ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
April 24, 2003
4:07 p.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Scott Ogan, Vice Chair
Senator Johnny Ellis
Senator Hollis French

MEMBERS ABSENT

Senator Gene Therriault

COMMITTEE CALENDAR

SENATE BILL NO. 170
"An Act relating to the Code of Criminal Procedure; relating to defenses, affirmative defenses, and justifications to certain criminal acts; relating to rights of prisoners after arrest; relating to discovery, immunity from prosecution, notice of defenses, admissibility of certain evidence, and right to representation in criminal proceedings; relating to sentencing, probation, and discretionary parole; amending Rule 16, Alaska Rules of Criminal Procedure, and Rules 404, 412, 609, and 803, Alaska Rules of Evidence; and providing for an effective date."
HEARD AND HELD

PREVIOUS ACTION

SB 170 - See Judiciary minutes dated 4/15/03.

WITNESS REGISTER

Mr. John Novak, Chief Assistant District Attorney
Department of Law
PO Box 110300
Juneau, AK 99811-0300
POSITION STATEMENT: Supported SB 170.

Mr. Jim McComas, Criminal Defense Attorney
1227 N. 9th, Suite 201
Anchorage, AK 99501
POSITION STATEMENT: Opposed SB 170.

Ms. Meg Simonian
14801 Northfield
Anchorage, AK 99501
POSITION STATEMENT: Opposed SB 170.

Ms. Linda Wilson, Deputy Director
Alaska Public Defender Agency
2207 Belair Dr.
Anchorage, AK 99501
POSITION STATEMENT: Opposed SB 170.

Ms. Lucille Frey
Mat-Su Property Owners
HC02, Box 7342
Palmer, AK 99645
POSITION STATEMENT: Opposed SB 170.

Mr. Noel Woods
Matanuska Valley Sportsmen
PO Box 827
Palmer, AK 99645
POSITION STATEMENT: Opposed SB 170.

Mr. Vern Rupright
866 W. Spruce
Wasilla, AK 99654
POSITION STATEMENT: Opposed SB 170.

Ms. Barbara Beckman &
Mr. Eric Beckman
3321 N. Wyoming Dr.
Wasilla, AK 99654
POSITION STATEMENT: Opposed SB 170.

Ms. Carmen Gutierrez, Atty.
No address provided
POSITION STATEMENT: Opposed SB 170.

ACTION NARRATIVE

TAPE 03-28, SIDE A

SB 170-CRIMINAL LAW/SENTENCING/ PROBATION/PAROLE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at 4:07 p.m. Present were Senators

French, Ellis, Ogan and Chair Seekins. He announced SB 170 to be up for consideration.

MR. NOVAK, Chief Assistant District Attorney, said he would talk about the portion of SB 170 that wasn't covered on April 15, but is more controversial. He said this legislation is about trying to have people resolve situations of conflict in a peaceful manner rather than resorting to violence. He stressed this is not a draconian change in the law of self-defense. With current law, the person accused of a crime has the burden of coming forward with some evidence of self-defense. It is less of a burden than under the proposed legislation. He read a quote from the Alaska Supreme Court describing the law:

> The law of self-defense is designed to afford protection to one who is beset by an aggressor and not confronted by a necessity of his own making. It must not be so perverted as to justify a homicide, which occurs in the course of a dispute, provoked by the defendant at the time when he knows or ought to reasonably know the encounter will result in mortal combat.

In large part, the comments he has received are about the concept of mortal combat and whether that is changed. Part of the legislation is codification into statute what the Alaska Supreme Court has already said the law of self-defense is. People should be held accountable for their violence and he had a list of 16 cases that, in his view, exemplified the need to change the law of self-defense. Two cases describe his frustration in meeting with family members and victims and saying he can't do anything. One case happened in July 1996 and involved Bosco Villa and gang activities. On this occasion Mr. Villa was carrying a gun because he knew that the gang members that were harassing him carried guns. Mr. Novak said Mr. Villa was in a car, and saw the gang members in another car and immediately started shooting. He shot into the car 15 times and killed one person. The reason he did that is to be the one that shot first. Under the law as it is now, the jury decided they could not hold him accountable and acquitted him.

