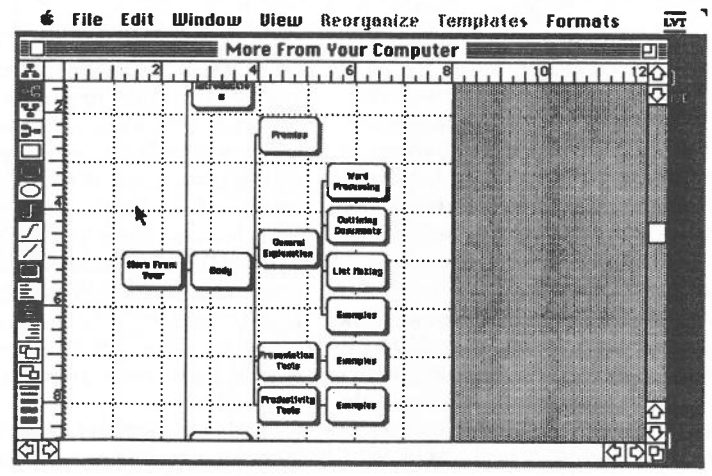
Because an outliner displays a blank page when one begins, the writer names the outline by typing in the main title, or "headline," on the first line. When one hits the return key, the cursor moves back, but not flush with the left margin. Instead, it's indented half an inch. This is the first level of outline points — the Intro, Body and Conclusion sections of this article. Below any level, the author can open a word processing document, or add subordinate points, as necessary.

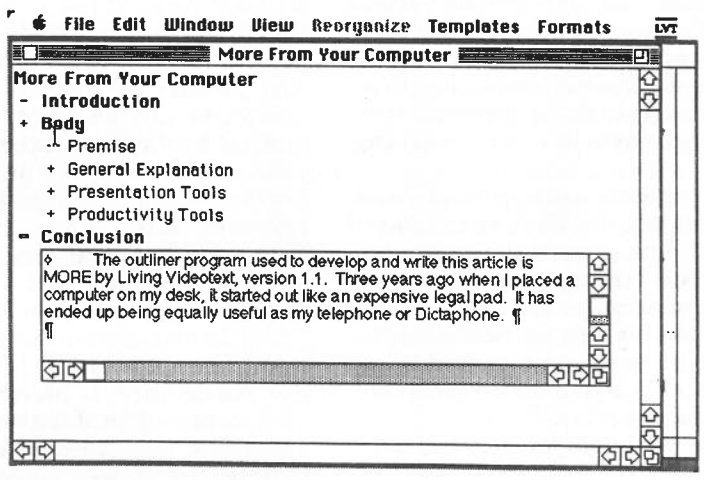
An example of the Outline view of this article, as seen on the computer screen, is shown here.

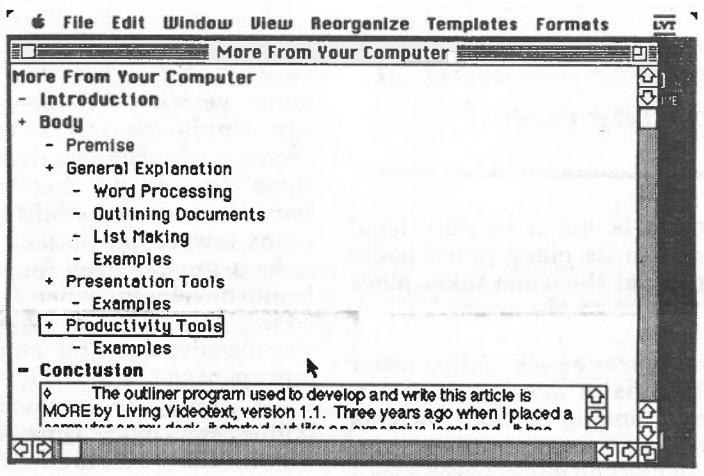
Using cursor keys, or a mouse, the author can move the cursor to the Body headline. At this point, she may have had an idea on what points the body of the article should make. She can list, under the Body headline, all of those points. From the line where "Body" is displayed, she simply hits the return key and types in each of the points. After each thought that is jotted down, the return key is hit to separate each thought on a separate line on the outline. If a subordinate thought is included, it is simply tabbed in to show it's derived from the main thought.

When the author wants to designate something as a subordinate thought, she hits return and tabs in from the dominant thought, and successively tabs in for each level as the thought or argument is refined. Each line represents a separate level on the outline.

Whether it's on a yellow pad or an IBM-clone, outlines are writing tools lawyers work with familiarly. On a computer, though, one can easily reorganize and revise the logical flow of one's thoughts by viewing the outline level by







level. The first level of this outline may not show much creativity, but it does show the logical flow from Intro to Body to Conclusion. Imagine the second level shows "Presentation Tools" listed as a topic under the headline "General Explanation." If the writer thinks the topic is more logically placed as a separate topic under its own headline, because these are especially Macintosh features and not common to all outliners, it's a simple cut and paste job to move the topic — and all of its subtopics — to the more appropriate location.

