

NO. 2

HB

February 17, 1969

Honorable Terry Miller, Chairman  
Senate Judiciary Committee  
and  
Honorable Barry Jackson, Chairman  
House Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska 99801

H B 127

Gentlemen:


Your committees, meeting jointly, are considering legislation that would establish a public defender system in Alaska.

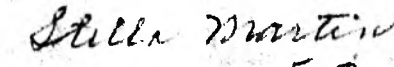
Please be advised that the Juneau Camp of the Alaska Native Brotherhood (ANB) and the Alaska Native Sisterhood (ANS) strongly endorses this and urges favorable action by the joint committees. We elect not to enter into the specifics of such legislation as we feel confident that other proponents will discuss the technical and legal aspects of the bill with the joint committees.

While you may be assured that the Juneau Camp expresses its' own desires, you may be equally assured that we feel we speak in the best interests of the natives of Alaska.

Not only would this be desirable for all natives, but the impact of implementing such a system would be tremendous for all persons, irregardless of ethnicity. We therefore urge that this be enacted and due consideration be given to establishing an office in each judicial district of our state.

Respectfully yours,

  
James J. Austin, Jr.,  
President - Juneau ANB

  
E. O.  
Mrs.) Stella Martin  
President - Juneau ANS

Joint Senate-House Judiciary Committee Hearings

Senate Bill 7  
Senate Bill 43      The Public Defender Act  
House Bill 127

February 17, 1969

1. Les Miller                      President, Alaska Bar Association
2. Representative of the Fairbanks Bar Association
3. Fred Miller                      Ketchikan Bar Association
4. Jim Bradley                      Juneau Bar Association
5. Bob Erwin                      Anchorage Bar Association
6. Jim Hornaday                      Kenai Bar Association
7. Stan Howitt                      Ex. Secretary, Alaska Bar Association
8. Kenneth Wells                      Public Defender, City of Sacramento, California
9. Dick Reagan                      Legal Services Corp.
10. Representative of the Alaska Native Brotherhood
11. Lou Dischner                      Teamsters Union
12. Don Dickey                      Alaska Chamber of Commerce
13. Duane Carlson                      AFL/CIO
14. Henry S. Pratt                      Alaska Bar Association

SUGGESTED AMENDMENTS TO SENATE BILL 43

BY THE ALASKA BAR ASSOCIATION

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Page 1, Line 27

After the word "council" insert the following new language: "The decision of the judge concerned shall be made within 60 days after receipt of the council's recommendation."

Page 2, Line 10

After the word "remove" delete "as many".

Page 4, Line 4

After the word "other" delete the word "may", and insert the word "shall".

Page 4, Line 24

After the word "defendant" delete "or other indigent person".

Page 4, Line 26

After the word "representative" delete the word "him" and insert the words "the defendant person".

Page 5, Line 1

Delete the word "other" and insert "agencies, as ordered by the court."

Page 5, Line 4

Between the words "may" and "contractor" insert the following: ", on approval of the presiding judge of the judicial district where the private attorney resides,"

Page 5,

Add new sub-section (c)

"A person receiving assistance under this Chapter shall be advised of his responsibility under this section, and shall at the conclusion of his representation hereunder, be advised of his exact financial obligation."

Add new sub-section (d)

"The extent of a person's financial obligation under sub-section (c) above, shall be determined by the Public Defender."

Re-number remaining sections to remaining sub-section.

Page 6

Insert new sub-section (1) to read:

"Agencies" means the public defender agencies created hereunder.

Re-number succeeding sub sections.

ESTIMATED NUMBER OF CRIMINAL APPOINTMENTS  
AND TIME SPENT THEREON BY MEMBERS OF THE  
ANCHORAGE BAR ASSOCIATION

1. Supreme Court - 1968

- A. Written opinions - 24 indigent criminal appeals
- B. Original applications - unknown
- C. Estimated time spent in preparation and argument to Supreme Court 75 - 100 hours each
- D. Estimated number of lawyers involved in appeals:
  - 40 on appeals alone
  - 20 on original applications
- E. Compensation awarded by court:
  - \$10.00 per hour on research
  - \$15.00 per hour on court appearances
  - 100 hours - approximate fee: \$1,050.00
- F. Minimum Bar Fee Schedule:
  - \$1500.00 minimum
  - \$35.00 per hour rate for all
  - 100 hours approximate fee - \$3,500.00

2. Probate Courts

- A. Sanity cases 1968 - 27
- B. Estimated time spent per each case: 3 - 5 hours
- C. Estimated number lawyers involved: 27
- D. Compensation awarded by court: \$25.00 for each court appearance
- E. Minimum Bar Fee Schedule - \$35.00 per hour.

3. United States Commissioner and United States District Courts

- A. Total 1968: unknown  
Average: 1-2 per each member of bar based on examination of appointment book in United States Clerk's Office.
- B. Probation revocation and minor crimes not compensable by United States, so requests for representation made by Judge to serve without compensation and no statistics kept.
- C. Estimated time spent on each:
  - 10 - 15 hours to enter guilty plea where no contest entered.
  - 20 - 50 hours for ultimate change of plea in contested cases
  - 50 - 100 hours for trial case.
- D. Court compensation
  - \$10.00 for out of court time
  - \$15.00 for in court time
- E. Minimum Bar Fee Schedule: \$35.00 per hour.
- F. Estimated number of lawyers involved: all private practitioners in Anchorage Bar.

4. State District Courts and State Superior Courts.

- A. Total 1968: unknown; average 3 - 4 for each member of bar, based on examination of criminal appointment book in District Court Clerk's Office.
- B. Question whether juvenile cases are also noted in book and if not, estimated additional 1 case per each member of Anchorage Bar in private practice.
- C. Estimated length of time spent on each criminal case:
  - 8 - 12 hours on each uncontested plea of guilty (arraignment District Court through plea in Superior Court)

4. State District and State Superior Court Continued:

12 - 40 hours on each contested plea of guilty.

40 - 150 hours on each case where trial takes place.

Estimated length of time on each juvenile case: 6 hours.

D. Court compensation:

\$10.00 per hour out of court time

\$15.00 per hour in court time

E. Minimum Bar Fee Schedule:

Depends on crime and \$35.00 per hour.

5. Estimate of normal time spent yearly for each member of Anchorage Bar in private practice on court appointments where matter uncontested:

Supreme Court	1 case	45 hours
Probate Court	1 case	4 hours
United States Courts	1 case	20 hours
State Superior and District Court	3 cases	30 hours
Juvenile Court	1 case	6 hours
	<b>Total</b>	<b>105 hours</b>

(American Bar Association recommends that each lawyer attempt to obtain 6 chargeable hours per day. On such a basis, this amounts to  $17\frac{1}{2}$  days a year or approximately  $\frac{3}{4}$  of a month.)

6. Estimated time where a contested matter is handled. (It is a consensus of opinion that each member would have at least one contested guilty plea each year):

45 hours  
4 hours  
20 hours  
50 hours  
6 hours

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125 hours

Total time approximately 21 days a year.

7. Estimate of time where there is one trial matter (this would be true for a majority of the members of the bar):

45 hours  
4 hours  
20 hours  
120 hours  
6 hours

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195 hours

Total time approximately 33½ days a year.

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ALASKA BAR ASSOCIATION

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ANCHORAGE, ALASKA 99501

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ANCHORAGE, ALASKA 99501

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ANCHORAGE, ALASKA 99501

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February 11, 1969

Representative Barry W. Jackson, Chairman  
Alaska State Legislature  
House Judiciary Committee  
State Capitol  
Juneau, Alaska

Re: Public Defender Bill

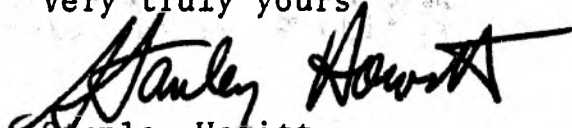
Dear Representative Jackson:

Mr. Kenneth Wells has agreed to testify on behalf of the Public Defender Bill and will be representing the National Legal Aid and Defender Association. Mr. Wells is the public defender for Sacramento, California.

We hope that his appearance will aid the judiciary committees in their evaluation of a public defender system for Alaska.

I will also be at the hearing.

Very truly yours,



Stanley Howitt,  
Executive Director and  
State Bar Counsel

SH:sb

WILFRED G. STUMP  
ERNEST E. BAILEY

PHONE CANAL 5-4131

**STUMP & BAILEY**  
ATTORNEYS-AT-LAW  
BOX 2693  
314-317 COMMERCIAL BUILDING  
KETCHIKAN, ALASKA

Feb. 11, 1969

Mr. Terry Miller  
Chairman, Senate Judiciary Committee  
State Legislature  
Juneau, Alaska 99801

Barry Jackson  
Chairman, House Judiciary Committee  
State Legislature  
Juneau, Alaska 99801

Gentlemen:

The Ketchikan Bar Association will have representation before your Joint Committee hearing on the proposed "Public Defender" bill which will be held at 7 p.m. in the Superior Court room, State Building, February 17th, 1969. It will be Mr. A. Fred Miller.

If there is any change in this hearing, would you please notify us at once as he will depart from Ketchikan on the 16th.

Sincerely yours,

STUMP & STUMP

BY:   
W. G. Stump

WCS:pm

cc: Senator R. H. Ziegler, Sr.  
C. L. Cloudy  
A. Fred Miller

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

BOX 1149 - JUNEAU 99901



H 136

March 17, 1969

The Honorable Irwin L. Metcalf  
House of Representatives  
Pouch V  
Juneau, Alaska

Dear Representative Metcalf:


Re: H.B. 136

The Department of Labor supports H.B. 136.

This legislation would allow the Alaska Department of Labor to furnish information obtained in administering the unemployment insurance law to the Alaska Department of Revenue in order for the Department of Revenue to administer the Alaska Revenue Act. At present this information is furnished to the U.S. Internal Revenue Service. The Department of Labor and the Department of Revenue are charged with the responsibility of collecting taxes. In fulfilling this obligation, information is obtained by both departments. A free interchange of information between the departments for legitimate purposes would increase the efficiency and effectiveness of required tax collections within the State.

It is my understanding that the House Labor Management Committee changed the language of H.B. 136 to limit the Department of Revenue's use of information to tax purposes only. The Department is in accord with that change. The purpose of this interchange of information is only to more effectively administer the collection of taxes as required by law.

Very truly yours,

  
William K. Jermain  
Deputy Commissioner

WKJ:eb

IN REPLY REFER

TO 5.03  
13.1

U.S. DEPARTMENT OF LABOR  
BUREAU OF EMPLOYMENT SECURITY  
Regional Office  
1911 Smith Tower Building  
Seattle, Washington 98104

UNITED STATES EMPLOYMENT SERVICE

UNEMPLOYMENT INSURANCE SERVICE

December 18, 1968

Alaska Dept. of Labor

RECEIVED

DEC 19 1968

Employment Security Division  
JUNEAU  
EXECUTIVE DIR.

Mr. Stuart H. Bowdoin  
Director  
Employment Security Division  
P. O. Box 3-7000  
Juneau, Alaska 99801

Dear Mr. Bowdoin:

This letter will confirm the information given to Assistant Attorney General Vernon Snow during Mr. Johnson's recent visit to your agency concerning a proposed amendment to the Alaska Employment Security Act to permit the release of information to the State Department of Revenue to assist in the collection of other State taxes.

Although section 303(a)(1) of the Social Security Act prohibits public disclosure of information obtained from claimants and employers on an unrestricted basis, disclosure to another agency of the government is permitted provided that further disclosure by that agency will be made only to the extent necessary in the discharge of its official responsibility under the State law. If the proposed amendment to section 23.20.110 is adopted, your agency should have an agreement with the Department of Revenue that it would limit its disclosure to the discharge of its responsibility under the Alaska law.

The Department of Revenue should also be advised that since the furnishing of information to that Department is a use of unemployment compensation records for a purpose other than administration of the State unemployment compensation law, the administrative costs of furnishing such information must be paid out of general funds rather than funds granted under Title III of the Social Security Act.

Sincerely yours,

Clinton A. Johnson  
Regional Administrator

By Richard C. Buschman  
Richard C. Buschman

*Feb*

*Bob Leather*  
*ESC*

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 136

House Bill No. 136, introduced at the request of the Governor, and supported by the Department of Labor and the Department of Revenue, will enable the Department of Labor to disclose information held by the Employment Security Division to the Department of Revenue to assist it in collection of state taxes. The bill would not conflict with Federal restrictions on the use of this information, which is already being furnished to the Internal Revenue Service for a limited tax purpose.

The Judiciary Committee amendment would limit the use of the information to tax purposes. The Department of Labor supports this change as in keeping with the intended purpose of H.B. 136.

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Barry Jackson, Chairman



*File  
HB 150*

**District Court  
State of Alaska**

POUCH U, STATE CAPITOL BUILDING  
JUNEAU, ALASKA 99801

March 3, 1969

Honorable Barry W. Jackson  
Chairman, Judiciary Committee  
House of Representatives  
Juneau, Alaska 99801

Re: Civil Statistics Juneau District  
Court

Dear Mr. Chairman:

Attached please find the statistical information requested during your deliberations on H.B. 150 during your February 24, 1969 committee hearings. These statistics are the results of extracting 200 of the 391 cases filed in 1968 in the District Court at Juneau.

If further information is necessary please advise me.

Very truly yours,

*Bruce Monroe*

Bruce Monroe  
Presiding District Judge

# Memorandum

Alaska Court System

TO: [ Honorable Bruce Monroe  
Presiding District Judge  
Pouch U, Capitol Bldg.  
Juneau, Alaska 99801

DATE : February 27, 1969

FROM: Mary Jo Jeans  
Deputy Clerk  
Pouch U, Capitol Bldg.  
Juneau, Alaska 99801

SUBJECT: Civil Filing Breakdown

<u>AMOUNT:</u>	\$100.00	\$100.00 to \$500.00	\$500.00 to \$1000.00	\$1000.00 and Over
<u>FILING</u>	55	116	19	10
<u>PERCENT</u>	27.5%	58%	9.5%	5%

The above is a breakdown of 200 civil cases from 1968.



HB-150

**District Court**  
**State of Alaska**

POUCH U, STATE CAPITOL BUILDING  
JUNEAU, ALASKA 99801

February 24, 1969

Representative Peter M. Deveau  
House of Representatives  
Pouch V, Capitol Building  
Juneau, Alaska 99801

Re: Small Claims Court  
Appeal Statistics

Dear Representative Deveau:

Thank you for your telephone call and inquiry of this date concerning the number of appeals taken from this Court in small claims matters. A search of the records of both District Court and Superior Court at Juneau reveals there have been no appeals since January 1, 1967 until this date. Records prior to January 1, 1967 were not examined.

I hope this information satisfies your needs. If I may be of further assistance, please contact me.

Yours very truly,

*Bruce Monroe*

Bruce Monroe  
Presiding District Judge

cc: The Honorable  
Thomas B. Stewart  
Presiding District Judge

CALL & HAYCRAFT  
ATTORNEYS AT LAW  
ROOM 210, NERLAND BUILDING  
FAIRBANKS, ALASKA 99701

HB 164

DAVID H. CALL  
KENNETH C. HAYCRAFT, COL. (RET.)

TELEPHONE  
452-2211  
452-2296

February 25, 1969

Representative Barry Jackson  
State Legislature  
Juneau, Alaska

IN RE: House Bill 164

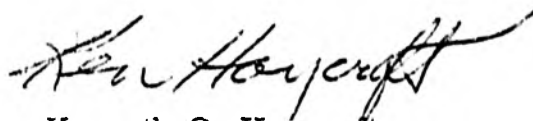
Dear Barry:

This is to ask you as a representative of Interior Alaska to oppose passage of House Bill 164. We have had Daylight Savings Time for one year only, but I think most people found it desirable. I should like to add my voice to those who think it is important to all forms of youth activity, particularly baseball, that we have the extra hours of sunlight in early June and August that are provided by Daylight Savings Time. Scheduling youth baseball is indeed difficult without it.

I am sure you will hear from many people as to other advantages of Daylight Savings Time such as in the field of transportation, and I will agree with them that it is desirable from many viewpoints. I urge a continuance of Daylight Savings Time to facilitate youth athletics in the Fairbanks area.

Sincerely yours,

CALL & HAYCRAFT



Kenneth C. Haycraft

KCH:gb

cc: William Cartwright,  
Alaska National Bank

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 179

This bill would establish qualifications and training for police officers in Alaska through the creation of a Police Standards Council. The bill follows the provisions of the Model Police Standards Council Act very closely.

When a person calls the police he has the right to hope that a well-trained, skilled and reliable man will answer the call. In some areas of Alaska today that hope may not be justified. Standards of police employment, and the actual practices of hiring, vary widely, and there is no uniform requirement of training.

The law enforcement officer is responsible for the protection of life and property and for the enforcement of laws and ordinances. He must know the law of arrest and of searches and seizures. He must be skilled in first aid and life-saving techniques. He should possess investigative ability, including good powers of observation, and the sense to interpret his findings and make an effective factual presentation, in order to command respect for law and order, he has to have general intelligence, emotional stability, good judgment, and the ability to handle complex situations under emergency conditions. We certainly expect him to possess good moral character and a high degree of physical fitness. In brief, he is expected to be a living example of all that is good within our society.

We require training and set standards for our physicians, attorneys, teachers, embalmers, beauticians, and barbers. It is time we did the same for our police.

Specifically, this bill creates a council containing representatives of the federal, state and local governments. The council will adopt regulations governing police training and certification, and will provide training programs. Presently employed officers may continue in employment. Some federal funds are available for the functions contemplated by this bill on a matching basis, and the bill provides for a sharing of funds by local governments to reimburse expenses invoked in police training programs.

There are 23 states having statewide police standards legislation, of which 7 are modeled on the prototype of the present bill.

Berry Jackson  
Chairman  
House Judiciary Committee

**MEMORANDUM****State of Alaska**

TO:  Honorable Barry Jackson  
Chairman House Judiciary Committee  
Sixth State Legislature

DATE : March 20, 1969

FROM: <sup>now</sup> Lieutenant G. O. Williams

SUBJECT: My Testimony Relative  
to SB 179

This memorandum is submitted to the committee pursuant to your request.

I will not address myself to the question of the funds which will be available for police officer training under the Omnibus Crime Bill. Mr. Rick Lauber of the Governor's Crime Commission will discuss this subject.

In my testimony, I stated that there were numerous federal grants which were becoming available for the training of law enforcement officers. Funds for police training under the Omnibus Crime Bill of 1967 may be wholly conditional to the passage of a Police Standards and Training Act.

Legislation of this type is essential to the coordination of grant applications for federal funding under a variety of programs. During 1968, the Department of Public Safety applied for and received federal funding for the following projects which had an important training component.

NEW CAREERS - \$125,000 program funded by the U. S. Department of Labor which provided for a 14-week training program for police and correctional aides in the Division of Corrections and the Department of Public Safety. Invitations to participate in the program were extended to all municipalities.

VOCATIONAL EDUCATION - \$10,000 program funded by the State Department of Education which provided books, training materials and training equipment for the State Trooper Academy.

We are currently awaiting final approval of the following projects which have been funded under the Highway Safety Act.

BREATHALYZER TRAINING - A program which will provide the transportation, maintenance and training expenses for municipal and state police officers to qualify them in the supervision of breathalyzer testing programs.

M E M O R A N D U M

Honorable Barry Jackson  
Chairman House Judiciary Committee  
Sixth State Legislature

March 20, 1969

Page two

POLICE TRAFFIC SUPERVISION - A program which will provide the transportation, maintenance and training expenses for municipal police traffic supervisors to train them in the advanced techniques of traffic accident investigation and traffic enforcement.

EMERGENCY MEDICAL CARE - A program which will provide the transportation, maintenance and training expenses for 100 volunteer and professional firemen, policemen and other personnel engaged in the transportation of sick or injured persons. The training will encompass advanced first aid and emergency rescue procedures.



**CITY OF JUNEAU | ALASKA'S CAPITAL CITY**

155 SOUTH SEWARD STREET | JUNEAU, ALASKA 99801

March 19, 1969

The Honorable Barry Jackson, Chairman  
House Judiciary Committee  
Alaska State Legislature  
Pouch V - State Capitol  
Juneau, Alaska 99801

Dear Representative Jackson:

I have received your letter of March 17, 1969, concerning House Bill 179, which is presently before your Committee. The purpose of the Bill, establishing an Alaska Police Standards Council, was discussed with Chief Wellington and he has informed me that as a police administrator, he feels the Bill is necessary in order to upgrade the qualifications for individuals desiring to be employed as police officers within the State of Alaska.

At the present time, there are no minimum qualifications for the individual, or standards set for the training he should receive. As a result of this, some cities have no standards or training for their officers. Of course, as an elected official, I can see the danger in this. The citizens of that particular community are going to suffer as a direct result of unqualified, untrained officers handling the police functions in their area.

Here in Juneau, I think we are fortunate that our Police Department has set standards for recruitment and also has taken the initiative to provide training, which is acceptable, but far from being the ultimate answer.

I definitely feel that the cities should not relinquish any power to a State board, but after reviewing the proposed Bill, five of the nine member committee will be representatives of local government, and this should be the safeguard that the cities will need in order to insure that programs are not pressed upon them which they are financially unable to meet.

For years, different professions throughout the State have been regulated by State boards' rules and regulations, and I think it is important that some minimum

The Honorable Barry Jackson

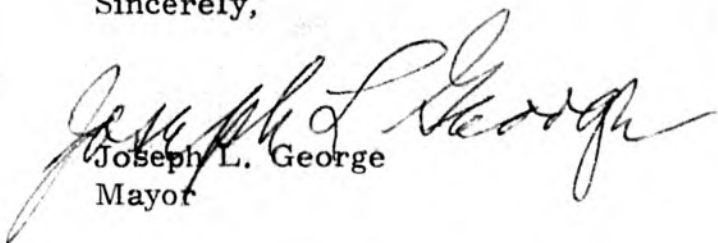
March 19, 1969

Page 2

standards be set for the recruitment and training of our police officers. Therefore, I am generally in favor of passage of House Bill 179.