A second case also demonstrates the problem. In August 1995, there was another gang shootout. Rival gangs on opposite sides of the street were shooting back and forth. A juvenile, Juan Ross just happened to be there and was killed by a shotgun slug. He wasn't able to charge anybody in that case, because they

couldn't prove who was shooting in self-defense and who started the situation.

If people think it's okay that no one has to be accountable in those kinds of cases, they don't need to change the law, but if they think there is too much violence, then the law needs to be changed to hold people accountable.

SENATOR OGAN said in the first case, it seems to him that there was a flawed jury more than a flawed law and in the second case, even if they had the self-defense law, they still couldn't tell who started shooting first.

MR. NOVAK replied that situations like the Bosco Villa case are not isolated. When the district attorney selects the best cases to try under this law, they lose. In the second instance, they were able to identify the shooters and it came down to Team A said the other guys started shooting first and Team B said Team A started shooting first. In these cases, the participants frequently have to be hunted down. These kinds of cases are fundamentally different than situations where someone breaks into a homeowner's house and the homeowner shoots the person to defend himself and his family. In that instance, the homeowner calls the police, they talk to the police, and the investigation is wrapped up quickly and no one is charged. Those are not the cases they are trying to get to.

SENATOR OGAN said he doesn't think it's okay for innocent people to die, but he has a serious concern over compromising what he believes is an inalienable right to defend oneself. He wants to look at other ways of achieving the goal without compromising the homeowner and suggested tying it to committing a felony, a gang activity or something like that.

CHAIR SEEKINS asked Mr. Novak to define the difference between a defense and an affirmative defense.

MR. NOVAK explained that under current law a defendant must introduce some evidence of self-defense and then he, as a prosecutor, has to prove beyond a reasonable doubt that the defense is not valid.

An affirmative defense is an excuse for the conduct. The accused needs to present evidence and prove it by a preponderance of the evidence. For instance, if he commits a homicide and claims insanity, then he would have to come in with evidence and prove it more likely than not that he was insane at the time. If he

wants to excuse his committing a homicide because he was under duress, he might say someone threatened to kill his child if he didn't kill this other person. He would have to prove that with a preponderance of the evidence.

CHAIR SEEKINS said it looked like it was guilty until proven innocent instead of the other way around.

MR. NOVAK responded that as a prosecutor, he would still have to prove that the person intended to kill a human being. It would be up to the accused to introduce evidence of the excuse.

CHAIR SEEKINS said in the previously mentioned case, it was assumed that the gang members committed murder and they would have to prove that they acted in self-defense versus the state having to prove that they didn't act in self-defense.

MR. NOVAK agreed that he would have to prove that person recklessly caused the death of Juan Ross. If he did that, the defense would have to introduce evidence proving it was self defense.

CHAIR SEEKINS said he believes there is a huge difference between this bill and existing law if you're being accused.

MR. NOVAK said he was anxious to clarify his comments for the committee and that the burden is currently is on the defense to prove some evidence of self-defense; it's not by a preponderance of evidence. Generally, the court will allow evidence of self-defense, but once it becomes an issue in a trial, it is often used to introduce all kinds of bad evidence about the victim. Often the jury sees the victim as a person not worthy of protection in the first place, and perhaps they are not worse off not having him around. He said, "That's really the problem."

He said it really would change the law, but these things go on and innocent people get killed. He submitted that this legislation tries to limit or give greater structure to what happens at trial.

SENATOR ELLIS asked him to provide the committee with the names and docket numbers for the other cases.

MR. NOVAK said he would be happy to do that and added that all the cases aren't charged.

SENATOR FRENCH remarked that he has lost self-defense cases and knows how tough it can be to talk to victims and victims' families about what happened. He asked what happens in the shootout cases when it can't proved beyond a reasonable doubt that someone wasn't acting in self-defense.

MR. NOVAK replied that when these things happen, if they can't proceed on a homicide, they look at other types of offenses - like whether drugs and guns are involved. They try to prosecute people even if they can't hold them responsible; they might become targets for other investigations.

SENATOR FRENCH asked about section 4 dealing with bringing a gun to a deadly encounter and whether it is right to assume that this is a codification of the Bangs case where the guy left the bar, came back with a gun, conducted a shooting and the Supreme Court said that under those circumstances it wasn't self-defense.

MR. NOVAK replied yes.

SENATOR FRENCH said he wasn't sure how this addresses the mutual shootout at a stoplight where there are two armed camps in two armed cars looking at each other and they start shooting. He asked what "brought a deadly weapon to an encounter" means.