One reason an outliner works so well for the lawyers using them, is that it does not require much typing to flesh out the outline to its fullest form. Most practitioners are impatient with hunt-and-peck typing. Even if a lawyer is an adequate touch-typist, he doesn't particularly want to punch out an entire brief, one tap at a time. But with a fully annotated, key word or topic sentence outline on the screen before them, most lawyers can dictate a clean, well-organized, memorandum of law. One that usually requires fewer revisions, and is therefore produced using the lawyer's time more efficiently.

Another reason the outliners are suited to lawyers' needs is the ability to have a number of outlines open at one time. If one thinks of outlines as lists, the utility in this becomes apparent. At the start of each day, for example, one may create a "to do" list, a "telephone" list, and a time log. All can be viewed at the same time if one is using an outliner like MORE. The three open "windows" can be displayed vertically, horizontally or diagonally. The active window is the one where the cursor is flashing. As phone calls are returned, and as tasks on the to do list are accomplished, they can be checked off the list. If at the same time one is organizing her thoughts for a summary judgment motion, a separate outline can be left open for those to be recorded as her research and analysis continues to develop.

One local practitioner uses Think Tank on his IBM personal computer to analyze construction cases. He lists each claim, and within the general claim each separate claim and the method to measure damages on each claim is itemized. In this way, he uses the outliner to analyze related but separate claims within large construction cases by simply listing each and arranging related materials together.

Another practitioner using MORE throughout the day creates her timelogs by listing each matter for the day's attention. Her working files, identified by client numbers, are pre-prepared templates that can be added to any list from the pull down menu for "document." When a project is started, she time stamps it, types in her billing narrative, and goes to work. When the project is completed, she time stamps it again, and moves on to the next project. At day's end, her timelog is printed and submitted.

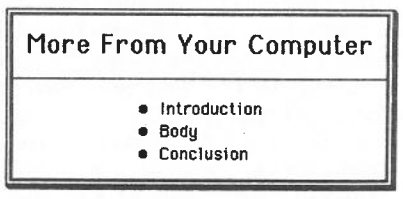
MORE's extra features work well for one who relies on the telephone greatly. As phone calls are made, notes can be taken within the outline by expanding a document from the name on the list. After a call, the notes can be time and date stamped within the program. If the phone log is printed at regular intervals, the contemporaneous phone log is filed and supplements the correspondence. Fewer scraps of paper, post-it notes and envelope backs clutter working surfaces, an unexpected benefit.

Macintosh users are especially well situated. Using MORE, they can have the computer dial the telephone while they review the file or tab the important documents to be discussed in the ensuing conversation. Some have their personal phone directories in a document, and use the search function to locate a name or number. Searching by number can be useful when client numbers have not been entered on a call, and the accounting department sends the phone bill to the lawyer's office to find out who to bill for all the long distance charges logged.

All of these are productivity tools, none requires great typing prowess. As such they're suited to introduce lawyers to computers as productivity tools rather than high tech paperweights.

There are presentation tools featured in MORE, too. These are tree and bullet charts, and may have usefulness for some practitioners. These require the graphic capability of a Macintosh, and aren't available on Think Tank yet.

Any subject that can be analyzed in outline form can be displayed as a tree chart or a bullet chart by simply selecting either of the two from the view menu. This doesn't require any special skill, just the click of a button. The outline described for this article, shown in the tree chart view, looks like this:



Bullet charts are more useful as visual aids when speaking. An example of bullet charts formed from the outline of this article appear at Illustration 2.

The outliner program used to develop and write this article is MORE by Living Videotext, version 1.1. Three years ago when I placed a computer on my desk, it started out like an expensive legal pad. It has ended up being equally useful as my telephone or Dictaphone.

One of the tools that helped me understand the usefulness hidden in that box was an outliner program, and it remains one of the programs I consistently recommend to lawyers who want to see their productivity increase using computers, without becoming typists themselves.

In Alaska, we'd have 50 Bar members

The Alaska-Japan law connection

John Gissberg lived in Japan six years as a graduate student at the University of Tokyo (1966), land use law consultant for the Conservation and Rockefeller Foundations (1975) and as Regional Fisheries Attache in the U.S. Embassy (1983-1987). He has given numerous speeches in Japanese to sections of Tokyo bar associations. A lifelong Alaskan who is International Counsel for Guess and Rudd, the following description of lawyering in Japan is a summary of a Nov. 18, 1988 talk to the Juneau Bar Association.

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The legal systems of Japan and Alaska share few similarities. The most striking differences are the lack of a jury system and the almost total reliance in Japan on informal, interpersonal discussions for avoidance and settlement of disputes.

Only when parties are unable to resolve differences on their own do they accept the "loss of face" that results from reluctantly resorting to the courts. As a result, it is very unusual to meet or hear of anyone who has ever had to suffer the ignominity of litigation.

It is also rare to meet an attorney. A total bar of 13,000 attorneys serves a population of nearly 130,000,000 or one lawyer for every 10,000 residents! The lack of women attorneys is even more striking. This phenomenon is not a unique characteristic of the legal community. Women are also sparsely represented in industry and government circles in Japan.

"In Japan, everything is neither prohibited nor permitted depending on the case."

Change comes slowly in Japan and current trends probably reflect past conditions. Japan's legal system has roots reaching back 100 when the Meiji Restoration government sought to adopt western legal principles for the newly opened country. Dispatched to Europe and the United States, special study missions were attracted by the simplicity of the Germanic and French codes of law. Common law precedents in England and the United States were too confusing.