Thank you very much for giving me the opportunity of making these comments to you.

Sincerely,



Joseph L. George  
Mayor

JLG/kh

# STATE OF ALASKA

## OFFICE OF THE GOVERNOR

CRIMINAL JUSTICE COMMISSION

March 24, 1969

KEITH H. MILLER, GOVERNOR

GOLDSTEIN BUILDING  
POUCH AJ - JUNEAU 99801

The Honorable Barry W. Jackson  
Chairman, House Judiciary Committee  
Alaska State House of Representatives  
Pouch V  
Juneau, Alaska 99801

Subject: HB179

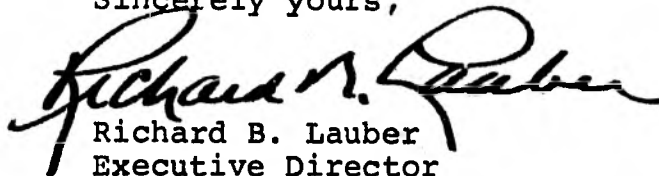
Dear Mr. Chairman:

The Omnibus Crime Control and Safe Streets Act of 1968 makes provision for federal assistance to states and units of local government for academic educational assistance. By grants and loans to law enforcement personnel, an effort is being made to upgrade the educational level of those presently engaged in law enforcement.

While the Governor's Planning Council on the Administration of Criminal Justice has not as yet submitted its Comprehensive Law Enforcement Plan, it appears that training in all areas of law enforcement will be a priority item. If the Council determines that funds should be allocated from the federal grant to units of local government to assist them in training police officers, up to 75 percent of the cost of the program may be paid under the federal grant. Either the unit of local government or the state could match the additional 25 percent.

While not specifically mentioned in the Act, I feel that the Justice Department would require that the state establish minimum curriculum requirements for the training of police officers. These standards could be arbitrarily fixed by the Governor's Planning Council on the Administration of Criminal Justice, but it would appear far better to have the curriculum established by representatives of units of local government with the assistance of state and federal agencies involved and concerned.

Sincerely yours,


  
Richard B. Lauber  
Executive Director

RBL:gt

**MEMORANDUM****State of Alaska**

TO:  Barry Jackson, Chairman  
House Judiciary Committee  
Sixth State Legislature

DATE : March 13, 1969

FROM:  Commissioner Mel J. Personett  
Department of Public Safety

SUBJECT: Fiscal Note - HB 179  
Our File 151 - 1969

In regard to your request for a fiscal note on HB 179, I find it almost impossible to submit a meaningful valid fiscal note on what is a voluntary program. This statement is of course in conflict with the statements of the "Anchorage Police Department Employees Association" in their correspondence with Rep. Harris. If nothing else, that correspondence verifies the need for minimum educational requirements for police officers. (See 18.65.180(b) regarding voluntary and incentive.)

The first year, however, would no doubt consist of planning meetings for formulation of the standards.

Travel and per diem would be the largest item, if not the only one. Estimate, \$5,000.00.

Second, third and subsequent years would have too many variables (decisions of the council, number of persons trained, facilities and training methods used, etc.) for me personally to arrive at any meaningful figure.

Since this is not a Department of Public Safety Bill, and the administration or direction would be mainly in the hands of local government, I do not feel qualified to present the fiscal note requested.

Copy to member  
meeting  
File copy in HB 179

## Anchorage Police Department Employees Assoc.

625 "C" Street

Anchorage, Alaska 99501

February 28, 1969

Representative Jess Harris  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

RE: HB 179 & Act already passed regarding submission  
of reports by local police departments  
to a central State file

Dear Sir:

In regard to HB 179, the Anchorage Police Department Employee's Association (APDEA) is in accord with the professionalization of law enforcement in Alaska by setting uniform and acceptable standards of recruitment and training. However, we do not endorse or recommend HB 179.

The Governor of the State has the sole power to appoint the members of this council. There are no written safeguards to confirm the qualifications of the people on this council. There are also no provisions for allowing the proposed council members to be chosen from representative, evenly distributed geographic areas. Appointment to this council could be politically influenced. This political influence could be directed, through this council, to law enforcement agencies. Influence on law enforcement agencies should only be imposed by legitimate legislative action in the form of laws enacted by elected representatives of the people.

Other hazards of this bill are: Section 18.65.160(1) - For what reason or purpose would a Police Standards Council need police reports and information? Once this information has been released from confidential files it could be made public, thus increasing the right to discovery of defense attorneys and suspected criminals. The names of confidential sources who provide information on criminal activities could be made public. We strongly object and oppose this breach of confidence.

Section 18.65.170(b) - The wording of the second line of sentence one; shall fix other qualifications for the employment of police officers. We feel that this wording leaves too general a discretion to the council.

Section 18.65.170(c) - Pertaining to promotional examinations. Is it to be understood that the council will administer the examination and make the promotion without the voice of the agency in which the vacancy has occurred. This area also comes close to and possibly does give power to horizontal mobility. This would allow a Sergeant in Nome to transfer in rank to the Juneau Police Department. This, of course, would not be realistic.

Section 18.65.200 - We feel that the members of the council should elect their own chairman.

Section 18.65.240(b) - We are greatly concerned that there is a conflict of interests with this section in utilizing existing facilities and programs to avoid duplication. There are two facilities in the State that are well-qualified to meet the standards of police training; one being in Sitka maintained by State personnel, and the other administered by highly qualified instructors of the Anchorage City Police Department. Also, in Anchorage the University of Alaska offers a Police Science curriculum for police officers.

Now, if the political appointed members of this State Police Standards Council are enacted with the power to approve these training facilities and programs with the intent to avoid duplication in the interest of economy and efficiency, we wonder which of the two facilities would be allowed to remain in operation, the State sponsored program or the local municipal program? If the local municipal training program is abolished in favor of the State program in Sitka, would the council also move the Police Science program from the University of Alaska to Sheldon Jackson College? Under Section 18.65.160, paragraphs 2, 3, 4 and 5, the council is empowered to make this move.

We do not feel that this council should be endowed with absolute power as set forth in this bill. Nor do we believe that the members should be appointed without qualifications and exposed to influence of political dominations. California has a similar but more practical and non-political bill in which compliance thereto is by choice, with a monetary incentive to comply.

We do feel that a Police Standards Council would be beneficial to both State and Municipal law enforcement agencies, and that their function should be in an advisory manner to the State and Municipal agencies. We sincerely believe that more research should be made in this matter before presenting it to the Legislature.

Regarding the other records submission bill, we understand a hearing is to be held by S. Cornelius to establish regulations for this act. We were opposed to this originally and request consideration of the following: lack of State ability to finance an adequate system, the geographic unavailability of the file, the amount of unnecessary reports involved, and of utmost importance, the availability of the file to process servers who are in actuality private investigators.

Jess Harris

-3-

February 28, 1969

The only method of operation of such a file that would produce timely, accurate feedback of information is an up-to-date teletype operated data process system designed after the Federal Bureau of Investigation's National Crime Information Center (N.C.I.C) on a seven day a week, 24-hour a day basis. This, I am sure, would not be forthcoming from the State.

Sincerely,



Brian S. Porter, President  
Anchorage Police Department  
Employee's Association

BSP/ams

cc: Robert Sharp, Anchorage City Manager  
John C. Flanigan, Anchorage Chief of Police  
All Representative & Senators, Anchorage Area  
Members of Judiciary Committee

# CITY OF FAIRBANKS



## OFFICE OF THE MAYOR

March 31, 1969

*The Golden Heart City*

P.O. BOX 790

FAIRBANKS, ALASKA 99701

The Honorable Barry Jackson  
Chairman, House Judiciary Committee  
Pouch Y  
Juneau, Alaska 99801

Dear Barry:

Concerning House Bill No. 179. This was supported by the League of Alaska Cities as a part of our blanket program implemented at the annual meeting of the League of Alaska Cities this past October. I have not followed the bill closely and will have to rely on your judgment regarding your statement that "This bill suggests that it would effectively limit the powers of cities to determine matters related to their own police force." If you feel strongly about this, I would suggest that you take whatever action you feel would be in the best interests of the Fairbanks community. Since the firm of Senator Merdes also acts as our City Attorney, and you have previous experience in this area, I will trust your good judgment in this matter.

Kindest personal regards and on behalf of the Fairbanks community, my sincere thanks for the outstanding job that you are doing in the current session of the State Legislature.

Most sincerely,

CITY OF FAIRBANKS

H. A. "Red" Boucher  
MAYOR

HAB/ss



VISIT ALASKALAND



All-America City  
of  
**ANCHORAGE**



**ALASKA**

*International*  
*Polar air cross roads of the world*

Office of The Mayor

March 25, 1969

Honorable Barry Jackson, Chairman  
House Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Barry:

This is in response to your inquiry on HB NO. 179 which would establish the Alaska Police Standards Council. As I wired you on March 24, 1969, the City of Anchorage opposes this bill. It would effectively invade the home rule powers of cities.

Section 18.65.160 would empower the Alaska Police Standards Council to promulgate regulations including the authority to require the submission of reports and information by police departments in the state. We have found from past experience that such agencies are unmindful of the costs involved in complying with such report requirements. The City is currently taking issue with the Department of Public Safety on regulations which require numerous reports.

This Council would also be empowered to establish minimum educational and training standards for police officers including those employed by cities. So-called "class specifications" which normally include educational training and experience are a part of a comprehensive pay plan. The City of Anchorage, and I am sure other cities, are not prepared to delegate this authority to an appointive state council. It could logically be asked, "if the state should establish standards for police officers, why not have the state establish standards for engineers, firemen, electricians, and any other class of employees of cities and boroughs?" We know that minimum standards also establish the level of pay that is justified. The agency with responsibility for the budget should have the ultimate responsibility for standards. The appropriate agency is the City Council and not the Police Standards Council as proposed in this bill.



Honorable Barry Jackson

March 25, 1969

-2-

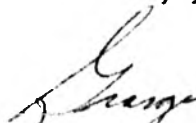
I could comment on each of the powers that Section 18.65.160 confers upon this Council but I believe the above remarks make the point I wish to make-- that this is a local matter insofar as it relates to City police officers. The powers proposed for this Council also invades the duties of the State Director of Personnel and will erode the Merit System. You can be assured that if the Council as proposed in this bill is established, there will be demands for similar councils to be established to control engineers and other professions and to eventually remove these positions from local and state civil service or merit systems.

There is such a variance in the needs of the cities of the state that I think it would be next to impossible for the Council to establish meaningful standards on a state-wide basis since the standards in Klawock and Craig would not very well meet the standards in Anchorage or Fairbanks. We feel the City of Anchorage is capable of determining the standards for City police officers, needed training facilities, curriculum, and other matters relating to law enforcement for which it is capable of financing. We find it totally inconsistent for a state agency to establish standards when it does not have the responsibility for funding these standards.

We find it unacceptable to have administration officers or executive officers of cities sitting in a position to prescribe standards that their city councils may not be willing to establish or may be unable to finance.

We appreciate your bringing this matter to our attention and if we can be of further assistance please advise me.

Sincerely yours,



George M. Sullivan,  
Mayor

A M E N D M E N T

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

TO: HOUSE BILL NO. 179

Page 3, line 22:

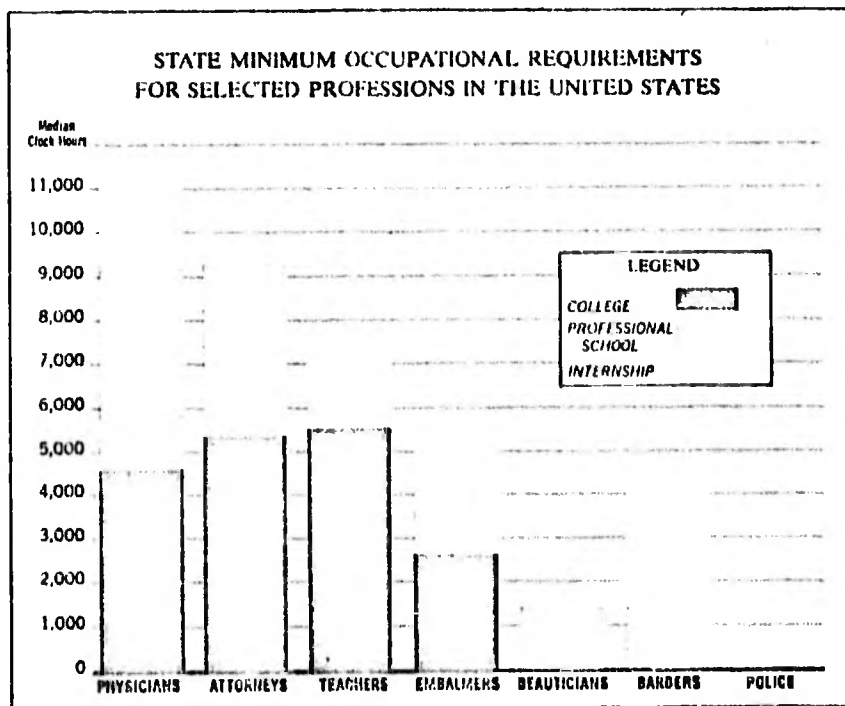
Before "reimbursement" insert "partial or complete" and  
after "reimbursement" insert a comma.

Page 3, line 23:

After the word "atate" insert a comma, and delete  
"of 50 per cent".

# A MODEL POLICE STANDARDS COUNCIL ACT

By NORMAN C. KASSOFF  
IACP Professional Standards  
Division, Washington, D. C. 20036



◆ The technological advances of the twentieth century in the United States have been accompanied by a corresponding advancement in the living standards of its citizens that is unique in the community of nations. This industrial and economic growth has been paralleled by a universal desire to increase the educational level of our population. School building programs, whether for a new construction or

the expansion of present facilities, are bringing the opportunity to learn to a very large segment of our population. This emphasis on education is reflected by the prediction that within the next five years some forty percent of the adult population will have obtained the equivalent of a junior college education.

It follows then that the citizen of an enlightened society is not only

more aware of the dignity of man, but of the guarantees given to him under the constitution. This awakening has in turn brought about great changes in the attitudes and physical operations of law enforcement agencies all across this country. Never before in our history have the police been so closely observed, criticized, (whether rightly or wrongly), nor have they encountered court decisions that questioned certain police practices. As a result, the law enforcement officer has in some instances found himself incapable of readjustment because of the very nature of this social and legal upheaval.

His ability and the methods used to cope with these new challenges are directly related to the type and quality of training that the police officer has received. Often as not, as our courts have indicated, the American police officer is inadequately prepared to cope with the rapidly changing problems in the society, and it appears that his ability to function in this contemporary society is weakened.

What are the answers to this situation?

If the individual police agencies cannot or will not prepare the officer to meet this pressing challenge, then the individual states must be prepared to provide the leadership and to assist in any means possible to help law enforcement achieve a professional status. Every state is charged with the protection of the health and welfare of its citizens, and all states have, through their legitimate licensing authority, established standards of selection and training for services and professions that affect this important phase of our lives.

## LICENSING AND ITS DEVELOPMENT

Licensing as a means to select the more qualified and assure their proper training and education is not a new concept. It can be traced back to the ancient Hebrews, who required their healers and physicians to be of a certain age and practice for a certain period of time under the supervision of an experienced physician before they could use their "art upon the people." The move to professionalize through licensing

has been extended to many fields, but strangely enough, it has not been made applicable to a group which must make certain life or death decisions, decisions where a citizen's life, liberty and property may be arrested . . . *the law enforcement officers (police) in the United States.*

The development of professions in the United States, and indeed in the rest of the world, has been based upon (1) a careful selection of individuals to make certain they have the basic qualifications needed to perform, and (2) an established and tested body of knowledge that the practitioners must master and use in performing their tasks.

It was felt that certain requirements had to be established beforehand to guarantee satisfactory performance, not only during the training period but long after the individual became a member of the profession. The states had a vital interest in this area, for it was found they were the only ones who had the authority to enforce compliance with regard to any criteria laid down by the professional groups. Further, the citizens demanded and expected that the professional be an expert in his field, and so they assented by giving to their state representatives the authority through legislation to determine and regulate, on a state-wide basis, whether individuals holding themselves out as members of a profession, were indeed qualified. As professions developed, the selection process readjusted to place a greater emphasis on basic educational qualifications in order to insure a greater degree of success in the training and learning phase by individuals. This, as we shall see, has varied greatly between occupations and professions, but the trend has been in one direction: toward higher basic educational qualifications.

The training of a professional person has, over a period of time, improved in quality and quantity. The factors affecting this were demands by the society for more improved services from the professions, the information explosion, and the great strides made in the areas of science and technology.

These facts have led to a generally accepted standard of what is a profession; and have set in

## MODEL POLICE STANDARDS COUNCIL ACT

(Title should conform to state requirements. The following is a suggestion: "An Act establishing a Police Standards Council; providing certain educational and training requirements for members of police forces; and for related purposes.")

(Be it enacted, etc.)

### Section 1. Findings and Policy

The legislature finds that the administration of criminal justice is of state-wide concern, and that police work is important to the health, safety and welfare of the people of this State and is of such a nature as to require education and training of a professional character. It is in the public interest that such education and training be made available to persons who seek to become police officers, persons who are serving as such officers in a temporary or probationary capacity, and persons already in regular service.

### Section 2. Police Officer Defined

As used in this Act:

"Police officer" means any full-time employee of a police department which is a part of or administered by the state or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of this State.

### Section 3. Police Standards Council

(a) There is hereby established a Police Standards Council, hereinafter called "the Council," in the Executive Office of the Governor. The Council shall be composed of fifteen members, as follows: five chief administrative officers of local government police forces, at least three of whom shall be from forces maintained by incorporated municipalities; five officials or employees of local government who have general executive or legislative responsibilities with respect thereto so chosen as to represent county government and municipal government; [the head of the state police], one representative of higher education, two public members and the Attorney General.

(b) Except for the Attorney General and the [head of the state police] who shall serve during their continuance in those offices, members of the Council shall be appointed by the Governor for terms of four years; provided that no member shall serve beyond the time he holds the office or employment by reason of which he was initially eligible for appointment. Notwithstanding anything in this Section to the contrary, the terms of members initially appointed to the Council by the Governor upon its establishment shall be: three for one year, three for two years, three for three years, and three for four years. The Governor, at the time of appointment, shall designate which of the terms are respectively for one, two, three and four years. Any vacancy on the Council shall be filled in the same manner as the original appointment, but for the unexpired term.

(c) The Governor annually shall designate the chairman of the Council, and the Council annually shall select its vice-chairman. The chairman and vice-chairman shall be designated and selected from among the members of the Council.

(d) Notwithstanding any provision of any statute, ordinance, local law, or charter provision to the contrary, membership on the Council shall not disqualify any member from holding any other public office or employment, or cause the forfeiture thereof.

(e) Members of the Council shall serve without compensation, but shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service.

(f) The Council shall hold no less than four regular meetings a year. Subject to the requirements of this subsection, the chairman shall fix the times and places of meetings, either on his own motion or upon written request of any [five] members of the Council.

(g) The Council shall report annually to the Governor and legislature on its activities, and may make such other reports as it deems desirable.

### Section 4. Powers

In addition to powers conferred upon the Council elsewhere in this Act, the Council shall have power to:

1. Promulgate rules and regulations for the administration of this Act including the authority to require the submission of reports and information by police departments within this State.

2. Establish minimum educational and training standards for admission to employment as a police officer: (a) in permanent positions, and (b) in temporary or probationary status.

3. Certify persons as being qualified under the provisions of this Act to be police officers.

(Continued on next page)

4. Establish minimum curriculum requirements for preparatory, in-service and advanced courses and programs for schools operated by or for the state or any political subdivisions thereof for the specific purpose of training police recruits or police officers.

5. Consult and cooperate with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of police training schools and programs or courses of instruction.

6. Approve institutions and facilities for school operation by or for the state or any political subdivision thereof for the specific purpose of training police officers and police recruits.

7. Make or encourage studies of any aspect of police administration.

8. Conduct and stimulate research by public and private agencies which shall be designed to improve police administration and law enforcement.

9. Make recommendations concerning any matter within its purview pursuant to this Act.

10. Employ a Director and such other personnel as may be necessary in the performance of its functions.

11. Make such evaluations as may be necessary to determine if governmental units are complying with the provisions of this Act.

12. Adopt and amend bylaws, consistent with law, for its internal management and control.

13. Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this Act.

#### **Section 5. Required Standards**

(a) Police officers already serving under permanent appointment on the effective date of this Act shall not be required to meet any requirement of subsections (b) and (c) of this Section as a condition of tenure or continued employment; nor shall failure of any such police officer to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible. The legislature finds, and it is hereby declared to be the policy of this Act, that such police officers have satisfied such requirements by their experience.

(b) At the earliest practicable time, the Council shall provide, by regulation, that no person shall be appointed as a police officer, except on a temporary or promotional basis, unless such person has satisfactorily completed a preparatory program of police training at a school approved by the Council, and is the holder of a Bachelor's degree from an accredited institution. No police officer who lacks the education and training qualifications required by the Council may have his temporary or probationary employment extended beyond one year by renewal of appointment or otherwise.

(c) In addition to the requirements of subsections (b), (e) and (f) of this Section, the Council, by rules and regulations, shall fix other qualifications for the employment and promotion of police officers, including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of police officers, and the Council shall prescribe the means for presenting evidence of fulfillment of these requirements.

(d) The Council shall issue a certificate evidencing satisfaction of the requirements of subsections (b) and (c) of this Section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the Council for approved police education and training programs in this State.