MR. NOVAK replied that idea is about someone arming himself and going to a specific confrontation.

SENATOR FRENCH asked him about the shootout at a stoplight.

MR. NOVAK replied in that situation, those people would have the affirmative defense and would have to prove with a preponderance of evidence that they didn't go to this encounter with reckless disregard.

4:40 p.m.

CHAIR SEEKINS asked what happens if he, as a law-abiding citizen, has his handgun in the car with him and he comes to the stoplight and someone shoots at him and he shoots back. Does he have to prove that he didn't go to that encounter?

MR. NOVAK replied under that scenario, he didn't go to the encounter. The encounter came to him. This is about someone looking for a fight.

CHAIR SEEKINS asked about a situation where a woman has a gun permit because her estranged husband is threatening her. He questioned whether it would be assumed that she knew the encounter could result in deadly combat.

MR. NOVAK responded that he wasn't trying to duck the question, but the short answer is that she would never be in court. The police and prosecutor wouldn't charge her - assuming that he came to her and she had to act in self-defense.

SENATOR FRENCH asked him to explain the exceptions in self-defense on your own property versus domestic violence that happens on your own property, which he believes to be an affirmative defense.

MR. NOVAK replied that there are two exceptions to the rule for an affirmative defense. The first is if a peace officer is acting in his or her employment; the other exception, which is in current law, is if the shooting is on the person's premises and the shooter is not the initial aggressor and is not another household member. If someone breaks into your house and you shoot that person, you would use the traditional defense. The prosecution would have to prove that beyond a reasonable doubt and it would not be an affirmative defense.

SENATOR OGAN said when he had a union job he was threatened and was even in a building that was shot at. He and his employees felt threatened and everyone carried guns to work. He said he is struggling with the idea that under this statute it could be construed that he took a gun to a gunfight. To be comfortable with this, he would have to tie it to some other criminal behavior as an aggravator.

MR. NOVAK responded that he understands that and is trying to get at that, too. "All of us want to protect people's legitimate use of self-defense and yet do something about the level of violence."

He said that even under current law, if you can walk away from a situation, you have a duty to do that. Tying these actions to gangs has been discussed, but that is extremely difficult to do because nobody agrees on the definition of a gang. He has prosecuted "gangs" for seven years in Anchorage and has yet to have a judge find that Anchorage has a gang. He suggested trying to tie it to drugs and said he welcomed ideas to address those concerns.

MR. JIM McCOMAS, Anchorage Criminal Defense Attorney, said he had practiced for 24 years in three different jurisdictions. He started trying cases in Alaska in 1986. He is also the father of two boys and knows the situations kids can get themselves into these days. "My message to you is this: There is no need at all for the self-defense portion of this legislation."

He gave the committee a handout and referred to page 2 listing the exceptions that further limit the claim of self-defense and said the question of needing a new section for duals is not needed.

- Exception 1) takes care of it saying, "The force involved was the product of mutual combat not authorized by law.... You are excluded from self-defense under current law, if you engage in mutual combat."

MR. McCOMAS exclaimed that the prosecution is citing cases that they have lost and refusing to grant the legitimacy of what the jury decided.

TAPE 03-28, SIDE B

4:55 p.m.

He said that juries really make a concerted effort to find out what the facts show and the two cars at the stoplight are already excluded.

EXCEPTION 2) the accused provoked the other person's conduct with the intent to cause physical injury to them. This takes care of someone who goes looking for a fight.

He commented that Mr. Novak would be satisfied if everyone who went to trial was acquitted claiming self-defense.

EXCEPTION 3) the accused was the initial aggressor. This would cover Bosco Villa.

> So, what's the problem? The problem is that facts in a courtroom are contested otherwise there's a plea. When the facts are contested, the prosecutor has only told you his side of the story. There was another side to the story...that led a rational and dedicated jury to entertain reasonable doubts about her client's guilt based on self-defense. It's not as easy as saying,

'Well, here's the problem. We have people bringing guns and initiating violence.'

Under the rule, they wouldn't get a self-defense instruction if everyone agreed. On the other hand, if there was some evidence of each of the four elements of self-defense, which I'll talk about in a minute, the defendant doesn't have to just prove a little bit of self-defense. He has to satisfy each and every element by some evidence and then the traditional rule you've talked about where the burden is on the prosecution kicks in.