After comparative evaluations, Japan adopted a system of laws based on subject matter codes. Little freedom was given to the 47 Prefectures to experiment with creative local legislation. As a result, compilations of national codes can be published in dictionary size editions. Extremely popular to the law abiding citizenry, the annual "Laws of Japan" volume is to be found found with dictionaries and atlases on book shelves in nearly every home.

Any attempt to describe the Japanese legal system must refer to its basic roots in Germany where laws are much like Alaska's fisheries—regulations: everything is prohibited unless specifically permitted as an exception to the general rule. French influence also seems to be apparent in some other cases where everything seems to be permitted unless otherwise prohibited. In actuality, the combination of European codes with Japanese goals to avoid conflict has caused some observers to conclude that "In Japan, everything is neither prohibited or permitted depending on the case."

Law reflects culture. The homogeneity of society and centralization of governmental authority in Japan portray a tranquility that emphasizes concensus, avoidance of conflicts and solutions satisfactory to everyone. However, rather than continually trying to revise existing codes to solve newly developing situations, informal governmental guidances or private understandings are relied upon to settle most differences of interpretation. Such unwritten solutions are achieved on a "case by case" basis. No confining precedents are set.

Before any "case-by-case" requests are given final approval, consensus from all parties who are directly and indirectly affected is necessary. In this effort, many forms of possible persuasion are permitted. For example, neighborhood meetings might involve standard explanations of a project but can also include various gratuities needed to achieve "understanding." If necessary, revisions in the project, special assistance to affected individuals or generous compensation payments can be arranged.

Once projects are approved, Japanese customs, not Western notions of business law, govern the accompanying private transactions. In a country where disputes are to be avoided at all costs, binding written contracts are not necessary (or even desired) when establishing even the most complex business relationships.

Thus, the basis for a commercial transaction is not a lengthy legal document. In its place, much polite bowing low at the waist takes place out of respect to the trusted third-party intermediary who initially introduced the two sides. Only after many months of developing a personal relationship of their own on company expense accounts at favorite nightclubs and golf courses does a mutual regard evolve sufficient to permit the establishment of the desired business relationship.

During this time, occasional scraps of paper may be saved for future reference; sometimes, an agreement may be reduced to writing. However, disputes on interpretation of the parties' understanding do not rely on the written document for resolution. Aware of the potential benefits in future dealings with each other and the damage to reputations engendered by unresolved disputes, every possible effort is made to settle present differences amicably.

If mutual efforts fail, with heads hung low in inexcusable embarrassment, both parties return to the trusted intermediary for assistance. The intermediary becomes judge and jury. There is no appeal from the intermediary's decision. However, once called upon, the intermediary's solution allows the parties to renew their business arrangements with greater resolve to avoid conflicts in the future.

Using a lawsuit to solve differences is an almost unbearable admission of personal and professional failure in Japan. Like a vacuum, litigation is abhored at all costs. For example, a taxi in which I was riding bumped into another car. The two drivers bounded from their vehicles in the awful horror of the collision.

While planning my retreat from the scene, I wondered if expected shouting would lead to fisticuffs, karate, or judo. Surprisingly, instead of righteous indignation, insults and accusations, both drivers immediately and unhesitatingly offered apologies and simultaneously confessed, "it was my fault, I am so sorry!" "No, no, I was the careless one."

In a different case, after a fatal industrial accident, the company president publically apologized, provided a $10,000 no strings-attached solatium to families, offered individual settlements of hundreds of thousands of dollars and then resigned! The loss of face and acceptance of responsibility associated with the president's apology, resignation, and public loss of face were quite sufficient to fend off the lawsuits that would have been filed in most other countries.

With no contracts to write and few lawsuits to pursue, Japan does not need many lawyers. A similar 1:10,000 ratio of lawyers to population in Alaska would reduce Alaska's bar membership to only 50 attorneys! The paucity of lawyers in Japan cannot be attributed to the lack of interest by Japanese students. Each year as many as 30,000 applicants sit for the Japan National Bar Exam. However, after a day of multiple-choice, and several days of essays and oral questions, only 1.5 percent or 400-500 applicants have passed.

Unlike beleagered lawyers in other countries, membership in the Japan Bar Association is highly regarded and respected in Japanese society. Therefore, an unusual persistence finds the many bar applicants repeatedly sitting for several attempts.

Those who ultimately fail, however, are not barred from taking advantage of their legal training. Most obtain permanently-guaranteed, lifetime employment in the commercial sections of large Japanese corporations. Though not members of any bar, their responsibilities include many lawyer-like duties.

As a greater need for legal skills began developing when Japan entered a high growth economic era just two decades ago and companies began opening branch offices overseas, these employees assumed responsibilities for memorializing understandings in letters and eventually preparing and reviewing written agreements with foreign companies.

Japan's lawyering nonlawyers recently played a role in a trade dispute in the services industry between the United States and Japan. Contrary to the practice in most major cities in the world, foreign law firms have been prohibited in Japan. A handful of foreign lawyers were given permission to remain in Japan after the Allied Occupation following World War II and an isolated special exception occurred in 1977.

With no contracts to write and few lawsuits to pursue, Japan does not need many lawyers.