#### **Section 6. Police Training Schools and Programs: Grants Under the Supervision of Council and the State**

(a) The Council shall establish and maintain police training programs through such agencies and institutions as the Council may deem appropriate.

(b) The Council shall authorize the reimbursement to each political subdivision and to the State 50 percent of the salary and of the allowable tuition, living and travel expenses incurred by the officers in attendance at approved training programs, providing said political subdivisions or state agencies do in fact adhere to the selection and training standards established by the Council.

#### **Section 7. Appropriations**

(a) Except as otherwise specifically provided in this Section, the Council shall be supported only by appropriations made by the legislature.

(b) The Council may accept for any of its purposes and functions under this Act any and all donations, both real and personal, and grants of money

*(Continued on page 15)*

motion the machinery of the states to guarantee that the high standards of selection and training developed by the professions would be safeguarded from incompetence and frauds.

This has been done through the process of licensing by the several states and is related to a method of control for the benefit of society. In our country this control is based upon the fact, as we have seen, that the several states owe an obligation to their citizens to protect their health, safety and morals from those who might adversely affect it. The states, through their various legislatures, therefore, have enacted laws to safeguard these inherent rights, and indeed have the responsibility to see to it that they are continually protected.

This is not new or unique; it is a sociological phenomena—as any population expands, living becomes more complex. Safeguards are needed not only to protect the society from outright criminal activity of individuals, but also from the less apparent unskilled and untrained individual, whose services can affect the people. This latter area permits the several states to regulate a large variety of activities and occupations. The legislative function, thus, is to secure to all persons the safeguarding of their rights, including the enjoyment of their personal property as well as the equal use and enjoyment of public property. Whatever affects the health, safety and morals of the people is subject to legislative action, and so licensing by legislative edict evolved as a means for this type of protection.

This is not an unreasonable restraint on individual liberty or the society, it is a process that, by building the safeguards, actually protects the individual and the society.

The states have acted, in many areas through the licensing of many enterprises and occupations, with one thought in mind: *to improve the end result, whether it be a product or service, either personal or impersonal.*

A license or certificate for an occupation is a means of providing the legal guidelines and requirements for those who wish to enter an occupation that affects the health and welfare of the entire

society. It establishes a high uniform standard for the licensee and enforces adherence to the prescribed standards; it further provides the public with the information that the state, within its legal prerogatives, has made certain the practitioner is what he says he is, a professional.

The result: public confidence.

But it was not always so, for we learn from our mistakes.

A license is a permit granted by the sovereign to a person, firm or corporation to pursue some occupation or to carry on some business, subject to regulation under police power. This has been due in part to the efforts of state or national professional organizations raising their own technical standards. This upgrading seems to center about educational qualifications; for example, there is a trend among the states for barbering to require a high school education.

As our population continues to expand, our knowledge should also continue to grow. The result of this complex growth will be a more complex economy and we will begin to see the development of specialization in many more fields of occupations and professions. As a result of this, the trend toward licensure will be subjected to more and more pressure from the public in order to improve the services offered.

The trend for licensing or control has gone far beyond those occupations normally associated with professional status, as evidenced by a recent survey conducted by the International Association of Chiefs of Police. This survey included barbers, beauticians, embalmers, as well as doctors, lawyers and teachers, and was most enlightening. First, all of these occupations had set standards of selection commensurate with their needs; and second, they all had established a body of knowledge which was needed by the practitioner to adequately perform this task. The trend is there, the need has become obvious, and in the interest of the public, the states have seen fit to regulate the several occupations that can and do affect our society.

At the cost of human life and suffering, it took the medical profession many years to have the

from any governmental unit or public agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. Any arrangements pursuant to this subsection shall be detailed in the annual report of the Council. Such report shall include the identity of the donor, the nature of the transaction, and the conditions, if any. Any monies received by the Council pursuant to this subsection shall be deposited in the [state treasury] to the account of the Council.

(c) The Council, by rules and regulations, shall provide for the administration of the grant program authorized by this Section. In promulgating such rules, the Council shall promote the most efficient and economical program for police training, including the maximum utilization of existing facilities and programs for the purpose of avoiding duplication.

(d) The Council may provide grants as a reimbursement for actual expenses incurred by the State or political subdivisions thereof for the provisions of training programs to officers from other jurisdictions within the state.

#### Section 8. Severability

The provisions of this Act shall be severable and if any phrase, clause, sentence or provision of this Act is declared to be contrary to the Constitution or laws of this State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Act and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

#### Section 9. Repealing Clause

All acts or parts of acts not consistent with this Act are hereby repealed.

#### Section 10. Effective Date

(Insert effective date.)

☆

state legislatures prohibit country store pharmacists and others from practicing medicine and calling themselves doctors without having graduated from accredited medical schools.

At the expense of many innocents going to jail, or heirs being involved in long drawn out litigation over the probating of a will, the public and the state realized the defense of a criminal case or a man's estate after his death were complex legal matters that required the special services of an individual who had received legal training and could demonstrate his learning.

It took several incidents of death to make the states realize that the handling and the preparation of a dead human body posed problems to health, sanitation and hygiene; that to deal effectively with these problems required an understanding of mortuary science, pathology, microbiology, chemistry and other related sciences. The result was the adoption by the states of a selection and training process for those seeking to become embalmers.

Besides some humorous results in haircutting, it took many serious scalp infections in heavily populated areas, for both the states and the barbers to realize that there was more to barbering than just cutting hair; there were questions of

hygiene, sanitation, nerve functions in the hand and face, chemistry of the hair and chemical composition of various lotions put on the scalp, all of which affected the type of service given in a barber shop. Together they drew a code of licensing for those practicing barbering to protect the general public and to provide a more efficient service to it.

#### PRESENT STATUS OF LICENSING: SURVEY RESULTS

The occupational survey conducted by the IACP included such considerations as age, residency, training, and reciprocity. Three of these occupations, the physician, the teacher, and the attorney, were chosen because the police officer of today performs each of these skills to some degree at some time during the course of his employment.

As a "physician" he must know the fundamentals of first aid for the sick and the injured, and practice this skill under the most trying conditions. In many instances he must know the law as thoroughly as a practicing attorney, and without the benefit of a large law library close at hand. The remaining three occupations—barber, beautician and embalmer—listed in the appendices are not less important,

and are generally not thought of as professions, but they do indicate the high degree of training needed to function and protect the society. It will be noted that they far exceed the requirements of law enforcement.

### *Physicians*

The survey showed that in order to enter the medical profession the states generally require a maximum of a four-year Bachelor's degree or a minimum of three years of college; four years of training in a medical school recognized and approved by the American Medical Association; and an internship of from one to two years. He must also pass a written and/or oral examination administered to him by the state's medical association in accordance with state law. The median number of hours needed to complete these qualifications is 11,450.

### *Attorneys*

In reference to the attorney, the survey shows that the majority of states require a maximum of a four-year Bachelor's degree (minimum number of states require two years of college), three years at an accredited law school recognized by the American Bar Association, and the passing of a Bar examination. A minority of states require an internship of from one to two years before being permitted to take the Bar examination in lieu of some years of law school. The median number of hours required to complete these qualifications is 9,540.

### *Teachers*

In the majority of states, the teaching profession requires a Bachelor's degree as a minimum, depending upon the grade level and the type of job the teacher seeks. (As an example, some states require a Master's degree for their administrators or principals.) There is now a trend toward a requirement of a fifth year of preparation for teachers in the elementary and secondary schools. In any case, they must serve an internship that may vary from twelve to twenty-four months, depending upon the state. Some states even require the

passing of the National Teachers Examination as a requirement for certification. The median time involved to complete these qualifications is 7,400 hours.

### *Embalmers*

The embalming profession in a majority of the states requires a maximum of two years and a minimum of one year of college. The courses required during this period include mortuary science, anatomy and physiology; chemistry—organic and inorganic; pathology; microbiology; sanitation and hygiene; public health laws and regulations; and mortuary law and administration. The professional schooling also requires an internship, varying from twelve to twenty-four months. During this internship, the student must embalm a prescribed number of bodies under the supervision of a licensed practitioner. The median number of hours required to complete these qualifications is 5,580.

### *Barbers*

The licensing of barbers in most jurisdictions, requires a professional schooling of from six to twelve months. Required courses include physiology, hygiene, elementary chemistry, sterilization, and anatomy, including facial bone structures and cranial nerve systems. There is a trend now among the states to require a high school diploma for barbers. An apprenticeship of from six to eighteen months is also required once the training course has been completed. The median number of hours required to meet these qualifications is 4,330.

### *Beauticians*

Such courses as theoretical studies in sanitation and hygiene, anatomy of the head and face, safety measures, use of antiseptics, chemical composition of cosmetics, and the use of electrical appliances consistent with the practical and theoretical requirements as are applicable to cosmetology, are required. The beauticians' general training requirements are similar to those of the barbers; however, the median number of hours required to complete these qualifications is 1,800.

### *Other Requirements*

In each of the previously mentioned occupations, the aspirant must be of good moral character, free from any physical or mental defects which might affect the performance of his work, and only after satisfactorily meeting all these requirements is he or she then permitted to receive a license to practice.

### *Reciprocity*

The survey further showed that licensing is not a means of excluding persons from entering these occupations. With very few exceptions, reciprocity is usually granted to an applicant who has obtained training in another state when requirements are similar to those of the state where he seeks to practice. It is this factor that has also added to the professional status of these occupations. Their training is uniform throughout the United States and lends itself to a national discipline applicable to each state. Licensing does not seek to exclude the qualified and the talented. It does, however, discourage the lazy and incompetent.

### *Probation*

The question of probation does not enter into these described occupations. The practitioners are not permitted to practice their arts or skills until they have fully complied with all of the statutory requirements which may include an oral, practical demonstration, and a written exam. Their internships are strictly controlled and observed to insure compliance. Internship is as much a part of their selection process as is their formalized education and training. The point is quite clear, aspirants to these occupations are not permitted to practice until their licensing boards are satisfied the individuals are qualified.

In law enforcement this is almost unknown. In over 31 per cent of the police agencies, the officer is on the street with *little or no training* of any type. The concept of probation permits an individual officer to practice his "skills" under a system that in effect is still testing him to determine if his training has been successful—his "guinea

pigs" are the public he is supposed to serve. Obviously, it follows that some of America's law enforcement problems are created by the police themselves.

No other profession has "probation." Individuals practicing the occupations surveyed are "on probation" all through their careers. The citizen doesn't look in the phone book for a doctor or an attorney or sit in a barber's chair and hope the individual he is dealing with is qualified; he expects it. When he calls for police assistance he has the right to expect that the officer is as qualified as any other specialist.

To insure the citizen's expectation and to elevate the stature of law enforcement, the myth that an individual hired as a police officer who serves his "probationary period" without incident is qualified, must be examined in the light of what a police officer does today in our society.

#### LAW ENFORCEMENT OFFICERS

Certainly we cannot say that law enforcement is less important than the previously discussed occupations. In fact, it might be said to be even more important considering the drastic social changes that are occurring in the United States. The law enforcement officer is responsible for the protection of life and property and for the enforcement of laws and ordinances. Society expects, and in the future should demand, that he command respect for law and order; integral parts of such qualities are general intelligence and emotional stability, coupled with good judgement. He must maintain order in crowds under extremely difficult circumstances, often unnecessarily complicated by hysterically emotional climaxes. He must be firm, courteous, and still be able, technically, to resolve situations with respect to the rights of others. He must have the ability to analyze situations quickly and objectively, to determine the necessary and proper action to take within the legal structures surrounding his position, and to guarantee the rights of all individuals. He must possess investigative ability, including good powers of observation, coupled



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with the ability to interpret his findings, to make a factual presentation, to protect the rights of the accused or convicted. He is expected to be a fact-finder for the court. His attributes must, of course, include good moral character, together with a high degree of physical fitness and mental stability. In brief, he is expected to be a living example of all that is good within our society.

Law enforcement agencies, since early in this century, have been talking and are aware of the need to move toward a professional status. So far, this has been a largely uncoordinated, unsupported effort, insofar as the individual officer is concerned. It is true, of course, that there have been some steps taken toward professionalization in law enforcement, albeit slow and unsteady steps in light of the needs. Up to this point, there has been no concentrated effort toward uniform standards for the police either from a personnel, physical or training and operational standpoint. Too often the exigencies of filling a police position result in a waiver of many factors recognized as necessary. The police officer's qualifications place him in a dual status since he must have not only some qualifications of a technician but also some qualifications of a professional.

As a technician, a police officer must have precise knowledge concerning the collection and preservation of evidence, a highly developed ability encompassing scientific methods of processing a crime scene, including the ability to properly lift and preserve latent forms of evidence. He must be skilled in the operation of a motor vehicle, diving gear, and other modern instruments of law enforcement.

As a professional police officer, he must know the criminal codes and be able to readily apply them to situations without the benefit of time for legal research and reflection. He must have a knowledge of rules of evidence, what is admissible and non-admissible. He must have an unreasoning ability to make the right decisions under any given circumstance. He must, under the most extreme conditions, determine when a citizen's property can be searched. Law en-

forcement today is concerned not only with the prevention of crime and apprehension of criminals, but also with the sociological aspects of crime.

In the field of law enforcement, which has a direct relationship to the important police power doctrine of the states, our research has revealed a complete lack of standards for selection and training. First, licensing required for some occupations is almost unknown in American law enforcement. When we consider the expected capabilities of the American police officer of today, we suddenly realize that the minimum entrance requirements and selection standards in all too many cases are sub-standard. If one were to examine and reflect on the major internal problems of law enforcement across this country today and seek a solution to prevent them from recurring he would, of necessity, have to start with selection and training criteria.

The theory is false that establishing selection criteria has the philosophical approach of a "text-book." Would we consider hiring a person with a felony record or a person with a long history of mental illness? The answer would have to be negative, and yet are these not selective criteria? Would we hire a person who could not read or who had difficulty in learning or adjusting to new situations and place him out on the street to control society? Again, the only possible answer must be in the negative, but shockingly, it is in some instances being done. We are, then, in effect putting a uniform on a man, handing him a gun and a badge, and proclaiming to the community that he is a police officer.

Only four states have gone so far as to include in their minimum statewide standards for law enforcement the number of hours needed to become a police officer. These provide for only about 200 hours. However, required qualifications and training of law enforcement officers have not been up-graded to keep pace with the changing aspects of our society and law enforcement. The graph on page 12 illustrates this point.

By state law the hours of training needed to become a barber or

beautician are almost ten times greater than hours of training needed to be a police officer, and yet the police officer's performance must be so exacting and correct that without it society could not function.

There are police officers across this country today with little or no training of any type, whose mental or physical capabilities have not been fully determined, whose mental stability has not been looked into, and who lack the ability to learn and absorb all of the new techniques that are applicable in our changing society. There must be some uniformity of standards. The "village" officer should not be any less important or less able to perform than the "large city" police officer.

In the area of law enforcement, the proposition that "the sovereign can do no wrong," has artificially protected to some degree the untrained and incompetent. Now, even this long established rule of law is undergoing change. There have been court decisions which state that the sovereign is not only responsible for whom it hires but how it trains them.

#### *Statutory Status of Police Training*

The survey was effectuated by contacting the Secretary of State for each of the various states and obtaining full copies of their police training laws, if any.

#### *Types of Laws*

Two categories of training legislation exist: voluntary and mandatory.

The *voluntary* type legislation gives to police agencies within the state an option of whether they have their personnel trained under the statewide standards prescribed by law, or whether they have them trained at all. Arkansas, Colorado, Illinois, Iowa, Michigan, Minnesota, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Oregon, Rhode Island, Tennessee, Texas and Washington have this type of legislation.

The *mandatory* type of law requires that all police officers within the given state must successfully conclude the prescribed training

program before they can receive a permanent appointment with other departments. Connecticut, Massachusetts, Maryland, New Jersey, New York, and Ohio have this type of legislation.

Alabama, Alaska, Arizona, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming *have no laws at all.*

#### *Types of Commissions*

A great majority of the existing laws call for the creation of a training commission, in most cases, to "establish the standards needed" for officers entering training and to "prescribe the course content" of the programs and the length of time to be devoted to the program. The function of these important commissions varies greatly. While the great majority of the states have commissions, their makeup differs.

In California, the commission is chosen from a cross-section of educators, police and administrative heads of local government, as well as the attorney general of the state. They function in all matters pertaining to the state training program and are free to carry out all aspects of the law which include, among other things, the inspection of the various programs on a statewide basis.

In Rhode Island, there is no commission and the Superintendent of the State Police sets the requirements for their statewide training program. In Michigan, the eleven-man training council is composed of ten police representatives and "one member nominated by the Metropolitan Club."

In Mississippi, the Commissioner of the Public Safety Department is authorized to establish and maintain a law enforcement officer's training academy. He alone establishes the curricula and determines who will attend.

The effect of this wide diversity in the type and makeup for the various commissions does not permit the establishment of uniform standards in the important matter of selection. There should be ab-

solutely no reason why selection standards should not be uniform throughout the United States. While it is argued that a small community cannot compete in the salary level that high selection standards would cause, there is no escape from the validity of equal salary for equal work; and no community today, large or small, can avoid the inevitable changes that are forecast for the future. The small city or community has the same, if not a greater, obligation to provide its citizens with good law enforcement as has the large community. If we wish to attract and keep capable and qualified people, we must be able to show to all concerned that law enforcement is interested, first, in raising the quality of its officers and then it must inevitably follow that salary increases for work performed will be forthcoming.

The Advisory Council on Education and Training of the IACP, which is made up of members from state, municipal and county police organizations, as well as educational and governmental institutions, has been at work for the last two and one-half years developing a Model Police Standards Council Act. The deliberations of this group have led to the development of a model, which breaks the chains that bind it to the obsolete philosophies that have plagued law enforcement. First, the proposed state council is made up of a cross-section of police officials representing the various levels of government, officials of local government who have had, prior to their present position, general executive or legislative responsibility, together with representatives of higher education, the attorney general and the head of the state police, plus three public members, to compose a well-balanced commission. The designation of the appointments of the commission is totally and specifically spelled out to encourage the commission to administer the law in a progressive manner.

Nationwide adoption of this Model Act is being recommended.

#### *Standards of Selection*

Only one state (California) has had its standards of selection built into its statewide training law. By

minimum standards of selection, we are referring to the basic qualifications that an individual must have before he will be hired by the police agency. The California law provides for U.S. citizenship, a minimum age of twenty-one, a criminal record check of the applicant to determine if he has been convicted of a crime, fingerprinting, a good moral background determined by a thorough background investigation, education through the twelfth grade, physical fitness as shown by a medical examination, and an oral interview conducted by the hiring agency. While California has such minimum standards, they operate solely within a *voluntary* law; that is, the various police agencies within California do not have to conform to these requirements if they do not participate in the training programs. It is purely voluntary. If, however, the agency does participate in the program, the local government must pass an ordinance wherein it agrees that it will conform to the minimum standards. While these minimum standards are a step in the right direction, the shortcoming is quite obvious in that there is no total compliance with the law; and while it may be argued that there is a near total compliance in California, it should be pointed out that this is due only to (1) the unique educational system within the state, (2) the large tax base that supports the educational system in the state, and (3) the funds provided from the criminal courts. These three unique realities have enabled the California law to be such a success. It is doubtful whether this type of law would have succeeded as well had it been tried in some state other than California. Further, there is an implication, no matter how slight, that the financial success of the training operation rests upon the number of citizens arrested in California and convicted in its criminal court system. It is questionable to say the least, whether a state should use its police authority to finance any type of training program related directly to the state's welfare and use a source of income for which it was not intended.

However, a major point is still to be considered, and that is one of keeping within the guidelines of

other professions, which do not give to doctors, lawyers, teachers, embalmers, barbers, or beauticians an option of participating in the required educational and training programs. The results of such an option would immediately become obvious and disastrous to the health and welfare of the public. It is apparent that one of the strong factors involving professional standards is that compliance on a statewide basis is mandatory.

The voluntary type of police training law appears to be political in nature because a voluntary, as opposed to a mandatory, law stands a better chance of passing through a state legislature. This compromise is a foolhardy one in that the complex requirements of law enforcement today are being subrogated to political compromise and arguments. A comparable situation existed in the United States in 1847, when a bitter argument arose between physicians and pharmacists as to what constituted the practice of medicine and who could practice it. Compromise obviously was not an answer where the public's health and safety were involved. The ecology is the same when discussing minimum standards for law enforcement. The issue here is that political compromise should not be permitted to enter this very vital question. There is only one question to be answered here: Is the individual who is to become a protector of and guardian for our society, qualified to perform within the society?