EXECPTION 4) you do have a duty to retreat unless you're in your own home. He was astonished to hear that no one in their own home got prosecuted and cited a case he defended in Kenai a few years ago where a young man was asleep in his own home when criminals tried to break in to his house, breaking through the glass in his wooden door. He fired in self-defense after seeing a gun in the hand of one. The jury acquitted him of murder one, murder two and manslaughter. Every grade of homicide was brought by the prosecution. When the judge asked the jurors how they felt about the verdict when he polled them, some stood and said yes, not guilty. An acquittal doesn't mean there has been an injustice. It means that the state's story has been disbelieved. That's what we want jurors to be able to do when the facts don't support them.

Another handout Mr. McComas had relates to elements to self-defense with the use of deadly force, but this change would affect the rules to regular self-defense, as well.

ELEMENT 1) the defendant has to actually believe that his life is in danger or be subject to certain specified felonies like rape or kidnapping and there has to be evidence in the record from which the court can infer that. If there is no evidence, there is no self-defense instruction. With some evidence, there is a dispute between the parties and then there is a self-defense instruction and burden on the state, because some evidence was presented.

ELEMENT 2) it doesn't matter if the defendant actually believed, if his belief was unreasonable - an important point. Reasonable is what self-defense law is all about. It makes sure that objectively unreasonable perceptions of danger don't get justified. On the other hand, if a battered woman is carrying a weapon, because her husband has threatened her life so many

times, she doesn't expect to encounter him, but she happens to. He goes into his pocket like he's pulling his gun and she knows he has a gun and she pulls out her gun and fires. Then, it's going to be for the jury to decide whether or not that was reasonable for her to take that action.

MR. McCOMAS pointed out an anomaly with the battered woman situation saying if the battered woman is in her home with a weapon where she would supposedly be under the exception, but the person who comes into the home is the ex-husband, he is a household member under the statutory definition in the new bill. She would have to prove an affirmative defense that she acted in self-defense.

ELEMENT 3) the necessity or threat that is perceived has to be imminent. It's not enough to know that tomorrow or the next day, that person will come to get you. If there's no evidence that a threat was imminent, there is no self-defense instruction. If there's contested evidence, the instructions are given and the jury decides.

ELEMENT 4) the accused used only necessary force. A lot of self-defense cases come down to excessive force. If you get hit in the face with a hand and take out a gun and shoot the person nine times, that is excessive force.

He reiterated that even the examples raised by the prosecution are adequately dealt with in existing law. The only thing they don't like is the result of 10 out of 16 of the cases. In the example they gave of two groups of armed people shooting at each other and they couldn't prosecute anyone for homicide, he couldn't understand why they didn't indict both groups on a mutual combat theory. Then it doesn't matter who shot first.

MR. McCOMAS concluded saying that self-defense is probably the most basic conscious action a person can take. "Any form of life tries to protect itself."

He said SB 170 would be a radical change. "It changes the burden of proof and that could make a substantial difference...."

Senator Ellis's point about looking at the 16 cases Is good. He cited an incident that happened in Anchorage that resulted in an acquittal and juror #4 called him afterwards and said, "Thank you very much for the work you did in Mr. Lockhart's case. You have restored my faith in the justice system."

> Jurors are the ones that we need to make decisions about when the use of force is justified or not and it wouldn't be fair and it wouldn't be right to shift the burden that's worked so well for so long.

SENATOR OGAN said he is troubled with Senator French's statement that a prosecutor seeks justice and a defender wants to get their clients off. He feels that we are not like Mexico where you either get off or pay the bribe. We have a Bill of Rights and he feels that justice is being fair. The defense plays an important role in making sure that people's due process rights are intact.

5:10 p.m.

SENATOR FRENCH explained what he means is that the two roles are not equal. There is frequently a mismatch in the missions of the two individuals. "The prosecutor is seeking justice and the defense has an unswerving obligation to that client. If that produces an acquittal, so be it - from the perspective of the defense."

MR. McCOMAS responded that the basic thing they are talking about is:

> ...The state has all the resource advantages - they get to investigate the case before there's ever a defense lawyer; they've got the grand jury they can use. That's why they have the burden of proof in our traditional system. What the defendant gets once he's hauled into court and accused is he gets procedural rights. One of those is that he is presumed innocent and another is that he can hold them to their burden of proof.