However, other foreign attorneys in Japan may not even give advice on the law in their home jurisdictions. Internationally-oriented U.S. attorneys may find employment in Japanese law firms as low-salaried "trainees" with no prospect for promotion. Therefore, many trainees represent newly-hired associates dispatched by large U.S. law firms for short sojourns with loosely affiliated or liason firms in Japan. Others are recent law school graduates seeking their own international experience.

In seeking solutions to the seemingly uncontrolled $70 billion trade deficit with Japan, the United States brought the legal services industry issue to formal negotiations with Japan. It was believed that U.S. attorneys with offices in Tokyo who understood the local language and Japanese business customs could serve U.S. companies whose exports and international business intentions might otherwise be discouraged because of the difficulties of doing business in Japan.

As a negotiating quid quo pro, Japanese businesses would be able to have access to competent advice on the effect of U.S. laws on Japanese exports to the U.S. of goods, technology and investment. Without such access, many might continue dispatching employees and cash to the U.S. only to find the effort wasted when cash advances were squandered and no security agreement protected the investment.

The Japan Bar Association (NICHIBENREN) immediately resisted this perceived assault on the bastion of the homogeneous Japanese bar. Themselves affronted, U.S. lawyers urged the U.S. Trade Representative, the U.S. Embassy and the State Department to consider revoking the commercial visas of thousand of Japanese company employees alleged to be engaged in legal work for their companies in the United States. Ultimately, an extremely narrow window was opened for foreign lawyers to work in Japan.

For example, since foreign lawyers would only be giving advice on U.S. laws as "Foreign Law Consultants" and would not need knowledge of Japanese law or courts, no affiliations or partnerships with Japanese law firms would be allowed. Further, since only individual foreign lawyers who were actually physically present in Japan would have permission to dispense U.S. legal advice, the firm's window in Japan could not include the actual firm name. Therefore, all letterhead stationery, business cards, office signs, etc. would refer only to the firm members currently resident in Japan.

Also, all advice must come from experienced counsel; thus, the qualified applicants would need at least five years experience in the U.S. jurisdiction. The many "trainees" who entered into relationships with Japanese firms soon after they passed U.S. bar examinations would not be able to apply.

Once these criteria and others were met, the aspirant must present a certificate of good standing from a foreign jurisdiction that permits Japanese lawyers to open their own offices to dispense advice on Japanese law. All applicants, however, must show credentials from a foreign jurisdiction in which Japanese lawyers are permitted to open their own offices to dispense advice on Japanese law.

On Sept. 22, 1988, the Alaska Supreme Court adopted Rule 63 to permit such foreign law offices in Alaska starting Jan. 15, 1989. Modeled on a similar Hawaii rule that satisfies Japanese reciprocity standards, Alaska now joins Hawaii, New York, the District of Columbia, Michigan and California as the sixth U.S. jurisdiction with a reciprocal Foreign Law Consultant Provision.

Thus, from Jan. 15, any Japanese lawyer interested in abandoning a 10,000 per lawyer clicnt advantage for a smaller but somewhat more litigious pool of potential clients can apply to become Alaska's first Foreign Law Consultant. At the same time, an Alaska attorney with five

Continued on Page 17

Waiting too long can mean there's nothing to wait for!

Attorneys Liability Protection Society (your Bar-sponsored Legal Malpractice Insurance Company) has enjoyed a steady growth since first beginning operations in March, 1988.

A true cross section of law firms throughout the 10 sponsor States (Alaska, Delaware, Idaho, Kansas, Montana, Nevada, North Dakota, South Dakota, West Virginia and Wyoming) have chosen ALPS as their Malpractice Carrier. As a result, ALPS Surplus now exceeds $3,000,000 and is growing daily. ALPS insureds include sole practitioners—and multi-faceted firms with as many as 42 attorneys. And, because of the input of many of these firms—ALPS Board of Directors have adopted numerous coverage enhancements helping ALPS to offer one of the broadest contracts available to lawyers.

One of ALPS original objectives was to create competition in the marketplace. Apparently, this goal has been achieved as most lawyers report greatly reduced quotations from their commercial carriers at renewal time.

Finally, ALPS' Reinsurers have expressed their delight with ALPS performance to date—indicating their willingness to continue top-notch security for ALPS insureds.

However, all of these "positives" could be jeopardized if ALPS is unable to sustain its steady premium growth. Such growth is necessary if:

1) ALPS Surplus is to continue to grow, and;

2) Confidence of Reinsurers is to continue.

Most firms have found that ALPS' Policy is comprehensive—and premiums competitive. However, they have renewed their coverage with a commercial market, commenting, in effect, "We'll wait a year to see how ALPS does." Perhaps this attitude is understandable—but if too many lawyers take a "wait & see" attitude—the results could be dangerous—if not disastrous! ALPS is sound now—it needs your support now to stay that way.

• Alaska-Japan law ...

Continued from Page 16

years active practice will be able to become one of the 30 or so already-admitted Foreign Law Consultants in Tokyo.

However, the high cost of doing business in a city where coffee is $8.00 a cup with no refills and a full tank of gas in an economy car is $80.00 brings law office expenditures above $1,000,000 per year. Nevertheless, hourly rates of $250-$400 are warranting serious consideration of possible Tokyo branches by large law firms in many major U.S. cities.