The states having mandatory law, such as New Jersey and New York have not provided for minimum standards of selection, apparently for political reasons. The determination of standards is left to the training commissions and it is obvious that with no statutory guidelines to govern them, they may make their own standards of selection. Although this is not to import outright political manipulation, such manner and determination does not always provide for the uniformity requisite in a professional group and permits human elements to enter into the consideration. Unless the statutes already contain minimum standards of selection, it must follow that there will be cases of poor selection. Poor selection eventually results in

the admission of sub-standard individuals who are incapable of learning and absorbing not only the basics, but the complex changes of technology and the society. There is every reason to believe that many problems in the field of law enforcement today were brought about by poor selection; inevitably this created problems not only for the agency, but for the individual involved, as time went on. Today even a twelfth grade education will not suffice. Higher educational requirements are essential not only for today, but for the future. Without careful testing and selection beforehand, we can never be sure of the future progress of the individual law enforcement officer. Certainly education is one of these key factors. Section V of the IACP Model Police Standards Council Act has included the necessary requirements of a police officer as well as higher ranks included in it. A copy of that model accompanies this article. The model act further provides that personnel who are already members of a department who further their education beyond the high school level, be awarded certain benefits for any future promotional examinations that they might participate in. The act in no way prohibits police personnel who do not further their education from taking future promotional examinations. The act further provides that at a certain future date, this date to be left to the states, no person shall be employed as a police officer, except on a temporary or probationary basis, unless he has satisfactorily completed two years of higher education beyond the high school level. At another future date, no person shall be employed except on a temporary or probationary basis unless he has satisfactorily completed courses and holds a Bachelor's degree from an accredited institution. In both instances, the individuals must still satisfactorily complete a police training program approved by the council. This law is mandatory in nature in that it prohibits permanent employment beyond one year unless he has met these educational and training qualifications. Further, the act provides for the council to establish standards involving promotion of police personnel at

all ranks, and the best method available to accomplish this objective is to prescribe by law and for a commission to carry it out. This portion of the model law was arrived at after great deliberation and careful study. As has been pointed out, the American public is receiving education above the high school level at a rate previously unknown in our history. The law enforcement officer in order to function in this society must equal if not exceed the general level of education and training. The various states have an obligation to their citizens to provide the best available. This model law supplies the basis from which great strides can be made toward establishing the professional status that is so greatly needed in American law enforcement. The educational requirements will not in and of themselves guarantee good law enforcement but they will eliminate many of the factors that have created bad law enforcement. The police officer of today, and most certainly of tomorrow, must be prepared to act professionally; and what is more important, the American public must look upon him as a professional. To achieve this, the educational requirements must be on a *mandatory* basis rather than on a *voluntary* basis, for the reasons already stated.

A review of the survey data indicates a new and guiding force is needed. A recent nationwide police training survey conducted by the International Association of Chiefs of Police has shown that some ninety per cent of over four thousand agencies responding were in favor of some type of statewide minimum standard law dealing with selection and training.

#### *Course Content*

The course content of the various police training programs varies greatly from state to state. In some instances the statutes limit the number of classes to be held in any given year or the length of time to be devoted to a program. Iowa has this type of statutory provision. In Illinois, the program is limited to a maximum amount of money that can be appropriated for each man attending the training program. The course content of many





## FOOTNOTES TO PRECEDING TABLE

<sup>1</sup> "The Training and Education Division shall: (1) certify law enforcement training and education programs as having attained the minimum required standards established by the council. (2) Certify instructors as having qualified as law enforcement officer instructors under conditions established by the council."

<sup>2</sup> "A penalty assessment in the amount of \$2.00 for every \$20.00 collected by the courts for criminal matters."

<sup>3</sup> "Five sheriffs or chiefs of police or peace officers nominated by their respective Sheriffs or Chiefs of Police."

<sup>4</sup> "A penalty assessment in an amount equal to \$5.00 for every \$20.00 or fraction thereof, collected by the courts for criminal offenses."

<sup>5</sup> "Eight members of the Educational Committee of the Connecticut Chiefs of Police Association who are holding office or employed as chiefs . . . or the highest ranking professional police officer of a regularly organized police department."

<sup>6</sup> ". . . and two police officers who are neither sheriffs nor chiefs of police . . ."

<sup>7</sup> ". . . Board composed of 16 members: 5 appointed by statute and 11 appointed by the governor . . . The 5 by statute are: one attorney general, the Superintendent of the Highway Patrol, the Superintendent of the Chicago Police Department, the Director of the Illinois Police Training Institute, and the F.B.I. agent in charge of the Springfield Division. The 11 by the governor are 2 mayors, 2 county sheriffs, 2 city-managers, 3 chiefs of police, and 2 citizens . . ."

<sup>8</sup> ". . . The facilities shall be available . . . without cost to . . . law enforcement agencies, subject to rules and regulations of the Board . . . agencies conducting training at other facilities . . . shall be entitled to a per capita allowance from the . . . fund to defray portions of the cost of such training . . . approved by the Board . . ."

<sup>9</sup> ". . . also included are one prosecuting attorney, one judge, and one member of the Municipal League . . ."

<sup>10</sup> ". . . Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order to be eligible for continued employment."

<sup>11</sup> ". . . created a continuing fund to be used by the Board to conduct a law enforcement academy until 1973."

<sup>12</sup> ". . . in each and every criminal action . . . one dollar of said fee . . . deposited in the General Fund . . . shall be earmarked and deposited in the Law Enforcement Training Fund . . ."

<sup>13</sup> "Any governmental agency subject to the requirements of this Act which desires to receive aid pursuant to this Act shall make application to the council and director for such aid . . . The Administration of the Academy and the Council Act shall be vested in the Commissioner of Public Safety."

<sup>14</sup> "Also included is one member appointed from the Senate . . . One member from the House . . . and four members knowledgeable and experienced in the field of law enforcement . . ."

<sup>15</sup> "The law becomes mandatory as of July 1, 1969."

<sup>16</sup> ". . . Commission consists of ten members . . . Full-time law enforcement officers . . . One of the ten members is the President of the Kansas County Attorneys' Association . . ."

<sup>17</sup> ". . . The F.B.I. member serves in advisory status only, and the Commission also has one member from the Kentucky Bar Association."

<sup>18</sup> ". . . and three police officials of the state . . ."

<sup>19</sup> "mandatory training for cities of 5,000 or more."

<sup>20</sup> ". . . Also consists of the Director of Civil Service . . . Commissioner of Public Safety . . . Commissioner of Police of Boston . . . and administrator of a city or town . . ."

<sup>21</sup> ". . . officer attending school shall be paid his wages . . . also receive such reasonable expenses as may be determined by appointed authority . . ."

<sup>22</sup> ". . . on assessment as additional cost . . . equal to 10 percent of every fine . . . collected by the courts for criminal offenses . . . other than violation of the vehicle code . . ."

<sup>23</sup> ". . . Mandatory to cities of 1,000 population or more; voluntary to cities of 1,000 population or less . . ."

<sup>24</sup> ". . . as well as "the chiefs of police of each city of the first class."

<sup>25</sup> ". . . The board may recommend to the attorney general rules and regulations only with respect to . . . certain

clauses . . . but not as to minimum standards of physical, mental, educational, etc. . ."

<sup>26</sup> ". . . The Executive Director . . . shall have the following duties . . . to be exercised with the approval of the Board . . . and to be executed only in full accordance with the rules and regulations promulgated by the attorney general . . ."

<sup>27</sup> ". . . 160 hours of training for cities in rural areas and 200 hours of training for cities in urban areas."

<sup>28</sup> ". . . Also one member from the County Attorney's Association, Montana Municipal League, the County Commissioners' Association, and one member from that unit of the University of Montana selected as a site for the academy . . ."

<sup>29</sup> ". . . all officers shall be paid their regular salaries during attendance . . . expenditure of funds by any city or town, for the board, room, or travel expenses of officers attending, is lawful . . ."

<sup>30</sup> ". . . It is stated by law that the academy will remain open for a period of three weeks per year . . ."

<sup>31</sup> ". . . Three members who are sheriffs, chiefs of police, or peace officers nominated by their respective sheriffs or chiefs of police . . . one member who is an elected county official . . . one member who is an elected city official . . ."

<sup>32</sup> "The law was voluntary from 1961 to 1965."

<sup>33</sup> ". . . The League of Municipalities."

<sup>34</sup> ". . . Council composed of 8 members . . . 3 appointed by the governor . . . 2 sheriffs . . . 2 chiefs of police . . . Commissioner of Police of New York City . . ."

<sup>35</sup> ". . . Superintendent of Bureau of Criminal Identification . . . State Parole Officer . . . State Attorney . . . representative of each House of the legislature . . ."

<sup>36</sup> ". . . Council consists of nine members appointed by the governor with the advice and consent of the Senate . . . These members are as follows: one member from the Ohio Board of Regents, two incumbent sheriffs, two incumbent chiefs of police, one member of Bureau of Criminal Identification and Investigation, one member from State Highway Patrol, one member from F.B.I., one member from the State Department of Education . . ."

<sup>37</sup> ". . . One man from the State Highway Patrol and one from the Bureau of Criminal Identification and Investigation."

<sup>38</sup> "One Peace Officer selected by Court of Criminal Appeals; one Peace Officer selected by Commissioner of Public Safety; one selected by Board of Directors of the Oklahoma Sheriffs and Peace Officers Association; one selected by Board of Directors of the Fraternal Order of Police; and one member who shall be the Director of the Southwest Center for Law Enforcement Education."

<sup>39</sup> "Consists of nine members of which one must be a city policeman and one must be a county policeman. The other seven can be citizens."

<sup>40</sup> "Administration of the Program is handled by the Superintendent of the State Police."

<sup>41</sup> ". . . Five members appointed by the Attorney General's office . . . The Chief Agent of the Division of Criminal Investigation, who shall serve as chairman . . . The special agent of the F.B.I. in charge of the district in which South Dakota is located . . ."

<sup>42</sup> ". . . consists of eighty hours of classroom training; ten hours of first aid training; and a required two day firearms school."

<sup>43</sup> "Governor appoints the Agency."

<sup>44</sup> "Governor appoints the commission of nine members with the advice and consent of the Senate."

<sup>45</sup> "Council composed of nine members . . . attorney general, one member from F.B.I., and three persons selected at large by the Governor . . . Governor also appoints one member from each of the following categories: incumbent mayors, incumbent county commissioners, incumbent sheriffs, and incumbent police chiefs . . ."

<sup>46</sup> "Council composed of nine members: two sheriffs, two chiefs of police, one member of F.B.I., two citizens at large, a Commissioner of Public Safety, and Commissioner of Motor Vehicles . . . The Attorney General is also a member of the Council, but he has no voting power."

<sup>47</sup> "Also includes one attorney from a city with less than 50,000 population, one attorney from a city with more than 50,000 population, one member from the Senate, and two members from the House of Representatives."

<sup>48</sup> "The committee of nine is appointed by the governor . . . The two members listed under the category of mayor represent one incumbent executive officer of a city within the state and one incumbent County Commissioner."

# The Dumb Cop

By  
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◆ It has been estimated that there are 50,000 openings in the field of law enforcement and that it is getting harder and harder to fill the positions. Recruitment of policemen is a national problem. To the question WHY, the commonest answer is money. But I am convinced that it goes far beyond money. If I were pushed for a one word answer, I would have to say "prestige." For the most part, policemen are looked down upon. The phrase "dumb-cop" is in common usage.

Several years ago I became interested in the education of police officers and decided to find out if the "cops" were dumb. There are about 450,000 law enforcement officers in the United States. About half of them never finished high school. About 12,000 departments do not require a high school diploma. Out of a total of 40,000 police units, only twenty require some college. Multnomah County, Oregon, is the only department in the United States that requires a college degree. Many officers in the Deep South are illiterate and unable to write even a traffic ticket. When I became interested in this problem, I discovered that out of 970 police officers in the city of New Orleans, only nine had college degrees and none of the degrees had anything to do with law enforcement. Incidentally, of the nine degrees, six were held by Negroes.

When we look at police training, the picture is darker. To earn a college degree a student must spend about 2,000 hours in the classroom. To become a beautician an applicant must "put in" 1,200 hours. To become a policeman all you need in most places is an appointment. The City of New Orleans has one of the longest training periods in the country, which is 520 hours. In the same city, the barbers require 2,000 hours plus an 18 month apprenticeship before an applicant can operate his own shop.

To further complicate this training or lack of training, very few agencies do any kind of testing. The City of New Orleans gives a civil service exam, a physical exam, a psychological exam and conducts a background investigation. This combination of tests rejects 91 out of every 100 applicants. When we

*... For the most part, we  
have better policemen  
than we deserve ...*

remember that police work attracts "the lunatic fringe" it is appalling to know that the 91 rejects can apply to non-testing departments and be accepted.

In New Orleans, a group of citizens became alarmed over the recruitment problem and decided to do something about it. They organized themselves into the Police Scholarship Foundation. Since so many citizens looked down upon the police, the group looked around for a method to create prestige. It was soon apparent that the policeman was the only non-professional in the field of criminal justice. The judge and attorney were professionals in the strictest sense of the word, while the policeman, whose testimony was often vital to the prosecution of a case, was an uneducated and poorly trained adjunct to the system of criminal justice. Therefore, the first step would be to professionalize the policeman and in our society this meant education.

Truly to professionalize the policeman, the education should be directly related to law enforcement. When we started to look for such programs at a college level, we were amazed that the closest university to New Orleans with such a curriculum was over 500 miles away at Tallahassee, Florida. We then approached the local universities and requested that a department of criminology be established. My Board of Directors gave the necessary permission as long as it was started in the Evening Division.

The Evening Division was under my jurisdiction but unfortunately I knew nothing about professional degrees in criminology. To prepare myself for this new responsibility, I visited the major schools of criminology in the United States and spoke with both police students and faculty members. The consensus of opinions was that the curriculum should be built around a core of social sciences. This really disillusioned

sioned me. I always thought of the police officer as a science oriented sleuth who used all of the new gadgets to apprehend the criminals. But as I got acquainted with policemen, I found that they spend only 10 per cent of their time in "sleuthing." The balance of their work is spent in preparing reports, interviewing innocent citizens, community relations, and in what can only be described as social work. Therefore, both the students and the faculty were emphatic that the curriculum should be related to such endeavors. Consequently, I organized the four-year degree around a Bachelor of Arts with a Major in Criminology. At this writing we have graduated 32 police officers who are members of the local police force. There are another 150 working toward graduation.

#### COLLEGE V. NON-COLLEGE COPS

It might be well to point out that the purpose of professional police education is not to turn out more efficient criminal catchers. *Its purpose is to give the students additional tools with which to work. Nevertheless we have been told that the "college cops" go about their job in a different way. They are much more assured in their approach to the non-criminal. Their superintendent says that they seem to approach their job from a fresh viewpoint.* Furthermore, the results of the educational program introduced by the Police Scholarship Foundation has made the Orleans and Jefferson Parishes (counties) police departments education minded. We no longer have to recruit police students. The Superintendent and the Sheriff do all of the urging.

In an attempt to find out if the college cop is a better policeman than the non-college cop, one department carried out a secret experiment. Two police districts with similar populations and problems were selected. Over a period of several months one was staffed with college graduates (any kind of college degree) and the other was manned with men with a high school level education. After six months the crime rate remained the same in each district. But the district with the higher level of education showed a higher rate of

morale, fewer complaints, less time off, and a quicker response to calls. Since the bulk of a policeman's time is spent in dealing with honest citizens, I think these differences represent worthwhile dividends.

Once he got into college, the dumb cop proved to be anything but dumb. When our program started in 1963, individual faculty members, reflecting the attitudes of the community, asked that the dumb cops be kept out of their classes. As a result of this, I purposely scheduled no all-police classes. Even in the criminology classes, I always found enough non-police interested in the subject so that it was a mixed class. At the end of the first year, I tabulated the police grades. Sixty percent of their grades were A and B. While the police students comprise about 15 percent of the Evening Division student body, they received about 40 percent of the honors. In the last graduating class the police comprised 50 percent of the graduates but the highest scholastic averages for the total college program were earned by two policemen. Now the faculty complains if there are no policemen in the class.

From the instructors' standpoint, there is no more gratifying teaching assignment than working with police students. First of all, since police work is becoming more and more social work, the police students bring a lot of maturity and experience to the classroom. Problems of psychology, sociology, and political science are part of their normal workday. They can give dozens of examples of personal contact with persons and situations involved in deviant behavior, delinquency, marital problems, practical politics, sub-standard housing, and most of the other factors touched on in many of the social science courses. But over and above the maturity and experience that they add to the class, the police students are welcomed by most faculty members for their gratitude. The policeman is the first to admit his inadequacies and is most appreciative for the assistance given him. In spite of hardships, they have proven to be sincere, hardworking, conscientious students. They maintain this attitude in the face of obstacles that would make most other students drop-outs. The "college

cop" must take a lot of kidding from his fellow officers. He must put up with jealousy from those who look upon his education as a threat to their own position. He must give up all thought of "moonlighting," a favorite extra income activity of most police officers. He must even give up overtime because it would interfere with his studies.

The policeman is the first to admit that he needs professional education. To get it, he is knocking on the doors of colleges all over the country. That is why the number of colleges offering degrees in criminology have more than tripled in the last five years. They now number about 200.

In my six years of close contact with many police officers, I have learned to respect them. For the most part we have better policemen than we deserve. Despite low salaries and lower prestige, we have a lot of good, honest, professional policemen. In New Orleans we have hundreds of officers who are dedicated to their job and who are professionals in every sense of the word. But it is just such men who are the first to admit that it is impossible today for a new recruit to duplicate the on-the-job growth that was accomplished by the men who joined the department twenty years ago. Whereas we now have many good, efficient, professional officers who never attended high school, these same men could not duplicate their achievements were they to start over today with the same level of education. Today, the policeman's role is more that of a social worker than a criminal catcher. Just as the social workers realized that they could not continue their work and growth with just the untrained volunteer ladies who formerly assumed the tasks as a civic duty, so, too, the modern police administrator realizes that the whole recruitment effort must start at a much higher level than it did a quarter of a century ago. Not only must it start higher, it must rapidly go higher and, of course, be supplemented by in-service training. As an educator in the field of adult education, I know of no other segment of the adult population that is more deserving of help or more appreciative of whatever educational assistance is given. ☆

◆ Is the legal training now offered by the state colleges, junior colleges and police academies adequate? Attention will be directed to programs offered in California because of the author's assumption that California has programs which compare favorably with the best training available in the nation. Indications are that present efforts on all levels are quantitatively and qualitatively deficient.

## A "MINUS" IN POLICE LEGAL EDUCATION

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By  
ROBERT JAGIELLO

THE AUTHOR is Assistant Professor of Police Science, Sacramento State College, Sacramento, Calif. 95819. He holds the Juris Doctorate from Loyola University, Master of Laws from Yale University, and is presently pursuing a Master of Arts degree in Liberal Studies at Wesleyan University. He held a teaching fellowship at Loyola Law School and a Sterling fellowship at Yale Law School. He was awarded the Bancroft-Whitney award for highest honors for the entire law school curriculum.

The police role requires that officers make decisions on essentially legal issues. These issues can be divided for purposes of discussion into two large groupings: (1) issues of substantive criminal law and (2) issues related to criminal procedure. Whether, in a given case, the police have enough legally significant evidence to satisfy the elements of burglary is in part an example of the former as well as a matter of evidence, and whether there is probable cause to arrest is an example of the latter. These decisions often have to be made instantaneously and call for sophisticated legal judgment. The decision made in an instant may be the subject of attention by lawyers and court officials for weeks, months or years. The results of these decisions, even if they go no further than an arrest, might have a lasting impact on the life of the person who was the subject of the decisions.

This article will examine three institutions involved in police legal education (1) the police academies, (2) California junior colleges, and (3) California state colleges. It will limit its considerations to instruction in criminal law. No attempt is made to assess the value of courses in evidence or other legal areas.

The present training in criminal law received in police academies by new recruits is extremely limited. According to the standards established by the California Commission on Peace Officer's Standards and Training peace officers must receive sixteen hours of instruction in law. Twelve hours are devoted to a study of penal codes and four hours to the law of arrest. Some departments offer somewhat more substantial programs. For example, the Los Angeles Police Department requires approximately 48 hours of instruction in penal codes and 8 hours in the law of arrest.

The junior colleges offer a program which is more extensive but still with substantial inherent deficiencies. The average curriculum contains two nuts-and-bolts courses in the area of criminal law. One is concerned with elements of common law crimes and crimes enu-

merated in the penal code. It may contain a brief discussion of some of the more basic criminal law concepts like *mens rea*, *actus reus*, insanity and limited capacity as a defense. The other course is usually called the administration of justice or criminal procedure and is designed to acquaint students with the nature of court systems, the criminal procedures employed from incident to final disposition and principles of constitutional law. Surface treatment of the topics discussed is common to both courses because of limitations in time and faculty resources. Training for six semester hours is not adequate preparation for an officer whose total working commitment is to the function of law enforcement. Staffing is also a problem, the teacher is not necessarily a law trained faculty member. Often he is a police officer, either active or retired, and has not had a substantial grounding in legal theory.

The state colleges with some exceptions have programs which closely parallel the junior college curriculum and suffer from the same inadequacies. Those which offer a more extensive course of instruction will have a course in arrest, search and seizure and advanced criminal law. Though the curriculum in these colleges approaches the needed level of training, the number of colleges which have the expanded program is small.

There are decided disadvantages in the limited legal training offered in the academies, junior colleges and most state colleges. The police officer does not act alone in the criminal legal process. He is part of a team engaged in enforcing the law. His work brings him into constant contact with prosecutors, judges and defense lawyers. If he is to have a meaningful understanding of what is expected of him, he must understand how they think. He must appreciate the underlying presuppositions they make about the law. His work only has effective relevance in a system which is administered and controlled by people who often entertain a different conception of the law than he does. What accounts for that difference is training. The police officer must re-

ceive the same type of training in criminal law that the other members of the law enforcement team receive, but his training must be more intense because he is expected to make under far more trying circumstances the same kinds of decisions they do.

If he does not have this kind of training, he cannot begin to understand the reasons which motivate the court in dismissing the case he has carefully investigated; there is a failure to appreciate why the prosecutor is unable to prosecute the case; he tends to rail against Supreme Court decisions without understanding the reasons which support the decision or what is to be expected of him in the future.

Another crucial reason why the present programs are deficient lies in the conception of law that is created in the minds of students in a nuts-and-bolts law course. The student whose training in criminal law consists primarily, if not solely, in a consideration of penal code elements of common law crimes and a smattering of information on the concepts of *mens rea*, criminal negligence, the defenses of infancy and insanity, is likely to be led into a serious misconception about the law. He will attribute to the law far greater certainty than actually exists. He will often see the law as a fixed body of rules which are applied with more or less uniform regularity against violators. His explanation for an arrest will often be in its totality: "he broke the law."