CHAIR SEEKINS thanked him for his testimony.

MS. MEG SIMONIAN said she used to be a public defender and now she does civil work. She came here because the provisions in this bill are very disturbing to anyone who cares about our constitution and the rights that go along with being charged with a criminal offense in this state. She said the self-defense issues were covered very well in previous testimony and she wanted to cover other areas that are equally concerning.

Section 6 talks about changing the district court rule that allows a family member to contact an attorney and have that attorney come to the aid of someone who is being interrogated by the police. She pointed out that it is very rare that an attorney barges in on a police questioning. The reason is that public defenders that handle most cases in our criminal justice system can't do that, because you have to be appointed by the court before you can insert yourself into any sort of investigation. Where it could logically happen is with a juvenile defendant or someone who is mentally ill or incapacitated in some other way and who has contacted their family asking them what they should do and the family gets a lawyer. This change would prohibit the lawyer from talking to that incapacitated person, which is problematic on lots of levels. While she hadn't had a chance to research the example Mr. Novak used, she thought it was dangerous to start legislating based on anecdotes, especially when they are talking about the right to counsel and the waiver of your Miranda rights, especially when dealing with young people who are charged with crimes.

It is also very dangerous to hope that the police department or the prosecutors involved in those sorts of situations are going to have the presence of mind to put aside their roles to get to the bottom of the matter, although they are trying to do that. "It's a change that's not necessary and it could have some pretty significant ramifications in situations that I don't think anybody would want them."

Section 15 talks about habitual offenders getting lighter sentences by challenging old convictions. In the Governor's transmittal letter, it appears they are suggesting that what is happening at sentencing hearings is that prosecutors are having the onerous burden of going back and finding out these prior convictions are really valid and that people are getting lighter sentences because of it, which she thought was a stretch of what was really going on.

In most cases like this, there is an out-of-state conviction and the question is whether it is going to trigger a presumptive sentence. It's often figured out in the course of negotiating the sentence, because if the statute is not a felony in Alaska, it can't be considered that for the purposes of sentencing here. That was the will of the legislature.

Section 15 would take away the ability to make sure that that would be a felony in Alaska and the only things that can be

attacked are whether or not you were denied the right to counsel or whether or not you had the right to a jury trial. That would, in some ways, be subverting the intent of the Legislature, because the purpose of the presumptive sentencing is to make sure that people who are prior felons are treated more harshly under our statutory scheme.

SENATOR FRENCH said he agrees with her, but he doesn't look at this bill as taking away the judge's fact-finding role of deciding whether or not that conduct is an Alaskan felony. He believes it is a way of reducing the haggling over whether the guy got due process when he was convicted somewhere else.

MS. SIMONIAN replied it is an open question.

She said that Section 7 overrules the Ostland case (as per the transmittal letter). She encouraged the committee to read the case and said that she is also a member of the Criminal Pattern and Jury Instruction Committee, which is made up of judges, prosecutors and defense attorneys from across the state. They have been dealing with the Ostland decision, which says unless the prior conviction is relevant for the case at hand you should go to a bifurcated trial. However, a bifurcated trial does not mean two trials (a comment by Mr. Novak); it means that the prosecutor presents the evidence, the jury makes a decision based on that evidence and they come back in. Then the judge reads an instruction about the prior crime - the element that makes it a felony.

> The Ostland decision is very good in pointing out that we don't want our juries making decisions based on what someone has done bad in the past if it's not relevant to the conduct at hand.

This case is not a procedural nightmare and she knows that from her participation on the Jury Instructions Committee. Tomorrow they will discuss a simple instruction that will be used in the DWI cases, theft cases and felony in-possession cases to deal with the bifurcation issue without any second trial.

SENATOR OGAN asked her to provide them a copy of the decision.

MS. SIMONIAN said she would do that and continued with section 8-11 dealing with a change in granting immunity.

> I understand prosecutors' frustration when they have a case that's going to trial and they have a key witness

who comes in and says, 'I'm asserting my Fifth Amendment privilege.' The problem is that it's unconstitutional to say that you have to tell a prosecutor what your Fifth Amendment privilege is.

That was decided in Gonzales. Our supreme court said that under the Alaska Constitution, you cannot make somebody testify or even talk about crimes that they have not been prosecuted for.