Alaska, with close commercial ties to Japan, should be able to take advantage of the potential benefit from these developments without the necessity of major investment expenditures. For example, financial backing might be obtained through affiliate firms in jurisdictions such as Washington still lack reciprocal foreign law consultant rules.

A firm's major clients could also jointly contribute to necessary retainers to help support a Tokyo Office. Lastly, an often overlooked opportunity to develop an international expertise may be through U.S. trainees in Japan interested in acquiring the requisite five year's experience in a U.S. jurisdiction.

These potential benefits to Alaska might now justify an international section in the Alaska Bar Association or a new Japan/Alaska Bar Committee. Much work in this regard has been done by Anchorage attorney Douglas Barker who has been the primary proponent of Alaska's Foreign Law Consultant Rule (See Alaska Bar Rag, June 1988 at Page 22.) Such developments can be expected to greatly increase interest in Japan by Alaska lawyers.

Samantha Slanders

Advice from the Heart

DEAR SAMANTHA: I am a 27-year-old, unmarried attorney who has recently become very active in the Anchorage Bar Association. Several months ago, I began dating a wonderful young veterinary assistant and have fallen in love. Although her working conditions are filthy, she is beautiful! I want to marry her. Lately, however, I have noticed a strong smell on my clothes at the end of the day and have discovered fleas in my hair. As much as I love this woman, I know I will not be able to live this way forever. How can I solve this delicate problem?

Lovesick in Anchorage

DEAR LOVESICK: Take hot showers and soak well after any contact with members of the Anchorage Bar Association.

Samantha.

***

DEAR SAMANTHA: I am a middle aged Alaskan judge who is up for retention soon. I have recently developed a problem that sets me apart from other Judges, and that I fear may affect my chances for retention. I burp continually in court, I can't keep awake during argument, and I develop hiccups whenever I do legal research. What do you suggest I do to be like other Judges?

In Pins and Needles.

DEAR PINS: Have your law clerk do your legal research.

Samantha.

DEAR SAMANTHA: I am a middle-aged attorney who practices law in Southeast Alaska and who presently finds himself in a very embarrassing situation. I need your help. Last night I got off the plane in Anchorage where I was coming for a Board of Governors' meeting. I was desperate for a smoke and had to go to the bathroom. I rushed into the restroom, entered the stall, and sat down. Immediately thereafter, I heard women's voices outside the stall and ascertained that I was, in fact, in the women's restroom. I was naturally embarrassed and raised my feet so that my size 12 Wingtips wouldn't disclose my identity. Now I am stuck and don't know how to get out of here without creating a scandal. If I don't get out of here soon, I will run out of cigarettes. Please respond immediately.

Stuck in a Stall.

DEAR STUCK: Simply slip off your shoes and slide them over to the next stall. then walk out confidently. If you encounter any women, merely point to the shoes under the stall, explain that they are in the men's room, and continue on out the door. Pass a hat at the next Board of Governors' meeting for new shoes.

Samantha.

Washington Supreme Court Reporter

Directs the operation of the Law Reports Office in Publishing the formal legal opinions and other official actions of the Supreme Court. Minimum qualifications: graduate from an accredited law school and member in good standing in a State Bar Association or its equivalent and five years' experience as a practicing attorney or legal editor, two years of which must have been in an administrative position. Salary: engotiable.

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We are an Equal Opportunity Employer. Women, racial and ethnic minorities, persons of disability, and persons over 40 years of age are encouraged to apply.

It's Alaska Festival Time Visit One!

January

Willow Winter Carnival. Dog races. Nordic ski races, many activities for kids, and the Willow Trading Post & Lodge is open. Jan. 28-29; Feb. 4-5.

February

Cordova Iceworm Festival. Featuring Alaska's longest parade animal, and other fishy goings-on. Feb. 3-5. 424-7443.

Fur Rendezvous. Alaska's biggest festival and World Championship Sled Dog Race downtown. Greater Anchorage Inc. Events, parades, fun citywide. Feb. 10-19. 277-8615 (spring is right behind).

Chugiak-Eagle River Winter Festival. Chamber of Commerce. Dog races, merriment and off-beat events. Feb. 24-25. 694-4702.

Big Lake Lions Winter Fair & Festival. Under the Big Lake Big Top. Feb. 25-26. March 4-5. 376-8000.

Iditarod Days. Claims of the "official" start of the dog race. Two weekends of softball, golf and other winter favorites. Feb. 25-26. March 4-5. Wasilla Chamber of Commerce. 376-1299.

Nenana Tripod-Raising Festival. Start of Nenana Ice Classic Sweepstakes. Nenana Banana Eating Contest, Native dance, dog races. Feb. 25-26. 832-5446.

March

Beaver Roundup. March 2-5. Dillingham.

North Pole Winter Carnival. North Pole Chamber of Commerce. Dog races, games, good, live entertainment. March 4-5. 488-2679.

Fairbanks Ice Festival. Fairbanks Chamber of Commerce. North American Sled Dog Race (open), parka parade, ice sculptures, trade fair and more. March 10-19. 452-6279.

Chatanika Days. Old F.E. Company Camp, Fairbanks. Outhouse races, bachelors auction and other creative events. Narch 11-12. 389-2414.