But the law is not a fixed body of rules, sitting off somewhere, simply waiting to be used as the basis for an arrest or conviction. The law is a very human enterprise. One can cite hundreds of principles of law if he has had sufficient training, but that does not mean that those principles compel a particular conclusion in a particular case. The particular case involves human beings. It is a one act drama, played only once. The principles of law are used as reference points in that drama, but it is the decision-makers—the judge, the prosecutor and in the first instance the police officer—who will decide what principles will be referred to and what those principles will be deemed to mean in *this*

case. Underlying this choice of principles, and the content that will be assigned to those principles chosen, are value choices of the decision-maker. The proper study of law will recognize this reality and discuss the underlying values which actually enter into the decision-making process.

A familiar example to police officers is the case involving the first time youthful offender. Perhaps he has engaged in petty theft. Will a decision to arrest him be made? "The law" as a fixed body of rules would seem to compel the result that he be arrested, prosecuted and convicted. If all an officer knew about the law is the appropriate penal code section and the elements of common-law crimes, he would with utmost logic say "I am compelled to arrest him." But he does not say that. At times the officer will arrest and at other times he will not. What has happened in those cases where he has decided not to arrest? He has engaged in some kind of balancing. Perhaps he concluded that the advantages to be gained from prosecution were outweighed by advantages gained by consultation with the parents. Perhaps he decided it would be unwise under the circumstances to tie the boy to a criminal record. What is clear, however, is that the officer has a large measure of discretion in deciding what will be the law for a particular case in all but the most serious offenses. If he decides not to arrest he has for this case assumed the role of legislator (he has nullified the law), police officer, prosecutor and court (he has decided the case in the suspect's favor). The police officer truly is a law unto himself in such cases.

How much he is the maker and interpreter of the law becomes clearer as his action is judged under the vague and more amorphous laws which give wide ranging discretion to a police officer. Officers will readily admit that if they want to arrest a person with whom they are having a confrontation, they can generally find a law which will permit them to do so. After the arrest the process of rationalization takes place in an effort to qualify the arrest under appropriate penal code sections.

There are many examples of open-ended laws which give police wide discretion: loitering, failure to identify, drinking in public, disorderly conduct, obstructing an officer in the line of duty, failure to disperse and others. For the motorist there is the whole arsenal of vehicle code sections which can always be referred to as a justification for stopping a car. Police in California are permitted to stop and question a person to ascertain his identity if the surrounding circumstances indicate to a reasonable man that the public safety demands such identification. What conduct or circumstances can form the basis for the officer's conclusion that public safety demands such identification? If the area is a high crime rate area and the officer has determined the subject has acted strangely or made a furtive gesture, the citizen can be stopped and questioned.

The question in these cases is what is loitering, disorderly conduct, obstructing an officer, failure to disperse? What constitutes acting strangely, and what is a furtive gesture? The inquiry then becomes: who is to decide whether this conduct is disorderly, strange or furtive?

It can be said that the police officer originally defines what each of these things are. To the extent that he defines the content of these terms in particular cases, he is making law for that case. He decides that particular behavior constitutes disorderly conduct; that a given movement was a furtive gesture; that certain conduct was strange. He thereby decides that the sanctions of criminal law, at least to the extent of making an arrest, booking and requiring bail in some cases will be employed against this particular defendant.

Did the law compel the officer in his decision in this particular case? The answer is no. With equal justification, he could have found that the movement of the arm was not a furtive gesture; that the conduct was not strange, but rather that it was explainable under the circumstances; that the conduct, though boisterous, was not so offensive as to be regarded as disorderly.

In most cases, when acting under an amorphous statute, the po-

lice officer is the initial interpreter of the law. The law could either acquit or convict at this first level of confrontation between the officer and the suspect. The officer chooses to bring the suspect into the criminal process. The important question then becomes: Why did the officer decide to bring *this* defendant into the criminal process? It is submitted that his decision is largely one based on values other than the compulsion of law. For example the officer's discretion is framed by his self-conception of his role as an officer. Perhaps he sees himself as a person entitled to more respect than the average person because he is the law incarnate. An officer with this mental set is more likely to view an argumentative suspect as disorderly or strange. The officer might have a prejudice against minority groups. He is likely in such cases to be more willing to interpret certain conduct by a black youth as furtive than he would be if the suspect were in a "safe" part of town and similar in appearance to the officer's own social group. Hippies and Yuppies run a far greater risk of being considered disorderly (particularly if they are in a place where their presence is unusual) than would their clean-shaven counterparts dressed in more traditional garb.

The principle that these cases demonstrate is crucial to an understanding of criminal law. The law often does not compel a result in a particular case. The principles of law which will be used as the touchstones for decision in the particular case will be chosen at the discretion of the police officer, prosecutor and judge. The choice they make will be determined by values independent of any appeal to "the law" as a justification. Once the decision to arrest is made, an appropriate section of the penal code will be chosen and the facts will then be interpreted to satisfy the requirements of that section. The same phenomena occurs as the defendant is moved along in the criminal process. The prosecutor possesses an enormous amount of discretion. Depending on his interpretation of the law and the facts, he can proceed with the case or dismiss it. He will, for

example, exact the full measure of the law's sanctions against one defendant and allow another to cop a plea to a lesser charge. Again, the question why this occurs must be asked. To what extent has he acted as a judge or a legislator in this case?

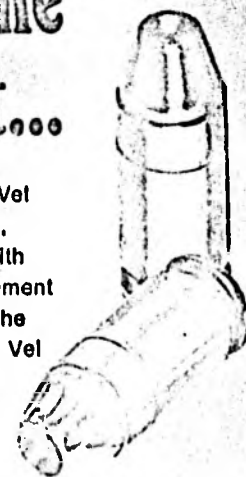
The judge also has enormous discretion to define criminal behavior. By proper judicial management of the trial, a discreet acceptance or rejection of preferred items of evidence, by allowance or rejection of certain defenses, he can and often does cause an acquittal or conviction. His decision, if he were questioned, would be couched in legal justifications, but often the answer simply masks the enormous discretion he has and fails to disclose his real reasons for exercising it in a particular way. The question then becomes: Why did he choose to allow or reject this defense or evidence? The whole range of questions posed regarding police conduct would be appropriate here.

This analysis is not to be taken as a criticism of discretion in the criminal legal process. Rather, it is a frank recognition that law enforcement is a human undertaking, riddled with the usual human failings. But we must recognize and declare that the process is discretionary and address ourselves to the important question: *How can we best train police officers in criminal law so that their judgments and decisions, though discretionary, will be informed and well conceived?*

I must of necessity reject any solution which concentrates solely on the penal codes and sterile pronouncements on the elements of common law crimes. Instead, we need to examine the values which underlie the entire criminal process both in its substantive and procedural aspects. The scope of the inquiry into criminal law can best be indicated by a series of questions which, though perhaps unanswerable in an ultimate sense, provide a working framework for a critical examination of a system of criminal laws.

"1. Considering law as a method of social control, what ends should men endeavor to achieve by

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law? Are these desirable in themselves or as means to ends desirable but more remote?

2. What special aims or purposes should the criminal law try to achieve and what means are well adapted to serving them?

(a) To what extent should a law of crimes be designed to control individual and group thoughts, beliefs and actions and to warn persons and groups subject or subjected to the criminal process?

(b) To what extent should a law of crimes be designed to control official action by specifying who has what power under what circumstances?

3. What persons, situations and events, under what circumstances should be labeled "criminal?"

(a) What correlation should there be between the degree and extent of a disturbance and the designation of its source as criminal?

(b) Whatever the degree or extent of disturbance, should actual or potential danger and benefit to community values determine whether situations or events be designated "criminal?"

(c) To what extent should the consequences, both official and unofficial, be taken into account in designating persons, situations, or events "criminal?"

4. What consequences should be officially authorized to follow the designation "criminal?"

(a) What correlation should there be between the consequences authorized and the degree and extent of the disturbance?

(b) Whatever the degree or extent of disturbance, should actual or potential danger and benefit to community values determine the consequences officially authorized?

(c) To what extent should actual consequences be taken into account in deciding what official consequences should be authorized?

"To facilitate analysis and discussion of these general questions and to illustrate the variety of contexts in which each may arise, specific questions are posed. These specific questions are stated in traditionally descriptive terms but answers to each of them should be by WHY? WHAT OUGHT TO BE?

and HOW WHAT OUGHT TO BE, if it varies from what is, CAN BE ACHIEVED?

"1. What is a criminal act? Is an act a requisite element of a crime?

2. What is a criminal state of mind (*mens rea*)? Is a criminal state of mind a requisite element of a crime?

3. What is a criminal result? Is a criminal result a requisite element of a crime?

4. What is a criminal relationship? Is a relationship between act, state of mind, and result a requisite element of a crime?

5. To what extent and degree are any of the foregoing elements taken into account in the decision to promulgate, invoke or administer custody, care, release or destruction of persons or property.

6. To what extent are culture, maturity, race, ancestry, family, associations, criminal and educational record, and mental, physical, political, economic, occupational, professional and religious statutes and needs taken into account in defining crime and determining consequences?

7. To what extent are such justifications and excuses and protecting self, others or property, provocation, entrapment, and official orders taken into account in defining crime and determining consequences?

8. How adequate are the procedures for obtaining and introducing data and how relevant are the data used and available to the decisions being made throughout the process by, for example, legislator, citizen, policeman, prosecutor, magistrate, bondsman, grand juror, investigator, defense counsel, judge, petit juror, diagnostician, correctional officer, parole or pardon board member?"

These questions indicate the general tenor of the inquiry. It is to be a broad ranging examination of the fundamental assumptions of the criminal law process.

The direction is clear. The present emphasis on abstract rules and penal codes must be redirected. A far greater emphasis must be placed on underlying legal theory

<sup>1</sup> Donnelly, Richard C., Goldstein, Joseph, Schwartz, Richard D., *Criminal Law* (New York, 1962), p. 2.

and assumptions, and the sociological realities of criminal law. Legally trained faculty members are absolutely essential. If at all possible the full range of academic resources should be brought into play. Ideally, sociologists, psychologists, social workers, corrections personnel, anthropologists, and economists would participate in the teaching process. Accepting the realization of the ideal as remote, the law trained faculty member must equip himself to deal with elementary considerations in these other disciplines. The materials used in the criminal law courses should be rich in non-legal literature.

Recognizing the direction that police training must take, Sacramento State College has substantially revised its criminal law offerings for police science majors. They will have a three-unit course equivalent to that offered at the junior colleges in the elements of common law crimes and penal codes. A course in constitutional law taken in the government department is also required. This will be followed by a six-unit course which will examine the fundamental assumptions of criminal law as discussed above. A six-unit course, titled the Criminal Legal Process, will also be required. The concepts which will be considered are: the nature of due process, role of the police in a democratic society, arrest, search and seizure, interrogation and confessions, wiretapping and electronic eavesdropping, preliminary examination, bail, role of the prosecutor, arraignment, plea bargaining, and right to counsel. Students will be exposed to an indepth discussion of the theory as well as the reality of the criminal legal process.

The role of the police in today's society requires some critical rethinking regarding their legal training. Their exposure on the academic level to criminal law and procedure should equal or exceed that of law students. Their position within the larger structure of law enforcement, their impressive discretionary powers and the spontaneity with which they have to make decisions all demand that they receive the finest legal training available. ☆

WHY COPS HATE LIBERALS—AND VICE VERSA

strikes or demonstrations. The ten sought to organize the police although it is, of course, also had an ambivalent attitude police have been involved in brewing and trade-union demonstrations which have made them the criticism and counterviolence. If there remembers that the proletarian origins. During the demonstrations and strikes in Communist intellectual, Pier the New Left students that them and the police, he stood our faces are those of sons of hate you as I hate your fathers. comes through. . . . Yesterday battle in the Valle Giulia with pathies were with the police, he sons of the poor" (quoted *Lella Sera* by Melvin Lasky in *Encounter*).

shown in the welfare of the the European left, their mem- nions, and their working-class surprising that the political be- police has been more ambiva- their American compeers. On gments of the police in Europe thy for left and working-class where they have been serving ments for some time. This was ocratic Berlin and Prussia gen- in Vienna before 1931, and in Spain before 1936. The ambiva- police have shown up most where a number of police unions ter the May, 1969, events, deny- or use of force against student police organizations wanted it ernalment, not the police, was vigor of the actions taken.

at the American New Left stu- to see the police in a sympa- loited, insecure, alienated mem- privileged classes. As members of h movement which is unaffiliat- arty, they are unconcerned with of their actions on the political ger left-wing movement. To a provocative efforts reflect the ed upper middle class. Lacking a d any concern for the complexi- power" which have characterized Marxist movement, they are pre- the police, as well as conventional ion, in order to provoke police turn will validate their total re-

jection of all social institutions. Hence, we may expect a continuation of the vicious circle of confrontation and police terror tactics.

Liberal moderates properly react to this situation by demanding that the police act toward deviant behavior much as all other professionals do, that they have no more right to react aggressively toward provocative acts than psychiatrists faced by maniacal and dangerous patients, that no matter what extremists do, the police should not lose their self-control. Such a policy is easy to advocate; it is difficult to carry out.

Furthermore, it ignores the fact that most of the police are "working-class" professionals, not the products of postgraduate education. As James Q. Wilson points out, "This means they bring to the job some of the focal concerns of working-class men—a preoccupation with maintaining self-respect, proving one's masculinity 'not taking any crap,' and not being 'taken in.' Having to rely on personal qualities rather than on formal routines . . . means that the officer's behavior will depend crucially on how much deference he is shown, on how manageable the situation seems to be, and on what the participants in it seem to 'deserve.'" If society wants police to behave like psychiatrists, then it must be willing to treat and train them like psychiatrists rather than like pariahs engaged in dirty work. At present, it treats their job like a semiskilled position which requires, at best, a few weeks' training. Norman Kassoff of the research staff of the International Association of Chiefs of Police has compared the legal minimum training requirements for various occupations in the different American states. Calculated in terms of hours, the median minimums are 11,000 for physicians, 5000 for embalmers, 4000 for barbers, 1200 for beauticians, and less than 200 for policemen. The vast majority of policemen begin carrying guns and enforcing the law with less than five weeks' training of any kind.

The new tensions have increased the old conflict between the police and the liberals. For it must be said that liberals are prejudiced against police, much as many white police are biased against Negroes. Most liberals are ready to assume that all charges of police brutality are true. They tend to refuse to give the police the benefit of any doubt. They rarely denounce the extreme black groups and left radicals for their confrontationist efforts. They do not face up to the need for tactics to deal with deliberate incitement to mob violence. If the liberal and intellectual communities are to have any impact on the police, if they are to play any role in reducing the growing political alienation of many police, they must show some recognition that the police force is also composed of human beings, seeking to earn a living. They must be willing to engage in a dialogue with the police concerning their problems.

STATEMENT ON HB 195

HOUSE JUDICIARY COMMITTEE

Submitted by

Don M. Berry, Executive Director  
Alaska Municipal League

For the record my name is Don M. Berry, Executive Director of the Alaska Municipal League, an association representing 9 boroughs and 30 cities throughout the State. On behalf of the members of the League, I want to thank the Committee for this opportunity to express our opposition to HB 195.

Our opposition, of course, is to delete lines 16 and 17 on page 1 of the bill which states: "Payment of this fee is in lieu of all ad valorem taxes by local government units."

In the first place, there is no local government unit in Alaska which can stand this erosion of its tax base. The League has been gratified this year at the apparent willingness of the Legislature to try to assist political subdivisions with their financial problems. However, exemptions, such as that provided in HB 195, is certainly doing just the opposite.

It must be remembered that this property-exemption would be in addition to the millions of dollars of property owned by the federal and state governments, religious organizations, charitable institutions, etc. which are exempt under the Constitution.

More important than the revenue loss, though, is the deteriorating effect HB 195 would have on a municipality's tax base. Our bonding and financing capacity is controlled primarily by the value of the real property which can be used to support bond issues. We are sure that most of you are aware of the unfavorable market conditions now existing on municipal bonds. Provisions such as that contained in HB 195 would cause this condition to worsen insofar as Alaska local governments are concerned and would certainly make our bonds much less desirable to buyers.

Also, HB 195 does not specify whether all of the real property is exempt or just that used for banking purposes. What does the bill envision as far as that portion of the property used for office space rental, parking lots, commercial enterprises, etc. are concerned? Even religiously-owned property is exempt only to the extent that it is used for religious purposes. We question whether or not properties owned by banks should enjoy a greater tax privilege than that.

We have compiled and are submitting herewith certain figures as to the evaluation of real property owned by banks, trust companies and savings and loan associations throughout the State and the tax loss to boroughs which would result from the passage of HB 195. We wish to stress that these figures are only from the boroughs and do not take into consideration the loss which would also accrue to the cities. Nor do these figures take into consideration the taxable personal property owned by state banks.

Once again, we wish to thank the Committee for this opportunity to express our opposition to HB 195 and urge you not to act favorably on the bill as it now reads.

Respectfully submitted,

*Don M. Berry*  
Don M. Berry, Executive Director  
Alaska Municipal League

COMPILATION ON HB 195

<u>Borough</u>	<u>Mil Rate</u>	<u>Real Property Evaluation</u>	<u>Tax Loss</u>
Ketchikan Gateway	6.4	\$1,089,070	\$7,000.00
Greater Anchorage Area	14.78	9,188,950	137,834.25
Kodiak Island	7.84	334,850	2,625.00
Greater Sitka	5.5	270,000	1,485.00
Greater Juneau	12.91	1,884,200	24,494.60
Fairbanks North Star	15	179,650	2,694.75
Kenai Peninsula	7	480,750	3,365.25

It is interesting to note that in the Fairbanks Borough only 1 bank owns its building. All the others are leased and therefore the exemption in HB 195 would be of no advantage to anyone in Fairbanks. The bill would result only in an increase in the license fee.

The Greater Anchorage Area Borough reported a "considerable amount of proposed construction" as did the Kodiak Island Borough.

File AB 202

# ANCHORAGE *NATURAL* CORPORATION GAS

P. O. BOX 6288  
ANCHORAGE, ALASKA 99502

3000 SPENARD ROAD  
PHONE 277-5551



Dr. Paul Haggland  
Chairman of the Senate Commerce Committee  
Alaska Senate  
Juneau, Alaska

Dear Dr. Haggland:

We have received copy of the comments of Mr. Don Hall ("Hall"), Executive Director of the Alaska Public Service Commission regarding CSHB 202 ("202"), dated December 18, 1969. We have discussed various considerations with him, and we believe he is willing to agree to the following changes which we are suggesting:

- 1. Section 171:  
202-page 6  
Hall-page 4,  
4th paragraph

Mr. Hall had asked to delete in lines 18, 19, 20 of 202 the requirement that:

A commissioner who has not read or heard the entire record, including the argument, may not participate in making a decision of the commission.

Comment:

We suggest that the foregoing sentence be revised to read:

A commissioner may not participate in making a decision of the Commission unless he certifies that he is familiar with the testimony and evidence adduced, and has read or heard the argument.

This revision would permit a commissioner to participate in a decision after reviewing the record as required above, even though he may have missed some or all of the proceedings. Without some such requirement it could be that the Hearing Officer (or staff) version alone could become the basis for a decision. Apparently this may already have happened in Alaska and may be responsible for some current objections to the use of a Hearing Officer.

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Dr. Paul Haggland  
February 12, 1970  
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2. Section 421(a): Mr. Hall had asked authority to suspend tariff changes for  
202-page 17 an initial period of six months (last 2 lines, page 15) and  
Hall-page 15/16 a further period of three months (top of page 16).

Comment: Nine months' suspension of tariff changes could be very harmful if a utility had urgent need of relief. We suggest that the six-month period be revised to three months (last 2 lines, page 15).

3. Section 421(b): Mr. Hall had intended to recommend deletion of 421(b).  
202-page 17/18  
Hall-page 16

Comment: 421(b) should be deleted if 421(a) is instituted as proposed.

4. Section 421(c): Mr. Hall had intended to recommend deletion of 421(c).  
202-page 18  
Hall-page 17

Comment: 421(c) should be deleted if 421(a) is instituted as proposed.

5. Section 421(d): Mr. Hall agrees that to place monies into escrow is not of  
202-page 18 material help to a utility during a pending tariff change, and  
Hall-page 17 that the alternative of a bond might be of real benefit.

Comment: (i) Add, at the end of 421(d):

"The utility may at its option substitute an acceptable bond in lieu of the escrow requirements hereof."

(ii) In our view (which is not Mr. Hall's past or present position) it would be most helpful to utilities, and no jeopardy to the public, to further amend the first sentence of 421(d) to read as follows: (adding the words as underlined)

"In the case of a proposed increased rate the utility may institute the new rate and the commission may by order require...."

(iii) 421(d) would become 421(b) after deleting 421(b) and 421(c).

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6. Section 441(a)  
and (b) ;  
202-page 19  
Hall-page 18

Mr. Hall had asked that the word "fair" be deleted wherever it appears.

**Comment:**

Mr. Hall's position is that since a majority (32 out of 50) of states use depreciated original cost, Alaska should abandon the "fair" value to be considered in determining the rate base for its utilities.

It is our position that fair value has been found to be a necessary requirement for assuring successful utility regulation in 18 states, and that the decisions of the courts or commissions of 18 other states are ample precedent for use of the fair value concept in Alaska. Samples of such decisions are attached, with source references.

By retaining the word "fair" but by adopting Mr. Hall's proposed language for 441(b), a compromise position would be reached which would provide fair consideration to be given to economic factors other than original cost, while not requiring the actual determination of reproduction cost per CSHB 202.

Alaska is a "fair value" state under existing law, and this law has served as incentive to attract private capital for investment in utilities in Alaska. The consequences of over-turning this concept could be unfair to the utilities now operating in Alaska, and would surely discourage future private investment.

On this section we are not in agreement with Mr. Hall, but we believe he may be willing to accept the compromise we are suggesting above.