The federal system has no such provision that will allow a prosecutor to come into a room and listen to a witness or a witness's attorney to talk about criminal exposure - telling them what they have done wrong, that they are afraid they could be prosecuted for.

SENATOR OGAN asked if they couldn't use that as the evidence.

MS. SIMONIAN replied that that is an interesting question. It has been said that they can't use what that attorney said to them, but they can take what was said to them, investigate it through an independent source and develop a case in a way that is based on what was said in that room against that person.

That is what the Gonzales decision talks about - it's any link in the chain. That's our term of art that we talk about.... You just can't legislate away that constitutional right to not have to incriminate yourself, whether through your attorney or through anybody.... As a defense attorney, looking at that decision, I would not participate in that hearing. I would not allow my client to participate in that hearing. I would just say he or she is asserting his Fifth Amendment privilege, because once that cat's out of the bag, there's no getting it back.

She explained that the federal system deals with granting immunity all the time and they don't have a provision that allows the U.S. Attorney to come into a hearing if someone is revealing potential criminal exposure based on things they have done in the past.

5:25 p.m.

SENATOR OGAN asked if in a closed door meeting with the judge, an astute defense attorney could, have his client admit to a crime so that he couldn't be prosecuted for it.

MS. SIMONIAN replied that she doesn't believe that is how it works. That would be an ineffective defense attorney and that provision means they can't use the attorney's statement as evidence against the person. Evidence that has been established independent of that statement could be used.

SENATOR OGAN asked if an attorney could be disbarred for getting that information in a closed door session and then going to his buddy, the police chief or whoever and telling them what he heard.

MS. SIMONIAN replied there are some potential issues there, but she believes the change to the law is that what is said in that room can't be used against the witness. It doesn't mean that it can't be developed and charged independently.

SENATOR OGAN asked if disciplinary action could be taken if the prosecutor leaked that information to someone who would develop the case.

MS. SIMONIAN replied it isn't black and white ethically, because of the way the statute reads.

Section 21 deals with the defense causing delays by giving late notice of defenses. The rule currently requires defendants to give notice of an affirmative defense 10 days before the trial begins. The change would make it 30 days, which she doesn't have a problem with. However, the problem is that the language precludes a defense if it is given less than seven days before trial.

> That has constitutional problems in and of itself because it's taking away from a defendant a right to a defense presumably because their attorney didn't get it together in enough time to give notice of the defense on time. When you look at court rules, there's no other absolute preclusion rule. When you deal with a discovery violation...it's often perpetrated by the prosecutors. Your remedy is usually a continuance and the judge gets to decide if this behavior is so bad that it requires a preclusion or a continuance....
>
> This is the strongest remedy and it only applies to defendants. This isn't a remedy a defendant can use against the state when the state violates the discovery rules that are in a different subsection of

> the same rule and it implicates their right to defend themselves, which is fundamental.

Section 24 deals with domestic violence and adds a new exception to the hearsay provision. The stated reason is this will allow the state to paint a full picture in domestic violence cases for hearsay.

> The hearsay evidence rule allows exceptions and there's a big long list of them, but the reason that there's exceptions in the book is because there is some other reliable [indisc] about them, because it's a business record and it's always kept that way. It's not a court statement and that makes it hearsay, but nobody is making up this record because it's done this way every day in this business in order to help this litigation. Or an excited utterance - because you are saying something in such an upset state of mind that it has an additional [indisc] that you wouldn't be making this up, because it's done in that context.

She can understand why domestic violence cases are difficult to prosecute, because there is a lot of abuse of the system in those cases. This rule would allow anybody to say anything that was said either 24 hours before or 24 hours after the alleged domestic violence.

> One of the fundamental tenets of our criminal justice system is you have a right to confront the witnesses against you and this rule effectively takes that away.... That's very problematic because of the constitution and it's very problematic because of messiness that's involved in these cases on both sides of the tables.

MS. SIMONIAN said she doesn't think this bill is to correct injustices with the exception of the consecutive and concurrent sentences provision, which she thought is a disputed and gray area.

SENATORS OGAN AND FRENCH said they appreciated her testimony.

MS. LINDA WILSON, Deputy Director, Alaska Public Defender Agency, said that their questions are very insightful and they are right on target with all of the issues in the bill. She noted that the proponents of the bill spent two or three hours

and she had an hour of testimony. It is a huge bill that needs long and careful consideration.