Valdez Winter Carnival. Ice climbing, shows, food, on beautiful Prince William Sound. March 18-26. 835-2330.

Skagway Windfest. Soapy Smith's sorry he won't be arond to usher in the spring. March 26-27. 983-2854.

Watch for these events:

- **Homer Winter Carnival.** February. 235-5300.
- **First City Folk Festival.** March. Ketchikan. 225-6166.
- **Kodiak Cultural Heritage Conference.** March. 486-4782.
- **Coal Miner's Festival.** March. Sutton. 376-8000.

Entertaining legal writing

SUBMITTED BY JULIE A. CLARK

Nowadays legal writing often tends to be a bit stuffy, but there was a time when the Alaska bar had a little fun with the matters then before the courts.

The following is a 1904 Fairbanks case found in 2 Alaska 269:

M'Ginley v. Cleary

On the 29th of last November the plaintiff was, and for some time previous thereto had been, one of the proprietors of that certain two-story log cabin described in the pleadings as the "Fairbanks Hotel," situate upon lot 1, Front street, in the town of Fairbanks, Alaska. The opening scene discovers him drunk, but engaged on his regular night shift as barkeeper in dispensing whisky by leave of this court on a territorial license to those of his customers who had not been able, through undesire or the benumbing influence of the liquor, to retire to their cabins. The defendant was his present customer. After a social evening session, the evidence is that at about 3 o'clock in the morning of the 30th they were mutually enjoying the hardships of Alaska by pouring into their respective interiors unnumbered four-bit drinks, reclessly (sic) expending undug pokes, and blowing in the next spring cleanup. While thus employed, between sticking tabs on the nail and catching their breath for the next glass, they began to tempt the fickle goddess of fortune by shaking plaintiff's dicebox. The defendant testifies that he had a $5 bill, that he laid it on the bar, and that it constituted the visible means of support to the game and transfer of property which followed. That defendant had a $5 bill so late in the evening may excite remark among his acquaintances.

Whether plaintiff and defendant then formed a mental design to gamble around the storm center of this bill is one of the matters in dispute in this case about which they do not agree. The proprietor is plaintively positive on his part that at that moment his brains were so benumbed by the fumes or the force of his own whisky that he was actually non compos mentis; that his mental faculties were so far paralyzed thereby that they utterly failed to register or record impressions. His customer, on the other hand, stoutly swears that the vigor and strength of his constitution enabled him to retain his memory, and he informed the court from the witness stand that while both were gazing at the bill, the proprietor produced his near-by dicebox, and they began to shake for its temporary ownership. Neither the memory which failed nor that which labored in spite of its load enabled either the proprietor or the customer to recall that any other money or its equivalent came upon the board. The usual custom of $500 millionaires grown from wild cat bonanzas was followed, and as aces and sixes alternated or blurringly trooped athwart their vision, the silent upthrust of the index finger served to mark the balance of trade.

They were not alone. Tupper Thompson slept bibulously behind the oil tank stove. Whether his mental receiver was likewise so hardened by inebriation as to be incapable of catching impressions will never be certainly known to the court. He testified to a lingering remembrance of drinks which he enjoyed at this time upon the invitation of some one, and is authority for the statement that when he came to the proprietor was so drunk that he hung limply and vine-like to the bar, though he played dice with the defendant, and later signed a bill of sale of the premises in dispute, which Tupper witnessed. Tupper also testified that the defendant was drunk, but according to his standard of intoxication he was not so entirely paralyzed as the proprietor, since he could stand without holding to the bar. Not to be outdone either in memory or expert testimony, the defendant admitted that Tupper was present, that his resting place was behind the oil tank stove, where, defendant testifies, he remained on the puncheon floor in slumberous repose during the gaming festivities with the dicebox, and until called to drink and sign a bill of sale, both of which he did according to his own testimony. One O'Neill also saw the parties plaintiff and defendant about this hour in the saloon, with defendant's arm around plaintiff's neck in maudlin embrace.

After the dice-shaking had ceased and the finger-tip bookkeeping had been reduced to round numbers, the defendant testifies that the plaintiff was found to be indebted to him in the sum of $1,600. Whether these dice, which belonged to the bar and seem to have been in frequent use by the proprietor, were in the habit of playing such pranks on the house may well be doubted; nor is it shown that they, too, were loaded. It is just possible that mistakes may have occurred pending lapses of memory by which, in the absence of a lookout, the usual numbers thrown for the house were counted for the defendant, and this without any fault of the dice. However this may be, the defendant swears that he won the score, and added up the tabs for payment.

According to the defendant's testimony, the proprietor was also playing a confidence game, whereupon, in the absence of money, the defendant suggested that he make him a bill of sale of the premises. Two were written out by defendant. The second was signed by plaintiff and witnessed by Tupper, and for a short time the defendant became a tenant in common with an unnamed person and an equitable owner of an interest in the saloon. The plaintiff testified that during all this time, and until the final act of signing the deed in controversy, he was drunk, and suffering from a total loss of memory and intelligence. The evidence in support of intelligence is vague and unsatisfactory, and the court is unable to base any satisfactory conclusion upon it.