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7. Section 501:           Line 9, delete "or their affiliated interests"  
202-page 22           Line 10, delete "or its affiliated interests"  
Hall-page 33/34

Comment:                   In our view Mr. Hall's proposed language proposed as Section 511(c) provides adequate protection against "affiliated interests." If desired a new Section 511(d) could be added as follows, to amplify or strengthen Section 511(c) :

"The utility may at its discretion supply documentation to the commission to substantiate and justify its position with respect to its arrangements or agreements or practices with affiliated interests. In the event of the utility's failure so to do, the commission's findings as to the reasonableness of such arrangements or agreements or practices shall be based upon the commission's own evaluation thereof, subject to Section 42.05.551 hereof."

8. Section 701(2)(E)   Mr. Hall has advised that regulation of pipelines for  
202-page 27           "petroleum or petroleum products" (line 20 of 202) may be  
Hall-page 70           undertaken per a new bill with authority vested in the  
Department of Natural Resources. For this reason we  
would recommend:

Line 20, delete "petroleum or petroleum products"  
Line 23, delete "for gas, petroleum or petroleum products as operating expenses"

Comment:                   These deletions would remove commission jurisdiction from and responsibility for the transmission of crude oil (e.g. TAPS) and petroleum products, while leaving intact the commission's power to establish for gas transmission the "reasonable price to be allowed in determining the reasonableness of the regulated public utilities rates."

9. Section 701(6) :   Mr. Hall has agreed that 701(6)(H) is a duplication of  
202-page 28           701(6)(D) already included in CSHB 202, and should be  
Hall-page 72           deleted.

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P. O. BOX 6288  
ANCHORAGE, ALASKA

Dr. Paul Haggland  
February 12, 1970  
Page Five

**Comment:**

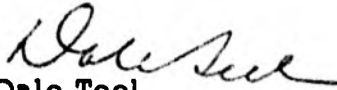
Paragraphs (G), (I), and (J) also should be deleted, regardless of Mr. Hall's experience with such law in Oregon.

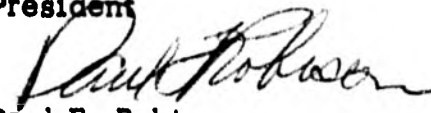
Paragraph (G) might effectively prevent a utility from attracting to its Board of Directors any person having a directorship or officership in any other business or profession, since such other business or profession would become an "affiliated interest" and could be subjected to unreasonable restraints, investigations, or harrassment.

Paragraphs (I) and (J) are likewise unreasonable, impractical, and intolerable, regardless of Mr. Hall's experience in Oregon. These paragraphs could serve as a basis to investigate or harrass almost anyone having contact with a utility or its management. There is no justification, stated or real, for such a far-ranging definition, other than the precedent in Oregon. These paragraphs should be deleted.

We have addressed our comments to those elements of CSHB 202 which we believe need attention for administrative reasons, and we are not commenting on regulation of municipalities, composition of the Commission, duplication of regulatory responsibility, etc. We hope that the legislature will favor a gradual and orderly evolution of the regulatory process in Alaska rather than immediate and major changes. We hope the decision will be to build upon the existing organization, rather than to reorganize the utility regulatory process which now exists in Alaska.

Very truly yours,

  
Dale Teel  
President

  
Paul F. Robison  
Counsel for  
Anchorage Natural Gas Corporation  
and  
Alaska Pipeline Company

cc: Senate Commerce Committee  
House Judiciary Committee  
PSC Commissioners  
Mr. Don Hall, Exec. Director  
Mr. Walter Kubley,  
Commissioner of Commerce

## RATE CASES RELATED TO FAIR VALUE

ILLINOIS Commerce Commission v. Peoples Gas, Light & Coke Co. (1953) 99 PUR NS 361. The Commission, in determining present fair value for rate making, is required to consider current economic conditions, price levels, reproduction cost, and original cost as well as the cost of improvements and the probable earning capacity of the property under prescribed rates.

INDIANA Re Indiana Bell Teleph. Co. (1950) 85 PUR NS 129. The commission, in determining the fair value of utility property, must give consideration to all bases of valuation which may be presented and to the reasonable cost of bringing the property to its present state of efficiency.

MISSOURI Missouri ex rel. Dyer v. Missouri P.S.C. (1960) 37 PUR 3d 507. The commission did not act arbitrarily or unreasonably in fixing a rate base calculated upon the fair value of utility properties (an amount between net original cost and net reproduction cost).

TEXAS Re Houston Nat. Gas Corp. (1963) 52 PUR 3d 244. The commission, in fixing rates, must determine a reasonable balance between original cost less book depreciation and replacement cost new less an adjustment for present age and condition, and in doing so it must use its own judgment and discretion.

NEW MEXICO Re Moyston (Hobbs Gas Co.) (1963) 48 PUR 3d 459. A fair value rate base for a gas utility was computed on the basis of the average of original cost and reproduction cost.

ILLINOIS Re Northern Ill. Water Corp. (1959) 26 PUR 3d 497. The commission, in arriving at a fair value rate base, must use reasonable judgment in determining the weight to be given reproduction cost, original cost, depreciation, book cost, work in progress, materials and supplies and cash working capital.

ILLINOIS Re General Telephone Co. of Illinois (1959) 29 PUR 3d 369. Fair value is not original cost depreciated, nor is it reproduction cost depreciated, nor is it a matter of formulas, but it is rather a matter of reasonable judgment based upon the consideration of all relevant facts.

NORTH CAROLINA Re Piedmont Nt. Gas Co. (1961) 40 PUR 3d 62. Upon evidence of average net original cost of a gas company's properties of \$17 million, net property value at the end of the period of \$19,600,000, and trended original cost of \$31,500,000, and considering that no evidence of reconstruction new cost or present-day values by visual appraisal was offered, the commission fixed a fair value rate base of \$20,300,000.

NORTH CAROLINA Re Nantahala Power & Light Co. (1963) 51 PUR 3d 96. The commission, in establishing a fair value rate base, considered all the evidence offered relating thereto, including, but not limited to, trended cost, reproduction cost new, original cost, average net investment, allocated cost, actual investment, normal depreciated value, and accelerated depreciation value.

DELAWARE Re Wilmington Suburban Water Corp. (1962) 47 PUR 3d 175. In determining a fair value rate base, the commission must give weight to original cost depreciated and reproduction cost depreciated.

OHIO Re Cleveland Electric Illum. Co. (1963) 47 PUR 3d 44. A fair rate of return is a figure which must be determined under Ohio law on the reproduction cost new less depreciation rate base.

April 15, 1969

Senator P. B. Hagglund  
Chairman  
Senate Commerce Committee  
Alaska State Legislature  
Juneau, Alaska 99801

Dear Senator Hagglund:

HB 202 as introduced provided in Sec. 42.05.421(b) that in determining fair value of public utility property for rate making purposes the Commission shall be guided primarily by the element of original cost less accrued depreciation. The committee substitute changed this in Sec. 42.05.441(b) to provide that the Commission shall be guided primarily by the average of original cost, less accrued depreciation, and reproduction cost, less physical depreciation. This change is not sound in principle and would create major difficulties in practice. The Alaska Public Service Commission has rejected the RCND approach for use in Alaska. For example in an order entered December 30, 1965 in P-65-2-1, entitled A. J. Rate Investigation the Commission said:

"A comment is in order regarding "reproduction cost new depreciated" (sometimes called RCND) and "trended original cost" methods of arriving at fair value. Even though they may be used in some other jurisdictions, the Commission specifically rejects them for use in Alaska, except as they may be used in connection with other techniques to establish the value of a substitute plant. After studying the matter, the Commission is convinced that to admit their use here would result in gross injustice to the ratepayer.

For one thing, both the RCND and trended original cost methods ignore the higher operating expenses of older plants, even though operating expenses make up the "lion's share" of gross revenue requirements. Another argument against their use is that no one is going to build an old, out-of-date, obsolete plant and there is therefore no reliable way of knowing what it would cost."

April 15, 1969

The entire approach is not realistic. First it allows a utility to obtain a return on investment never made by the utility. It provides a reconstruction dollar value at today's price which in many cases is completely divorced from economic realism. It does not allow for economic or functional obsolescence, allowing only for physical depreciation. Where major plant items are relatively new or have relatively short lives this factor is not greatly unresponsive to the cost of a substitute plant but, at least in the production of electricity major plant items of very long useful lives are involved. In such cases this approach injects a wholly unrealistic element into the valuation. For instance here in Juneau a large concrete dam built in 1914 or thereabout is a key element in supplying electrical energy to the Borough. Competent engineers have testified in court and before the Public Service Commission that no one would build a dam in that manner today. The dam is adequate for its purpose and apparently has, with reasonable maintenance, an almost indefinite useful life. In a superior court case contesting the valuation of the A. J. Complex for tax purposes RCND was estimated at \$1,934,600. The court held that the fair market value was original cost, depreciated, which amounted to \$389,260. (A. J. Industries v Greater Juneau Borough, First Judicial District, Civ. No. 65-300). Adding these together and dividing by two, as the substitute provision requires gives a rate base value of \$1,161,930. Since the major components of these, especially the dam, deteriorate very slowly physically unless a sharp reversal of the economic trend toward increasing prices occurs, the rate base valuation will constantly increase even though with the pace of modern technology the functional obsolescence will become even greater.

This is not an isolated case, the same situation would occur in any system which combined major elements with long service lives and an even moderate rate of technological advancement. Placing such a premium on functional obsolescence seems to insure that modernization will come to Alaska only limping haltingly on unsure, uncertain feet.

The formula would double the problem of determination of value since the original cost study, with its attendant question would remain as controversial and as necessary as ever while the RCND study would be added.

This is certainly not an argument against the bill as a whole. We do however agree fully with the Commission's statement quoted above that to admit this technique would be to work a gross injustice

Senator Hagglund  
Page 3

April 15, 1969

on the rate-payer. For these reasons we strongly submit that it would serve the public interest best if the language in the original bill were substituted for the language of the committee substitute.

Very truly yours,



Billy G. Berrier  
Borough Attorney

cc: Rep. Barry Jackson, Chairman  
House Judiciary Committee

BGB/llh



*File  
HB 202*

OFFICE OF THE MAYOR  
CITY OF ANCHORAGE  
BOX 400  
ANCHORAGE, ALASKA 99501

GEORGE M. SULLIVAN  
MAYOR

February 26, 1969


The Honorable Barry Jackson  
Alaska House of Representatives  
Pouch V Capitol Building  
Juneau, Alaska 99801

Dear Barry:

On Friday, February 21, 1969, the Anchorage City Council and the Fairbanks City Council met in joint session to consider the merits of Senate Bills #54 and #128 which would confer jurisdiction over certain municipal utilities to the Public Service Commission.

The enclosed Resolution was unanimously approved at the joint Council meeting. Your consideration in reviewing this joint resolution will be greatly appreciated.

Sincerely yours,

  
George M. Sullivan  
Mayor

GMS:gm

JOINT RESOLUTION NO. A/F-2-69

A JOINT RESOLUTION OF THE CITY COUNCILS OF THE CITIES OF ANCHORAGE AND FAIRBANKS OPPOSING REGULATION BY THE PUBLIC SERVICE COMMISSION OF MUNICIPAL UTILITIES AND URGING LEGISLATION TO RESOLVE SERVICE AREA CONFLICTS.

WHEREAS, Senate Bills No.'s 54 and 128 have been introduced in the Senate to confer jurisdiction over certain municipal utilities to the Public Service Commission; and

WHEREAS, few states have granted such jurisdiction over municipal utilities, and most granting jurisdiction only do so in limited cases; and

WHEREAS, no studies, facts or findings have been advanced to show, or attempting to show, that municipal utility rates are unreasonable or that municipal utility services are inadequate to the extent that a public service commission could lawfully remedy such rates or services; and

WHEREAS, municipally owned and operated utilities have, in fact, and traditionally, furnished the lowest cost utility services feasible to its consumers; and

WHEREAS, the Public Service Commission itself has not requested the Legislature to grant the Commission any jurisdiction over municipally owned and operated utilities; and

WHEREAS, municipal utilities can best be regulated by city councils and their citizen boards on a local level and at a place accessible to consumers, and consumers have a forum at all meetings to voice their grievances and criticisms as to rates and services without compliance with complicated and costly Public Service Commission proceedings in Anchorage; and

WHEREAS, the Public Service Commission regulation over municipal utilities would be a costly and undue burden on municipal utilities and their consumers, particularly since S.B. 54 would create a gross business tax of 1/2 of 1% on municipal utilities; and

WHEREAS, the Public Service Commission regulation would undoubtedly lead to increased rates for consumers because the costs of such regulation must be passed on to the consumers; and

WHEREAS, proponents of Public Service Commission regulation contend that such regulation is necessary to enable consumers outside the corporate boundaries to have a forum for their complaints and to resolve service area conflicts between municipal electric utilities and R.E.A. electric cooperatives in a few cities in this State; and

WHEREAS, a long standing history of a lack of complaints to the city councils and citizen boards concerning municipal rates and services outside corporate limits does not appear to justify any contention that customers outside of the area have complaints not justified by sparse, scattered populations outside cities and economic feasibility; and

WHEREAS, the city councils and their citizen boards have not been shown to be unresponsive to complaints over rates and services; and

WHEREAS, the proposed legislation would not eliminate the duplication of facilities in service areas in that no standards are provided and no provision is made in any proposed legislation for payment to a utility for the loss of the facilities and service and utilities could serve within their duplicating grandfather areas; and

WHEREAS, the service area conflicts and problems may be resolved by legislation other than costly and ineffective public service commission regulation; and

WHEREAS, millions of dollars of publicly owned utilities

controlled by the elected officials responsible to the public, and assisted by citizen boards, should not be entrusted to a part-time public service commission and insufficient staff; and

WHEREAS, the Alaska Municipal League has opposed regulation of municipally owned and operated utilities by the Public Service Commission; and

WHEREAS, regulation of municipally owned and operated utilities is contrary to the principle in this State that local governments are best able to govern themselves and municipal utility regulation should remain with local government;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCILS OF THE CITIES OF ANCHORAGE AND FAIRBANKS THAT:

1. The City Councils of the Cities of Anchorage and Fairbanks, strongly oppose the passage of Senate Bills No.'s 54 and 128, or any other legislation granting jurisdiction over municipally owned and operated utilities.

2. The City Councils urge that the Legislature study, develop, and enact, in consultation with cities and R.E.A. electric cooperatives, adequate legislation to resolve the alleged service area conflicts between municipal utilities and R.E.A. cooperatives by agreement or arbitration without resort to public service commission regulation.

3. Copies of this resolution be sent to the Honorable Keith Miller, Governor of the State of Alaska, and all members of the Alaska State Legislature.

4. This resolution shall become effective immediately upon passage.

Passed and approved by the City Councils of the cities of Anchorage and Fairbanks, Alaska, at a special joint council meeting, the 21 day of February, 1969.

ATTEST:

B. J. ...  
City Clerk, City of Anchorage

George D. Sullivan  
Mayor, City of Anchorage

W.A. Bowler  
Mayor, City of Fairbanks

ATTEST:  
W. G. ...  
City Clerk, City of Fairbanks

The Legislature of the State of Alaska  
 FISCAL NOTE  
 First Session - Sixth State Legislature

COPIES:        THE CHAIRMAN OF THE COMMITTEE MAKING THE REQUEST, POUCH V  
       THE LEGISLATIVE FINANCE COMMITTEES' STAFF, POUCH Y  
       THE DIVISION OF BUDGET & MANAGEMENT, POUCH C  
       RETAIN A COPY FOR YOUR FILES

subject        HB 188        SB         
 requested by Chairman Barry W. Jackson, House Judiciary Committee  
 referred to        date of request         
 completion date requested        date received       

EXPENDITURE DETAIL	FY 1969-70	FY 1970-71	FY1971-72
100 PERSONAL SERVICES	\$243,300	\$265,400	\$272,700
200 TRAVEL	28,500	26,300	27,000
300 CONTRACTUAL SERVICES	120,400	73,000	73,200
400 COMMODITIES	4,000	5,000	5,000
500 EQUIPMENT	7,700	2,500	2,500
600 LAND AND STRUCTURES			
700 GRANTS, CLAIMS & SHARED REVENUE			
900 Inter-agency Charges	22,000	23,000	23,000
TOTAL	\$425,900	\$395,200	\$403,400

FUNDING DETAIL			
FEDERAL RECEIPTS	\$	\$	\$
SPECIAL FUNDS			
UNRESTRICTED GENERAL FUND RECEIPTS	425,900	395,200	403,400
Man Months	180	204	216
Permanent Positions	15	17	18
Temporary Positions	0	0	0

FISCAL ANALYSIS

Please see attached.

DATE 3/4/69

SIGNATURE *George Sharrock*

NAME & TITLE George Sharrock, Commissioner of Commerce

## MEMORANDUM

State of Alaska

TO: B. L. McMurtrey  
Deputy Commissioner  
Department of Commerce

DATE : February 27, 1969

FROM: Don Hall  
Executive Director  
Public Service Commission

SUBJECT: HB 188 and HB 202

You asked for my comments in regard to HB 188 but made no similar request in regard to HB 202.

I have compared HB 188 and SB 54 and find that they are identical in every respect. I have also compared HB 202 with SB 128 and find that they too are identical in every respect with one exception; namely, that Sec. 42.05.691(b) of SB 128 has been omitted from HB 202. This deletion has the effect of broadening the Commission's authority.

I have already prepared detailed comments on SB 54 and SB 128, copies of which are in Mr. Sharrock's possession--and these comments, of course, apply also to their respective House companion bills.

You have the Commission's original budget in the amount of \$347,800 as subsequently modified by the cost of upgrading certain positions and by adding \$8,500 to cover the cost of regulating pipeline companies (principally the Alaska Pipeline Company). The cost of administering SB 54 would be somewhat greater than the cost of administering SB 128 because of the fact that SB 54 requires more extensive regulation of municipally owned and operated utilities. However, I believe that the aforementioned original budget as modified would be adequate to administer SB 54, at least during the first year.

Estimates have also been submitted regarding our budgetary requirements for the years ending June 30, 1970, 1971, and 1972. These estimates were specifically based upon administering SB 128 and consist of a three-year projection compiled in one document.

I believe the foregoing is an adequate response to your request for information in regard to the House and Senate bills mentioned above.

By Don Hall

DH:SG

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ALASKA PUBLIC SERVICE COMMISSION

Detail of Personnel Requirements

NOTE #1

Position Title	Approved FY 1968-1969	Projected FY 1969-1970	Projected FY 1970-1971	Projected FY 1971-1972
Executive Director	18,888	21,612	21,612	21,612
Deputy Director	17,844	19,992	19,992	19,992
Utilities Engineer	14,916	17,844	17,844	17,844
Financial Analyst II	15,876	15,876	15,876	15,876
Tariff Specialist II		15,876	15,876	15,876
Financial Analyst I	12,156	13,908	13,908	13,908
Tariff Specialist I		13,908	13,908	13,908
Accountant IV			13,032	13,032
Assistant Utilities Engineer		12,156	12,156	12,156
Administrative Officer I		12,156	12,156	12,156
Accountant II	9,960			
Secretary III		8,496	8,496	8,496
Secretary II	7,956			
Secretary I		7,488	7,488	7,488
Secretary I		7,488	7,488	7,488
Documents Clerk III		7,488	7,488	7,488
Clerk Steno II	6,420	6,420	6,420	6,420
Clerk Steno II			6,420	6,420
Clerk Typist III	6,420	6,420	6,420	6,420
Clerk Typist III				6,420
Sub-total	110,436	187,128	206,560	213,000
Commissioner 5 es @\$6,000 each per year		30,000	30,000	30,000
Employee Benefits	11,164	26,172	28,820	29,700
Total Personnel Services	\$121,600	\$243,300	\$265,400	\$272,700

The difference between this amount and the request for personnel services included on our original FY 1969-1970 budget request (\$228,300 - \$194,900 = \$33,400) is comprised of nominal salaries for the five Commissioners plus six reclassifications which were recommended by consultants in recommendations on Commission Staffing.

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ALASKA PUBLIC SERVICE COMMISSION Cont.

NOTE # II

200 Travel

We anticipate that our travel fund requirements, both outside and within the State, will remain fairly constant for the next three years. The moderate decrease projected for FY 1970-1971 is comprised of two items included in our present budget (ACS Sale Bid Proposal Evaluation conferences and transportation of new employees) which will no longer be needed. The moderate increase in FY 1971-1972 is anticipated because of increase in workload. Add increase of 2,000 for each Year covering additional 2 commissioners for a total of 5 .

NOTE # III

300 Contractual Services

The \$28,500 increase in FY 1969-1970 projected requirements is made up of the following costs:

- a) \$20,000 to provide funds for hearing officers appointed pursuant to AS 42.05, Section 181 of SB-128
- b) \$8,500 to provide funds for consultants to investigate operations of existing oil transmission pipelines within the State

The \$47,400 decrease in FY 1970-1971 was computed as follows:

- a) \$5,100 increase in overall contractual services account due to increase in workload and change in methods and procedures utilized in accomplishing program of utility regulation.
- b) \$52,500 total decrease possible because of anticipated finalization of ACS sale by July 1, 1970 (\$35,000); completion of investigation of safety programs of natural gas utilities (\$18,500); completion of investigation of oil transmission pipelines (\$8,500); and an increase of \$10,000 for hearing officer fees.

NOTE # IV

400 Commodities

Our requirements in this area have reached a fairly stable level. The increase in FY 1970-1971 is necessary because of additional personnel to handle the added workload. However, we then expect requirements in this account to level off at the amount shown.

NOTE V

500 Equipment

Continuing decrease in requirements in this area is a reflection of the adequacy of budget requests made and appropriations received in the past.

NOTE VI

900 Interagency Charges

Moderate increase is for additional travel funds for the attorney on full-time assignment from Department of Law.