5:35 p.m. - 5:38 p.m. - at ease

CHAIR SEEKINS thanked Ms. Wilson for agreeing to deliver her testimony at another time.

MS. LUCILLE FREY, Mat-Su Property Owners, supported the testimony of Meg Simonian and encouraged them not to pass this bill.

MR. NOEL WOODS, Matanuska Valley Sportsmen, said he has very serious concerns with this bill, particularly with the way it would affect the 99 percent of Alaskans who are law-abiding citizens and have concealed carry permits. He endorsed the comments of Mr. McComas and Ms. Simonian.

MR. VERN RUPRIGHT, Wasilla resident, said this bill is stripping away defenses that people enjoy as members of a free society. People expect to be able to protect themselves from third persons.

TAPE 03-29, SIDE A

5:46 p.m.

MR. RUPRIGHT said this would change the entire concept of a citizen's right to defend themselves and their family in their home. Regarding a person invoking the Fifth Amendment and allowing the prosecutor to hear the testimony, he thought that would also be a tremendous waste of the state's resources. Senator Ogan's question about how this change would affect the younger defendant who was talking to the police was also a good point.

MS. CARMEN GUTIERREZ said she has been a practicing criminal defense attorney for the last 22 years. The reason she's testifying is that Mr. Novak is using the case of State of Alaska versus Bosco Villa as an example of why the self-defense laws need to be changed. She was Mr. Villa's attorney during the trial that took place in Anchorage before Judge Milton Sudor in 1997. She stated that Mr. Novak misrepresented the facts of the case in four important respects.

> First, Mr. Villa was not a member of a gang. Secondly, Mr. Villa did not seek out the decedent and force a

> confrontation. Third, Mr. Villa was not in a car at the time of the shooting. Lastly, Mr. Villa was armed with a weapon, but he was armed with a weapon because for two years prior to this incident, he had been the victim, as well as his family and a close friend, of basically a campaign of terror that had been committed by this group against Mr. Villa, his family and his close friends.

The evidence in this case was submitted during a trial and the jury heard the following testimony.

> Mr. Villa was a graduate of East Anchorage High School; he was on the honor roll at the time he graduated. He had absolutely no criminal history as a juvenile or as an adult. Upon his graduation, he went to work and about a year and a half after he graduated from high school, his brother had an encounter with a group of young men who considered themselves to be a member of a gang, which is called "Down To Kill."

There was an encounter at a grocery store in Anchorage where words were exchanged between the brother and the group. Mr. Villa's brother went outside the grocery and was followed by his friend. One of the members of the gang shot and killed his friend. As a result of his relationship with his brother, a group victimized him and his family, his parents, his girlfriend, his child, and a close friend for two years. Before the shooting took place in 1996, a member of the group again threatened Mr. Villa at gunpoint. Mr. Villa and his family were the victims of a drive-by shooting that was related to the gang and a bullet was lodged in his baby girl's room. A member of the gang fired a gun at Mr. Villa several months later while he was at a movie theatre. All the incidents were reported to the police.

Finally, the police took action and arrested two members of the gang after his friend, Franco, was shot seven times while in the driveway of his home. Six months later, one of them fled the state and was never brought to justice and the other man who is actually the decedent in the case referred to by the state was arrested and released on bail. His sentence was pending when he was shot by Mr. Villa in July 1996. Because Mr. Villa had no faith at all that the system could guarantee his safety, he bought a handgun and he was not in a car, but rather in a neighborhood in Mountain View with some friends playing with a dog when a gang member drove up to him. He tried to run away and

they followed him. When he heard one of the individuals in the car say words to the effect of get your guns, Mr. Villa, who had his weapon on him, turned and fired 14 - 15 shots in the car.

> This incident took place because Mr. Villa felt at that point, given the two-year history of violence that he had personally witnessed, and heard and seen his friends and family witness, felt he had no other recourse, but to defend himself.

She said those are the actual facts of the case.

> When the state uses this case as an actual example of the 16 cases where it claimed the law as it stands now has resulted in an injustice, if the Villa case is one of its best examples, I would encourage the committee to examine the 16 other cases.

CHAIR SEEKINS thanked her for her testimony and said they would hold the bill for further work. There being no further business to come before the committee, he adjourned the meeting at 6:00 p.m.