Above the mists of inebriety which befogged the mental landscape of the principals in this case at that time rise a few jagged peaks of fact which must guide the court notwithstanding their temporary intellectual eclipse. After the dice-throwing had ceased, the score calculated, and the bills of sale written, and the last one conveying a half interest in the premises signed by the plaintiff, he accompanied the defendant to the cabin of Commissioner Cowles, about a block away, on the banks of the frozen Chena, and requested that official to affix his official acknowledgment to the document. Owing to their hilarious condition and the early hour at which they so rudely broke the judicial slumbers, the commissioner refused to do business with them, and thrust them from his chamber. He does not testify as to the status of their respective memories at that time, but he does say that their bodies were excessively drunk; that of the defendant being according to the judicial eye, the most wobbly. He testifies that the plaintiff was to and did assist the defendant away from his office without any official acknowledgement being made to the bill of sale. The evidence then discloses that in the light of the early morning, both principals retired to their bunks to rest; witness Sullivan going so far as to swear that the plaintiff's boots were removed before he got in bed.

The question of consideration is deemed to be an important one in this case. Defendant asserts that it consisted of the $1,800 won at the proprietor's own game of dice, but Tupper Thompson relapses into sobriety long enough to declare that real consideration promised on the part of the defendant was to give a half interest in his Cleary Creek placer mines for the half interest in the saloon; that defendant said the plaintiff could go out and run the mines while he remained in the saloon and sold hootch to the sour-doughs, or words to that effect. Tupper's evidence lacks some of the earmarks; it is quite evident that he had a rock in his sluice box. The plaintiff, on the other hand, would not deny the gambling consideration, he forgot; it is much safer to forget, and it stands a better cross-examination.

The evidence discloses that about 3 or 4 o'clock p.m. on the evening of the 30th the defendant went to the apartment of the proprietor, and renewed his demand for payment or a transfer of the property in consideration of the gambling debt. After a meal and a shave they again appeared, about 5 o'clock, before the commissioner; this time at his public office in the justice's court. Here there was much halting and whispering. The bill of sale written by Cleary was presented to the proprietor, who refused to acknowledge it before the commissioner. The commissioner was then requested by Cleary to draw another document to carry out the purpose of their visit there. The reason given for refusing to acknowledge the document then before the commissioner was that it conveyed a half interest, whereas the plaintiff refused then to convey more than a quarter interest. The commissioner wrote the document now contained in the record, the plaintiff signed it; it was witnessed, acknowledged, filed for record, and recorded in the book of deeds, according to law.

The deed signed by McGinley purports to convey "an undivided one-fourth (¼) interest in the Fairbanks Hotel, situate on lot No. one (1) Front street, in the town of Fairbanks." The consideration mentioned is one dollar, but, in accordance with the finger-tip custom, it was not paid; the real consideration was the $1,800 so miraculously won by the defendant the previous night by shaking the box. Plaintiff soon after brought this suit to set aside the conveyance upon the ground of fraud (1) because he was so drunk at the time he signed the deed as to be unable to comprehend the nature of the contract, and (2) for want of consideration.

It is currently believed that the Lord cares for and protects idiots and drunken men. A court of equity is supposed to have equal and concurrent jurisdiction, and this case seems to be brought under both branches. Before touching upon the law of the case, however, it is proper to decide the questions of fact upon which these principles must rest, and they will be considered in the order in which counsel for plaintiff has presented them.

Was McGinley so drunk when he signed the deed in controversy that he was not in his right mind, or capable of transacting any business, or entering into any contract? He was engaged, under the aegis of the law and the seal of this court, in selling whisky to the miners of the Tanana for four bits a drink, and more regularly in taking his own medicine and playing dice with customers for a consideration. Who shall guide the court in determining how drunk he was at 3 o'cl;ock in the morning, when the transaction opened? Tupper or the defendant? How much credence must the court give to the testimony of one drunken man who testifies that another was also drunk? Is the court bound by the admission of the plaintiff that he was so paralized by his own whisky that he cannot remember the events of nearly 24 hours in which he seems to have generally followed his usual calling? Upon what fact in this evidence can the court plant the scales of justice that they may not stagger?

Probably the most satisfactory determination of the matter may be made by coming at once to that point of time where the deed in question was prepared, signed, and acknowledged. Did the plaintiff exhibit intelligence at that time? He refused to acknowledge a deed which conveyed a half interest, and caused his creditor to procure one to be made by the officer which conveyed only a quarter interest; he protected his property to that extent. Upon a presentation of the deed prepared by the officer, he refused to sign it until the words "and other valuable consideration" were striken out; thus leaving the deed to rest on a stated consideration of "one dollar." Upon procuring the paper to read as he desired, he signed it in a public office, before several persons, and acknowledged it to be his own act and deed.

Defendant says the the deed was given to pay a gambling debt lost by the plaintiff at his own game, and his counsel argues that for this reason equity will not examine into the consideration and grant relief, but will leave both parties to the rules of their game, and not intermingle these with the rules of law. He argues that they stand in pari delicto, and that, being engaged in a violation of the law, equity ought not to assist the proprietor of the game to recover his bank roll. It may be incidently mentioned here, as it has been suggested to the court that the phrase pari delic*to* does not mean a "delec*table* pair," and its use is not intended to reflect upon or characterize plaintiff and defendant.