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FY 1969 - 1970

FY 1970 - 1971

FY 1971 - 1972

	Original APSC	Projected Budget Re-			Projected Budget Re-			Projected Budget Re-		
	Request	Increase	Decrease	quirement	Increase	Decrease	quirement	Increase	Decrease	quirement
General Services (See attached Note I)	194,900	33,400		228,300	22,100		250,400	7,300		257,700
Travel (See attached Note II)	26,500			24,500 + 2,000		2,000	24,700 + 2,200	200		25,900 + 2,200
Statistical Services										
Communications	5,100			5,100	900		6,000	500		6,500
Printing & Publishing	3,000			2,500	1,500		2,000		2,000	3,000
Postage	4,500			4,600	1,200		10,500			10,500
Repairs	700			700	500		1,000	200		1,200
Competition of Price	1,200			1,200		500	700			700
Group Rental	2,600			2,600	1,000		3,600			3,600
Books & Periodicals	500			500	100		400			400
Supplies & Tools	68,000	28,500		96,500		52,000	44,500	1,500		46,000
Utilities fees	700			700	100		1,000			1,000
Contingency (See attached Note III)	91,900			120,400			73,000			73,200
Consultations (See attached Note IV)	4,000			4,000	1,000		5,000			5,000
Equipment (See attached Note V)	7,700			7,700		5,200	2,500			2,500
Contingency Charge (See attached Note VI)	22,000			22,000	1,000		23,000			23,000
TOTALS	342,000			408,900 + 17,000			378,200 + 17,000			381,400 + 17,000

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# Memorandum

AB 226  
Alaska Court System

TO:  Representative Irwin L. Metcalf

DATE : March 17, 1969

FROM: Judge Thomas B. Stewart *TBS*

SUBJECT: House Bill No. 226

You asked for my very brief comment on H.B. No. 226. After further consideration, I think I should not comment specifically on its merits without making a full explanation, and it is not feasible to do this in the time available to me today.


In general I would not favor the bill in its present form, if only because of vagueness of the amendatory language. This is solely a personal view and should not be attributed to the Alaska Court System.

## MEMORANDUM

State of Alaska

TO:  Representative Irwin L. Metcalf  
Sixth State Legislature

DATE : March 17, 1969

FROM:  Commissioner Mel J. Personett  
Department of Public Safety

SUBJECT: HB 226  
Our File #151 - 1969

As you have requested, the following are my comments on HB 226:

1. As the situation now stands, I would personally prefer that the entire section be repealed, and information be made available as it is with adults.

The original idea and intent of juvenile proceedings was good -- informal hearing, rules of evidence relaxed, etc. -- with the entire thought being to help the child and straighten him out if necessary. In many cases it was possible to do so before the child actually went so far as to actually commit an offense.

This is no longer possible since rules of evidence and constitutional guarantees as interpreted by the Supreme Court also apply to juveniles.

Juvenile court, as it existed when this statute was necessary and desirable, is a thing of the past.

2. If AS 47.10.090 (a) and (b) were amended to be applicable only to minors 14 years of age or younger, the persons most in need of protection would still be covered.

HB 226 would still protect the unlicensed or "license suspended" 17-year old drunken driver since it states, "holder of an operator's license".

1. The juvenile concept is based on a sacrifice of certain legal rights by a minor child in return for special measures of judicial processes designed to rehabilitate those young offenders while they are still "impressionable". Given the benefit of special counseling, separate facilities, and an informal, confidential atmosphere the system remains in balance. But when benefits are taken away, legal rights must be restored, or the system gets out of balance. Recently the U. S. Supreme Court has found that "rehabilitation" facilities in the various states were largely unsatisfactory, and accordingly restored a number of legal rights to the minor child. See In Re Gault.
2. The State of Alaska has subjected the minor child to adult court for certain violations of Title 28 dealing with motor vehicles. AS 47.10.010(b). This is quite proper, as full legal rights are then afforded. If the legislature deemed it in the public interest to except certain other crimes from juvenile jurisdiction under AS 47.10.010(b), there could be no objection.
3. HB 226, however seeks to leave jurisdiction alone, but alter the balance of the juvenile concept. It would accomplish this by removing the benefit of confidentiality of a juvenile proceeding without restoring any "legal rights". In effect, HB 226 is saying... "we're going to privately, confidentially, informally and without affording you your legal rights, adjudicate you a delinquent. We're thereby going to make you a 'child of the state' for dispositive purposes. And when we get through setting you up, we're

going to tell the world about it if there was a motor vehicle involved in your misconduct." This would not be proper.

4. There is another objection to HB 226, in that the language it seeks to insert into AS 47.10.090(b) is quite vague. A motor vehicle may be "used in connection with the act" in an infinite variety of collateral ways. Under HB 226 it doesn't even have to be used by the minor child, so that if a licensed 16 year old hides marijuana in his dad's car, the case would seem to qualify for publication. This may not be the legislative intent.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

KEITH H. MILLER, GOVERNOR

POUCH S—JUNEAU 99801

January 23, 1970

The Honorable Barry W. Jackson  
Chairman, Judiciary Committee  
House of Representatives  
Alaska State Legislature  
Juneau, Alaska 99801

Re: House Bill No. 258

Dear Mr. Jackson:

Reference is made to your letter to Commissioner Morrison dated January 15, 1970 asking for our current views relating to House Bill 258 which deals with the bond required to be filed by nonresidents.

It is our recommendation that Article 4 of AS 43.10 which consists of AS 43.10.160-200 be repealed and re-enacted to read as set forth on the attached proposed Committee Substitute Bill.

The advantages gained by the State from the existing statute (AS 43.10.160) are so small compared to the problems it presents and the hard feelings it engenders from legitimate businesses that the statute requiring the bond should be repealed. However, to assist the State in collecting taxes from nonresident firms, particularly those involved in the construction field it is requested that the State adopt two sections which are set forth in the accompanying draft of a committee substitute bill. The first section was passed by Congress for the Internal Revenue Service in 1966 to correct abuses in the construction industry. The second section is taken from AS 23.20.265 of the Labor Code. It has been most beneficial to the Employment Security Division in collecting its taxes.

Enclosed with the draft of the committee substitute bill is a copy of the Internal Revenue Code section and the Department of Labor section.

When your Committee considers this bill it is requested that I be given an opportunity to appear and clarify any questions that it may have.

Thank you for your interest and concern in this matter.

Very truly yours,



Vernon L. Snow, Deputy Commissioner

VLS/ge

Enclosures as noted

cc: John Beard w/enclosures

CS FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing the bond required to be filed with the Department of Revenue by nonresidents under AS 43.10.160 and providing other methods of protecting tax revenue; and providing for an effective date."

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

\* Section 1. Article 4 of AS 43.10 consisting of AS 43.10.160-200 are repealed and re-enacted to read:

ARTICLE 4

LIABILITY OF CONTRACTORS AND THIRD PARTIES

FOR TAXES, LICENSES AND FEES

\* Sec. 43.10.160. Liability of third parties paying or providing for wages.

(a) If a lender, surety, or other person, who is not the employer, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of the employee or employees, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purposes of paying wages of the employees of the employer, with actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the amounts of tax required by statute to be deducted and withheld by such employer

from the wages, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) which are not paid over to the state of Alaska by the employer with respect to the wages. However, the liability of the lender, surety, or other person shall be limited to an amount equal to 25 per cent of the amount so supplied to or for the account of the employer for such purpose.

(c) Effect of payment. Any amounts paid to the state of Alaska pursuant to this section shall be credited against the liability of the employer.

\* Sec. 43.10.170. Liability of contractor and principal for taxes. (a) No employing unit which contracts with or has under it a contractor or subcontractor who is an employer under the provisions of this section may make a payment to the contractor or subcontractor for a debt due until the contractor or subcontractor has paid or furnished a sufficient bond acceptable to the department for payment of taxes, licenses and fees, including penalty and interest, due or to become due for personal services which have been performed by individuals for the contractor arising during the course of the employment of the contractor or subcontractor by the employing unit.

(b) Failure to comply with this section makes the employing unit directly liable for the taxes, licenses and fees, including penalty and interest, and the department has the remedies of collection against the employing unit under this title as though the services in question were performed directly for the employing unit.

(c) "employer" means an employing unit which for some portion of a day within the calendar year has or had in employment one or more individuals.

(d) "employing unit" means an individual or type of organization, partnership, association, trust, estate, joint trust company, insurance company or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has one or more individuals performing service for it within the state.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

KEITH H. MILLER, GOVERNOR

BOX 1149 - JUNEAU 99801

February 3, 1970

The Honorable Barry W. Jackson  
Chairman  
House Judiciary Committee  
House of Representatives  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99801

Dear Mr. Jackson:

Vernon L. Snow, Deputy Commissioner, Department of Revenue, has asked me to write you concerning our experience with AS 23.20.265 (liability of contractor and principal for contributions).

AS 23.20.265 was passed in 1955, and amended slightly in 1959.

Our Employment Security Division advises that the section has been a great aid in the collection of Employment Security contributions during the past 15 years. To their knowledge, there has never been a question of constitutionality raised about this section.

We recommend adoption of a section similar to AS 23.20.265 for the Department of Revenue to assist it in the collection of taxes.

Very truly yours,



William K. Jermain  
Deputy Commissioner of Labor

cc: Vernon L. Snow

R. E. ROBERTSON (1865-1961)  
M. E. MONAGLE  
F. O. EASTAUGH  
R. J. ANNIS  
J. S. BRADLEY  
W. G. RUDDY  
~~XXXXXXXXXX~~  
T. P. BLANTON

ROBERTSON, MONAGLE, EASTAUGH & ANNIS  
ATTORNEYS AT LAW  
P. O. BOX 1211  
JUNEAU, ALASKA 99801

200 NATIONAL BANK OF ALASKA BLDG.  
PHONE JUNIPER 6-3340  
CABLE ADDRESS: ROMEA

April 2, 1969

Hon. Wendell P. Kay  
House of Representatives  
Alaska State Legislature  
Juneau

Re: House Bill No. 258

Dear Wendell:

Enclosed is the "proposed language".

Reviewing Ch. 71. SLA 1955 I found "unencumbered"  
to be redundant.

Let me know when convenient to discuss this.

Sincerely,



F. O. Eastaugh

FOE:bh  
Enc.

# STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S—JUNEAU 99801

February 21, 1970

The Honorable Barry Jackson  
Chairman, House Judiciary Committee  
Alaska State Senate  
Juneau, Alaska 99801

Re: CSHB 258

Dear Mr. Jackson:

Committee Substitute for House Bill 258 repeals AS 43.10.160 - AS 43.10.200 which require a bond to be filed with the Department of Revenue by nonresident businesses to cover estimated taxes which will be incurred during the year. The bond is a condition precedent to doing business in the state. The Department of Revenue has never collected on one of these bonds.

AS 43.10.150 provides that if acquiring the bond would be a hardship on the business the Attorney General may waive the bond. This waiver provision has resulted in most businesses asking for a waiver. A business which is sound financially can seldom ever show a hardship and must obtain a bond by paying a premium which seldom goes to an Alaska business. A nonresident business which can show a hardship is often a business in a poor financial condition and is a business which should not receive a waiver. The result is a sound business is penalized and the unsound business has a way out.

The Department of Revenue recommends and concurs in section 1 of CSHB 258 which repeals the nonresident bond requirement.

Section 2 of Committee Substitute for House Bill 258 adds two new sections. The first (section 43.10.165) is adopted from the Internal Revenue Code of 1954. It makes a lender, surety, or other person who pays the wages directly to an employee or a person who supplies funds to or for the account of an employer for the purposes of paying wages when he knows the employer does not intend or will not be able to make timely payment of the tax deducted from employees wages liable for the tax.

The second section (43.10.175) is adopted from AS 23.20.265 of the Labor Code. It provides that a contractor is liable for the taxes of his subcontractor.

The two new sections will assist the Department of Revenue in collecting taxes in the construction field which is probably our major collection problem area.

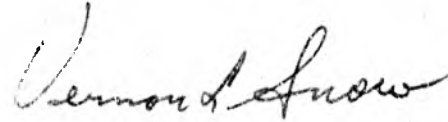
The Honorable Barry Jackson

-2-

February 21, 1970

CSHB 258 will not cost the state any additional funds. It will result in savings in administering the bill and should help increase collections.

Very truly yours,



Vernon L. Snow  
Deputy Commissioner

VIS /ge  
cc: John Beard

## MEMORANDUM

## State of Alaska

TO:  John Beard  
 Legislative Assistant  
 Office of the Governor

DATE : February 24, 1970

FROM: Vernon L. Snow  
 Deputy Commissioner  
 Department of Revenue

SUBJECT: CSHB 258 - Repeal of Nonresident  
 Bond Requirement

Reference is made to my conversation with you on February 24, 1970. At that time I suggested that you talk with Representative Boardman and other legislators regarding the administration's position with respect to House Bill 258. I pointed out to you the Department of Revenue and the administration favors the adoption of the House Judiciary Committee's Substitute Bill for House Bill 258. A brief history of this act and our reasons for favoring the Committee Substitute Bill are set forth below.

The nonresident bond requirement (AS 43.10.160-200) was passed in 1955 apparently because many construction firms and fishery businesses were coming into the State and leaving without paying their taxes. Since that time several changes have occurred which require a change be made in our law. Among these are the following:

1. AS 43.75 requires fish processors to post a bond covering the fishery taxes. Thus the bond required by AS 43.10.160 is no longer needed for the fish processors tax.
2. Experience indicates that we have never collected on any bond which has been filed with the department.
3. A tremendous amount of time is required to administer the non-resident bond statute because nearly all businesses ask for a waiver. Not only does this entail searching our records to ascertain the current status of the business, but it also requires us to transmit this information to the Attorney General who in turn must examine it to see if a waiver should be granted. If one is granted then additional search is required. Correspondence is created by the "reams".
4. AS 43.10.160 provides that a waiver may be given to a business which can show that furnishing the bond is a hardship. A firm which is financially responsible such as a billion dollar corporation can seldom ever show that payment of a bond premium is a hardship. For example one large corporation paid out \$21,000 for premium for a bond for one year. On the other hand a financially weak business which could show a hardship in posting a bond and obtain a waiver is the very company which may end up not paying the state taxes and should not be given a waiver. Accordingly, the good business is penalized and the poor business may obtain a waiver.
5. Few if any of the bond premiums paid for bonds posted with this department are paid to Alaska insurance firms. The nonresident firm generally gets its bond from a broker in the city where its home office is located.

During the 1969 session of the legislature the administration introduced H.B. 258 which would do away with the waiver provision and require that nonresident businesses post the bond, prepay the tax, or own sufficient real property in Alaska not to need to file a bond under the act. This change would eliminate most of the wasted expenditure of time in the Departments of Revenue and Law. It would also have eliminated any possibility of favoritism being claimed in granting waivers to some and refusing waivers to others.

House Bill 258 was referred to the House Congress Committee which approved the original bill with one or two minor changes. The bill then went to the House Judiciary Committee.

Hearings were held by the House Judiciary Committee in 1969 on House Bill 258. Because of the harshness of the bond requirement and the absurd results that could and did arise other approaches were sought. One committee substitute was proposed by a lobbyist, but that proposal would have been more onerous and burdensome to the Department of Revenue in administering the law than the present act. Finally near the end of the 1969 session the Judiciary Committee requested the Department of Revenue to provide it with additional recommendations at the commencement of the 1970 session.

After reviewing the entire nonresident bond provisions and the act's history the Department of Revenue concluded that difficulties in administering the present act far exceed the benefits received. Accordingly we recommended to you in our memorandum of January 21, 1970 that the entire nonresident bond provisions (AS 43.10.160-200) be repealed and two new sections be adopted in its place to assist the Department of Revenue in collecting taxes in the construction industry which constitutes the principal delinquent area where we have trouble.

The first new section is adopted from section 3505 of the Internal Revenue Code of 1954. It provides that a lender, surety, or other person who supplies funds for the payment of wages for an employee is liable for the taxes withheld from the employee's wages if the lender has actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the taxes. This section was adopted by the United States Congress in 1966 to assist the Internal Revenue Service in dealing with its problem in the collection of taxes from contractors.

The second section which we recommended was patterned after AS 23.20.265 of the Alaska Labor Code. That section holds a prime contractor liable for the taxes of the subcontractor arising from personal services which have been performed on the contract.

After obtaining your approval, we communicated to Representative Barry Jackson our revised views. Committee hearings were held and the House Judiciary Committee adopted our new recommendations with slight wording changes to the second section we recommended be adopted.

John Beard

-3-

February 24, 1970

Although the House Judiciary Committee has changed the title to House Bill 258, the Committee Substitute does represent the Department of Revenue's position on this subject. It is recommended that you notify Representative Boardman and other legislators that Committee Substitute for House Bill No. 258 be adopted.

VLS/ge

Enclosure: Copy of CSHB 258  
cc: Copy of this memorandum w/enclosure

## Judiciary Committee Report

on

CS for HOUSE BILL NO. 258

Committee Substitute for House Bill No. 258 repeals AS 43.10.160-AS 43.10.200 which require a bond to be filed with the Department of Revenue by nonresident businesses to cover estimated taxes which will be incurred during the year. The bond is a condition precedent to doing business in the state. The Department of Revenue has never collected on one of these bonds.

AS 43.10.160 provides that if acquiring the bond would be a hardship on the business the Attorney General may waive the bond. This waiver provision has resulted in most businesses asking for a waiver. A business which is sound financially can seldom ever show a hardship and must obtain a bond by paying a premium which seldom goes to an Alaska business. A nonresident business which can show a hardship is often a business in poor financial condition and is a business which should not receive a waiver. The result is that sound business is penalized and unsound business has a way out.

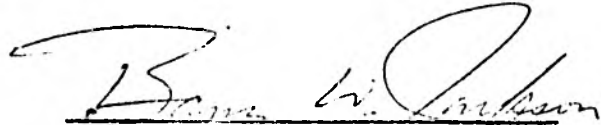
The Department of Revenue recommends and concurs in Section 1 of CSHB-258 which repeals the nonresident bond requirement.

Section 2 of CSHB-258 adds two new sections. The first (section 43.10.165) is adopted from the Internal Revenue Code of 1954. It makes a lender, surety, or other person who pays the wages directly to an employee or a person who supplies funds to or for the account of an employer for the purposes of paying wages when he knows the employer does not intend or will not be able to make timely payment of the tax deducted from employees wages liable for the tax.

The second section (43.10.175) is adopted from AS 23.-20.265 of the Labor Code. It provides that a contractor is liable for the taxes of his subcontractor.

The two new sections will assist the Department of Revenue in collecting taxes in the construction field which is probably the major collection problem area.

According to the Department of Revenue, which supports the committee substitute, CSHB-258 will not cost the state any additional funds. It will result in savings in administration and should help increase collections.

A handwritten signature in cursive script, appearing to read "Barry W. Jackson". The signature is written in dark ink and is positioned above a horizontal line.

Barry W. Jackson  
Chairman  
House Judiciary Committee

A M E N D M E N T

Offered in the HOUSE

By Commerce

To: HOUSE Bill No. 258

SENATE Bill No.

AMENDMENT: Page 1 Line 10

Add:

Section 1. AS 43.10.160 (a), (b), and (c)

Second amendment:

Delete the words "before June 2 of" of Sec. 43.10.160 of Article 4 as follows:

Sec. 43.10.160

(a) Every nonresident person, as a condition precedent to the act of severing or taking resources from or transacting or doing business in the state, shall file (BEFORE JUNE 2 OF) each year a sworn statement in affidavit form with the Department of Revenue setting forth the following information;

CS FOR HOUSE BILL NO. 258

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act repealing the bond required to be filed with the Department of Revenue by nonresidents under AS 43.10.160 and providing other methods of protecting tax revenue; and providing for an effective date."

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

\* Section 1. Article 4 of AS 43.10 consisting of AS 43.10.160-200 are repealed and re-enacted to read:

ARTICLE 4

LIABILITY OF CONTRACTORS AND THIRD PARTIES

FOR TAXES, LICENSES AND FEES

\* Sec. 43.10.160. Liability of third parties paying or providing for wages.

(a) If a lender, surety, or other person, who is not the employer, pays wages directly to an employee or group of employees, employed by one or more employers, or to an agent on behalf of the employee or employees, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by the employer.

(b) If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purposes of paying wages of the employees of the employer, with actual notice or knowledge that the employer does not intend to or will not be able to make timely payment of the amounts of tax required by statute to be deducted and withheld by such employer

from the wages, the lender, surety, or other person shall be liable in his own person and estate to the state of Alaska in a sum equal to the taxes (together with interest) which are not paid over to the state of Alaska by the employer with respect to the wages. However, the liability of the lender, surety, or other person shall be limited to an amount equal to 25 per cent of the amount so supplied to or for the account of the employer for such purpose.

(c) Effect of payment. Any amounts paid to the state of Alaska pursuant to this section shall be credited against the liability of the employer.

\* Sec. 43.10.170. Liability of contractor and principal for taxes. (a) No employing unit which contracts with or has under it a contractor or subcontractor who is an employer under the provisions of this section may make a payment to the contractor or subcontractor for a debt due until the contractor or subcontractor has paid or furnished a sufficient bond acceptable to the department for payment of taxes, licenses and fees, including penalty and interest, due or to become due for personal services which have been performed by individuals for the contractor arising during the course of the employment of the contractor or subcontractor by the employing unit.

(b) Failure to comply with this section makes the employing unit directly liable for the taxes, licenses and fees, including penalty and interest, and the department has the remedies of collection against the employing unit under this title as though the services in question were performed directly for the employing unit.

(c) "employer" means an employing unit which for some portion of a day within the calendar year has or had in employment one or more individuals.

(d) "employing unit" means an individual or type of organization, partnership, association, trust, estate, joint trust company, insurance company or domestic or foreign corporation, or the receiver, referee in bankruptcy, trustee, or successor of one of these, or the legal representative of a deceased person, which has one or more individuals performing service for it within the state.