Bion A. Dodge, for plaintiff.

Claypool & Cowles, for defendant.

WICKERSHAM, District Judge. The plaintiff prays judgment that the transfer made to the defendant, Cleary, be vacated as fraudulent and void (1) because he was intoxicated at the time it was made, signed, and delivered, and (2) because no consideration was paid therefore. Equity will grant relief where the transfer of a valuable property has been fraudulently extorted, for a grossly inadequate consideration, from a person in such a state of intoxication as not to be in his right mind, or capable of transacting any business or entering into any contract. [cite omitted]

The evidence in this case raises the single question, will a court of equity set aside a deed made by the keeper of a saloon in payment of a gambling debt contracted by him to one of his customers when no other fraud is shown? By the common law no right of action exists to recover back money which has been paid upon a gambling debt. 8 Am. & Eng. Ency. of Law (1st Ed) 1021. In Brown v Thompson, 14 Bush (Ky.) 538, 29 Am Rep. 416, the court held that the keeper of a faro bank, who sued to recover losses against one who had won by betting against the bank, was not within the spirit of the Kentucky statutue, although his claim was within the letter, and accordingly refused to maintain his action. The general policy of the courts in suits to recover gambling losses is clearly stated by Judge Ross in Gridley v Dorn, 57 Cal. 78, 40 Am. Rep. 110, whre he says:

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Poems

World War II

Every night at 10 p.m., the propellers start to churn.
As Lancasters and Fortresses line up to wait their turn.
The wind is up for Schweinfurt. The moon has gone away.
Walter Cronkite rides beside me. We'll talk along the way.

Thumbs Up! We're on the tarmac. The engines start to roar.
I'm bolt upright in my easy chair and we thunder off to war.
When we reach cruising altitude, I'll just put the set on hold;
While I fetch the taco chips and bring in the beer that's cold.

We've a long, hard night ahead of us; these brave boys and I
As we face the flak and Messerschmitts, some of them must die.
I'll help them all I can, of course, and Walter, he will too.
Both of us will cheer them on, and spot the planes before they do.

Chorus

World War Two
I'm falling in love with you.
Your guns, your ships, your planes.
They're driving me insane.
So what, oh what can I do?
Ooh, ooh, ooh, woo, woo, woo.

Another time, another place, and I'm on Channel Two.
The Rising Sun is over Pearl. The fleet is just in view.
Now bombs are falling on the ships, and everything I see.
I guess I will remember all my life, this Day of Infamy.

It's Sunday morning, early. The paper hasn't come yet.
I think I'll just catch a round of the latest news on my TV set.
But wait! What's this on Channel Four? Can I believe my eyes?
The History of the OSS? Those wild and crazy guys?

It doesn't matter when I watch; there's always something on.
The Desert Fox at El Alamein. Commandos Strike at Dawn.
The Second Front. Corregidor. The Underground in France.
Until this war is finished, I'll be living in a trance.

Chorus

World War Two
I'm falling in love with you.
Your guns, your ships, your planes,
Are driving me insane.
So what, oh what can I do?
Ooh, ooh, ooh, woo, woo, woo.

—Harry Branson

• Now this is legal writing

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"The impropriety of the court's entertaining such actions as this is well illustrated by the circumstances of the present case, for it appears from the record to have been conceded to the court below that the right of the plaintiff to recover depended upon the question whether the wager made was a 'by bet' or a 'time bet.' To determine this question several witnesses were introduced, who gave their opinion in the matter, and we have been cited by counsel to the 'Spirit of the Times' and the 'Rules of the National Trotting Association' as authorities upon the proposition. These are, we believe, standard authorities in turf matters, but cases which depend upon them have no place in the courts. If, notwithstanding the evil tendency of betting on races, parties will engage in it, they must rely upon the honor and good faith of their adversaries, and not look to the courts for relief in the event of its breach."

There are cases where courts will assist in the recovery of money or property lost at gambling, but this is not one of them. The plaintiff was the proprietor of the saloon and the operator of the dice game in which he lost his property. He now asks a court of equity to assist him in recovering it, and this raises the question, may a gambler who runs a game and loses the bank roll come into a court of equity and recover it? He conducted the game in violation of law, conveyed his premises to pay the winner's score, and now demands that the court assist him to regain it. Equity will not become a gambler's insurance company, to stand by while the gamester secures the winnings of the drunken, unsuspecting, or weak-minded in violation of the law, ready to stretch forth its arm to recapture his losses when another as unscrupulous or more lucky than he wins his money or property. Nor will the court in this case aid the defendant.

The cause will be dismissed; each party to pay the costs incurred by him and judgment accordingly.

Ode to a Misnumbered Mo-Jo

We find a master index
To be a useful thing
Especially in context
Of Mo-Jo issuing

However, be it noted
That only yesterday
Our system overloaded
And now there's hell to pay

We must assume that someone
Out in the great somewhere
Is caught up on their reading
Enough to really care

And for that loyal student
Of our appellate court
We find it only prudent
To issue this report

They don't serve as authority
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But please correct your copies
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In a confusing way
Attached are the corrections
That's all that we can say

Judge Fraties' clear, concise discription of a "Mo-Jo" misnumbering problem encountered by the courts.