\* Sec. 2. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.

Work Draft

Original sponsor: Rules Committee by  
request of the Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 258

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the collection of taxes, licenses,  
7 and fees; and providing for an effective date."

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

9 \* Section 1. AS 43.10.160 - 43.10.200 are repealed.

10 \* Sec. 2. AS 43.10 is amended by adding new sections to read:

11 ARTICLE 4. LIABILITY OF EMPLOYERS AND THIRD PARTIES  
12 FOR TAXES, LICENSES AND FEES.

13 Sec. 43.10.165. LIABILITY OF THIRD PARTIES. (a) If a lender,  
14 surety, or other person, who is not the employer, pays wages directly  
15 to an employec, employed by one or more employers, or to an agent on  
16 behalf of the employee, the lender, surety, or other person is liable  
17 in his own person and estate to the State of Alaska in a sum equal to  
18 the taxes (together with interest) required to be deducted and withheld  
19 from the wages by the employer.

20 (b) If a lender, surety, or other person supplies funds to or for  
21 the account of an employer for the specific purpose of paying wages of  
22 the employees of the employer, with actual notice or knowledge that the  
23 employer does not intend to or will not be able to make timely payment  
24 of the amounts of tax required by statute to be deducted and withheld  
25 by the employer from the wages, the lender, surety, or other person is  
26 liable in his own person and estate to the State of Alaska in a sum  
27 equal to the taxes (together with interest) which are not paid over to  
28 the State of Alaska by the employer with respect to the wages. How-  
29 ever, the liability of the lender, surety, or other person is limited

Work Draft

1 to an amount equal to 25 per cent of the amount so supplied to or for  
2 the account of the employer for this purpose.

3 (c) An amount paid to the State of Alaska under this section shall  
4 be credited against the liability of the employer.

5 Sec. 43.10.175. LIABILITY OF EMPLOYER AND CONTRACTOR. (a) A  
6 <sup>Contractor</sup> person who contracts with or employs a ~~contractor~~ or subcontractor who  
7 is an employer is liable for taxes, licenses and fees, including penalty  
8 and interest, due or to become due for personal services which have  
9 been performed in the state by an individual for the contractor or  
10 subcontractor arising during the course of the contract with or employ-  
11 ment of the contractor or subcontractor; and the department has the  
12 remedies of collection, provided in this title, against the person  
13 as though the services in question were performed directly for him.  
14 The department shall, however, first <sup>attempt to collect the taxes, licenses,</sup> pursue the collection remedies  
15 <sup>and fees from</sup> against the contractor or subcontractor who is the immediate employer  
16 of the individual performing the services.

17 \* Sec. 3. This Act takes effect on the day after its passage and approv-  
18 al or on the day it becomes law without approval.  
19  
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29

AL 269

Ketchikan League of Women Voters  
President Mrs. Jeff Collins  
P. O. Box 1133  
January 26, 1970

The Honorable Barry Jackson  
Chairman: House Judiciary Committee  
House of Representatives  
Juneau, Alaska

Dear Mr. Jackson:

Last spring the Ketchikan League of Women Voters studied the problem of the dual city council-borough seats. After studying the problem we came to the conclusion that this was not a desirable arrangement. Our group felt that the two seats should be separate, and each should be voted upon by the city voters. Since this can be accomplished only at the state level, we are urging support for House Bill 264, which provides for assemblymen representing a first class city to be elected by the city voters rather than being appointed by and from city councils.

Our reasons for supporting legislation to make the city council and borough assembly seats separate positions are:

1. Voters inside the city limits would like to have a direct vote as to who would represent them on the borough assembly.
2. The duties of a city councilman and a borough assemblyman are too time consuming for one man to adequately do both jobs.
3. Since over 80% of our borough budget is ear-marked for schools, the voters would like to select someone to fill the assembly seat who has an interest in working with the schools.
4. A man running for city councilman does not find out until after he takes office whether he will also be appointed to the borough assembly.

In the last session this bill did not get out of your committee. Please act on this bill so that it can get out on the floor and get passed.

Thank you.

Sincerely,

*Melva Joan Hiatt*  
Melva Joan Hiatt  
Chairman, Borough Studies Comm.



# CITY OF ANCHORAGE



# ALASKA

*International*  
*Polar air crossroads of the world*

March 25, 1969

Hon. Barry Jackson, Chairman  
House Judiciary Committee,  
Alaska State House of Representatives  
Capitol Building  
Juneau, Alaska 99801

Re: HB 265 - Leasing of Public Buildings

Dear Representative Jackson:

I would have only two comments in regard to the above bill which would permit cities and boroughs to acquire and construct public building and facilities for cities and boroughs. It would probably be advisable for the State to be mentioned as a party in that all three forms of government may in many instances be able to use one public building. The second comment would be to permit an option to purchase the building after a specified period of time. Without such a provision, a long term rental proposition may prove to be more attractive to government planning if public ownership of the building would be a possibility. I have not explored the result of what would happen to the tax problems, and these questions would have to be answered upon further analysis.

Very truly yours,

Karl L. Walter, Jr.,  
City Attorney

KLW/gl



# STATE OF ALASKA

## DEPARTMENT OF LABOR

OFFICE OF THE COMMISSIONER

*file  
HB-280*  
KEITH H. MILLER, GOVERNOR

BOX 1149 - JUNEAU 99801

January 20, 1970

*Jackson placing  
Hold on this  
1-22-70*

The Honorable Barry W. Jackson  
Chairman  
Judiciary Committee  
House of Representatives  
Pouch V  
Juneau, Alaska 99801

Dear Mr. Jackson:

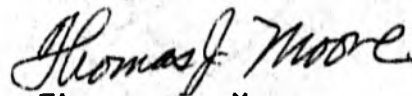
Thank you for the opportunity to comment on Committee Substitute for House Bill 280.

The Department of Labor has questioned whether or not it should properly have the responsibility for involvement in this area.

It is now our understanding that the Inland Boatmen's Union, at whose behest this bill was originally introduced, no longer feels there is urgent need for such legislation by the State of Alaska; as it is now anticipated that Federal regulations will be extended to this area of maritime safety.

Since Committee Substitute for House Bill 280 provides that vessels subject to similar regulation by an agency or department of the United States would be exempt from the provisions of the bill, it appears that this legislation is not needed at this time.

Sincerely,



Thomas J. Moore  
Commissioner of Labor

46281



Supreme Court

State of Alaska  
Pouch U  
Box 5004

JUNEAU, ALASKA  
99801

April 1, 1969

BUELL A. NESBETT, CHIEF JUSTICE  
JOHN H. DIMOND, ASSOCIATE JUSTICE  
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

*Question of  
appeal from Dist. C*  
  
*Case please  
review & review  
as a committee  
report*

Hon. Barry W. Jackson, Chairman  
House Judiciary Committee  
State Capitol Building  
Juneau, Alaska 99801

Dear Mr. Jackson:

House Bill 281 has been recommended by the Alaska Judicial Council and its Statewide Committee composed of judges, lawyers, legislators and prominent citizens from all areas of the state.

Appellate courts of the states of the United States and the federal courts have held that they do not have the inherent authority to review and modify a lawful criminal sentence, ~~imposed by a trial judge on the ground that the sentence was excessive or too lenient. The decisions of these courts are based in large part on the fact that during the growth of the common law the prerogative of prescribing punishment for the violation of criminal ordinances was in the crown and later in the legislative bodies.~~ The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient. >

X

Hon. Barry W. Jackson

April 1, 1969

Page 2

The concept that the discretion of the trial judge exercised in imposing a particular sentence should not be questioned on appeal is now being challenged in more and more jurisdictions. In approximately eleven states of the United States constitutional or statutory provision for the appellate review of criminal sentences is now provided. The Congress of the United States has held hearings for the past three years on proposed federal legislation which would provide for the appellate review of sentences in the federal courts. ~~It is predicted by~~ Senator Hruska<sup>prolix</sup> that the pending legislation will be enacted into law during the 1969 session of Congress. For the past ten years the states of Massachusetts and Connecticut have provided by statute for the appellate review of criminal sentences and only recently the state of Maryland has adopted the techniques employed in those two states.

The general advantages of appellate review of sentences are considered to be:

1. Prison unrest generated by long-term prisoners can be alleviated to a large extent by providing for review of sentences which are claimed to be excessive on the ground that the trial judge "railroaded" the offender.

2. Where sentences are appealed by the offenders the appellate review panel can adjust the sentence upward as well as downward if in its opinion the original sentence was too lenient or too severe, resulting in a more just treatment of the defendant and the state.

3. Since every other aspect of a criminal trial prior to conviction is subject to appellate review there is, in this enlightened day, no reason in logic or justice why a sentence imposed by the trial judge after conviction should not likewise be reviewed.

X  
Enactment of <sup>H.R. 281</sup> ~~the above~~ legislation would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The supreme court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general these rules

It is expected that

Hon. Barry W. Jackson  
April 1, 1969  
Page 3

X  
would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. The additional expense to the state which would result from providing appellate review ~~as above contemplated~~ would be negligible. *According to Chief Justice Norbit,*

*X* Experience in Massachusetts and Connecticut has indicated that the fact that a sentence may be modified by the appellate body upward as well as downward has restricted the appeals taken by defendants to those cases where the defendant sincerely believes that his sentence was excessive. *B* The statistics of those states also reveal that less than 20 percent of sentences imposed are appealed. During the past calendar year a total of 113 sentences of one year or more were imposed by the superior courts of the state. These statistics indicate that approximately 20 appeals from superior court sentences might be expected annually. Since many of the criminal appeals already being taken would be able to incorporate as an additional point an appeal for claimed excessiveness of the sentence imposed, it is not expected that the total number of separate appeals from the sentence alone would exceed 15 in a given year. Under the same reasoning it is not expected that the number of appeals from the district or magistrate's courts to the superior court would exceed a total of 35 in a given year in the entire court system.

Hon. Barry W. Jackson  
April 1, 1969  
Page 4

X The ~~legislation~~ <sup>act</sup> ~~should be made~~ <sup>effective</sup> effective, six months from the date of enactment in order to give the courts time to formulate rules of procedure. The act <sup>is</sup> ~~should be made~~ applicable only to sentences imposed after its effective date, as has been provided in the federal legislation. *date is*

Sincerely yours,

Buell A. Nesbett  
Chief Justice



Supreme Court

State of Alaska

POUCH U. CAPITOL BUILDING

JUNEAU, ALASKA

99801

BUELL A. NESBETT, CHIEF JUSTICE  
JOHN H. DIMOND, ASSOCIATE JUSTICE  
JAY A. RABINOWITZ, ASSOCIATE JUSTICE  
GEORGE F. BONEY, ASSOCIATE JUSTICE  
ROGER G. CONNOR, ASSOCIATE JUSTICE

April 11, 1969

Honorable Barry W. Jackson  
Chairman, House Judiciary Committee  
Capitol Building  
Juneau, Alaska 99801

Re: HB 281 - Appellate Review of  
Criminal Sentences

Dear Chairman Jackson:

In our recent conversation I was under the impression that we had agreed that the captioned bill should be amended to provide that the superior court would have the power to modify a sentence upward as well as downward. I notice that the bill has come out of Judiciary without this amendment, perhaps by oversight.

The amendment would have two desirable effects, I believe:

- (1) It would discourage appeals of every sentence on the "gamble" that a "break" might be received.

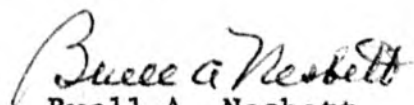
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- (2) It would be more likely to pass the Senate where some senators view the act as one to obtain more lenient sentences.

The change could be effected by interlining the words "upward or" between the words "from" and "downward" in line 18 of page 2 of House Bill 281.

I urge this amendment.

Sincerely yours,

  
Buell A. Nesbett  
Chief Justice



*Jackson*

Alaska Judicial Council

941 FOURTH AVENUE  
ANCHORAGE, ALASKA  
99501

February 26, 1969

The Honorable Jalmar M. Kerttula  
Speaker of the House  
Alaska House of Representatives  
Capitol Building  
Juneau, Alaska 99801

Dear Speaker Kerttula:

House Concurrent Resolution No. 47 of the 1968 session asked the Alaska Court System to review its sentencing techniques and suggested that it hold a sentencing seminar for its judges. Efforts were made to appraise sentencing techniques and methods and a sentencing seminar was held at the annual judicial conference in Ketchikan in May of 1968. Other sentencing seminars are planned.

In addition, the Alaska Judicial Council voted in 1968 to sponsor a study of the need for a procedure to provide for the appellate review of sentences in Alaska. In the course of its study it further undertook to review and report to the Alaska legislature on the pending proposed revised criminal code and the sentencing aspects of this proposed code. To provide a broad base for its studies the Judicial Council created a statewide blue ribbon committee composed of approximately 60 legislators, judges, lawyers and leading lay leaders in Alaska. Considerable background study material was collected and distributed to all members of the committee. Nationally recognized experts on the subject from Connecticut, New York and California were brought to Alaska to assist the statewide committee in its studies and discussions at its first meeting held in Sitka on December 12, 1968. As a result of the two-day Sitka conference on sentencing the statewide committee voted to establish subcommittees to further study the main interests of the statewide committee as evidenced at the Sitka conference.

Accordingly subcommittees on Appellate Review of Sentences, Probation and Parole in the Courts, and Sentencing Aspects of the Proposed Revised Alaska Criminal Code were created. These committees studied the aspects of sentencing assigned to them and reported to the Statewide Committee at its meeting held in Juneau

on February 19, 1969.

The Statewide Committee adopted the subcommittee report on Appellate Review of Sentences and recommended it to the Alaska Judicial Council for further recommendation to the Alaska Legislature. At its meeting on February 20, 1969 the Alaska Judicial Council adopted the report and recommendations of the subcommittee and voted to recommend the passage of legislation which would provide authority for the appellate review of sentences by Alaska's courts.

1 Appellate courts of the states of the United States and the federal courts have held that they do not have the inherent authority to review and modify a lawful criminal sentence imposed by a trial judge on the ground that the sentence was excessive or too lenient. The decisions of these courts are based in large part on the fact that during the growth of the common law the prerogative of prescribing punishment for the violation of criminal ordinances was in the crown and later in the legislative bodies. The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient.

2 The concept that the discretion of the trial judge exercised in imposing a particular sentence should not be questioned on appeal is now being challenged in more and more jurisdictions. In approximately eleven states of the United States constitutional or statutory provision for the appellate review of criminal sentences is now provided. The Congress of the United States has held hearings for the past three years on proposed federal legislation which would provide for the appellate review of sentences in the federal courts. It is predicted by Senator Hruska that the pending legislation will be enacted into law during the 1969 session of Congress. For the past ten years the states of Massachusetts and Connecticut have provided by statute for the appellate review of criminal sentences and only recently the state of Maryland has adopted the techniques employed in those two states.

The general advantages of appellate review of sentences are considered to be:

3 1. Prison unrest generated by long-term prisoners can be alleviated to a large extent by providing for review of sentences which are claimed to be excessive on the ground that the trial judge "railroaded" the offender.

2. Where sentences are appealed by the offenders the appellate review panel can adjust the sentence upward as well as

downward if in its opinion the original sentence was too lenient or too severe, resulting in a more just treatment of the defendant and the state.

3. Since every other aspect of a criminal trial prior to conviction is subject to appellate review there is, in this enlightened day, no reason in logic or justice why a sentence imposed by the trial judge after conviction should not likewise be reviewed.

The Alaska Judicial Council, assisted by its statewide committee, has considered all aspects of the problem and has concluded that the administration of criminal justice would be improved if the courts of Alaska were granted jurisdiction to review and modify criminal sentences imposed by the trial judges. The Council was considerably impressed by the simplicity of the procedure proposed for federal appellate review of sentences and its suggested method of providing such review in Alaska is based primarily on proposed federal legislation.

The Alaska Judicial Council therefore respectfully requests that this legislature grant jurisdiction to the Supreme Court of Alaska to sit in appellate judgement on criminal sentences imposed by the Superior Courts of Alaska by enacting the following:

Amend AS 22.05.010 to add the following two sentences:

The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts upon the ground that the sentence or sentences are excessive or too lenient and in the exercise of this jurisdiction may modify the sentence as provided under law and under the constitution of this state. For the purpose of considering appeals of sentences upon the above grounds the supreme court may sit in divisions.

DISCUSSION: Enactment of the above would give the Supreme Court of Alaska the jurisdiction to hear appeals of criminal sentences which it has held in a recent decision that it does not now have. The last portion of the first sentence which reads "may modify the sentence as provided under law and under the constitution of this state" was worded in that manner rather than to state, as was originally proposed, that the court "may modify the sentence upward or downward." The reason being that where the defendant appeals he can be held to have waived his constitutional right not to be twice placed in jeopardy for the same offense in the event the sentence should be modified upward. However, where the state has

appealed on the ground that the sentence is too lenient, but the defendant has not also appealed, the court would not be justified in holding that the defendant had waived his right against double jeopardy and would be prevented from increasing the sentence by reason of that fact. The above wording was finally adopted which provides for modifying the sentence upward or downward where the defendant himself has appealed but prevents the court from modifying the sentence upward if the defendant has not appealed but the state has appealed.

Add as separate sections to Chapter 25, Title 12 of Alaska Statutes the following:

Sentence Appeal.

(a) Any sentence or sentences of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant upon the ground that the sentence or sentences are excessive. By a sentence appeal under this section the defendant waives any right to plead that by any revision of the sentence resulting from such appeal he has been twice placed in jeopardy for the same offense.

(b) Any sentence of imprisonment lawfully imposed by the superior court may be appealed to the supreme court by the state upon the ground that the sentence is too lenient provided, however, that when a sentence has not also been appealed by the defendant, the court is not authorized to increase the sentence but may express its approval or disapproval and its reasons therefore in a written opinion.

(c) A sentence appeal under this section does not confer or enlarge any right to bail pending appeal. Where a defendant in the prosecution of a regular appeal urges excessiveness of the sentence as an additional ground for appeal, the defendant's right to bail pending appeal shall be governed by the statutes and rules of court.

DISCUSSION: It is believed that the above proposed sections are self-explanatory. Subsection (b) takes care of the situation mentioned in the above discussion with respect to appeals by the state. The advantage of enacting this subsection would be to permit the state to draw to the attention of the appellate courts sentences which were considered to be too lenient. The appellate court would review such sentences and express its approval or

disapproval in a written opinion. Whether the appellate court affirmed the sentence on the ground that it was not too lenient or whether it merely expressed disapproval of the sentence on the ground that it was too lenient, the written opinions of the court would in time provide guidelines for the other courts of Alaska to use in their determination of the appropriate sentence. As the case law of Alaska built up over the years considerable guidelines would be supplied to the lower courts which would be binding upon those courts within the limits of the exercise of their judicial discretion. It is believed that this would be a tremendous advantage because at the present time there are no binding guidelines for the courts of Alaska to employ in determining the appropriate sentence. Subsection (c) would prevent indiscriminate appeal being taken on the ground that the sentence was excessive in order to obtain release pending appeal. It was not intended to prevent release of the defendant on bail pending appeal where the excessiveness of the sentence was only one of several grounds of appeal in the usual appeal. In those situations the defendant should have the right to release on bail pending appeal provided he can convince the court that he qualified for bail pending appeal under the statutes and rules of court now in effect.

In subdivision (a) of AS 22.10.020, interline the following sentence as a next to last sentence:

An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 180 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from downward.

DISCUSSION: This would provide an appeal for the defendant only from the magistrate's and district courts to the superior court. The Council felt that the appellate review procedure should be extended to the lower courts, for it is in those courts, particularly the courts presided over by lay judges, that abuses of discretion too often occur. The appeal would be heard by a single superior court judge on the record created by the defendant's written statement, the sentencing judge's written statement of reasons, and the district attorney's or the enforcement officer's written statement. The hearing procedure would be fairly summary and expeditious, but it would provide for a mature review by a more experienced judge and would undoubtedly prevent occasional injustices.

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4 { Enactment of the above legislation would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The Supreme Court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general these rules would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. The additional expense to the state which would result from providing appellate review as above contemplated would be negligible.

5 { Experience in Massachusetts and Connecticut has indicated that the fact that a sentence may be modified by the appellate body upward as well as downward has restricted the appeals taken by defendants to those cases where the defendant sincerely believes that his sentence was excessive. The statistics of those states also reveal that less than 20% of sentences imposed are appealed. During the past calendar year a total of 113 sentences of one year or more were imposed by the superior courts of the state. These statistics indicate that approximately 20 appeals from superior court sentences might be expected annually. Since many of the criminal appeals already being taken would be able to incorporate as an additional point an appeal for claimed excessiveness of the sentence imposed, it is not expected that the total number of separate appeals from the sentence alone would exceed 15 in a given year. Under the same reasoning it is not expected that the number of appeals from the district or magistrate's courts to the superior court would exceed a total of 35 in a given year in the entire court system.

6 { The legislation should be made effective six months from the date of enactment in order to give the courts time to formulate rules of procedure. The act should be made applicable only to sentences imposed after its effective date, as has been provided in the federal legislation.

Sincerely,

*Buell A. Nesbitt*  
Buell A. Nesbitt  
Chairman, Alaska Judicial Council

JUDICIARY COMMITTEE REPORT

ON

HOUSE BILL NO. 281

This bill draws on the concepts for appellate review of criminal sentences contained in proposed federal legislation. Such legislation is expected to be enacted into law during the 1969 session.

The majority of the courts have held that where a sentence imposed by a trial judge is within the limits prescribed by statute and otherwise legal, an appellate court cannot review the discretion of the trial judge exercised in determining the sentence, even though it may appear in retrospect to have been too severe or too lenient.

Enactment of House Bill No. 281 would provide the jurisdiction and substantive guidelines required to provide for appellate review of sentences in Alaska. The supreme court of Alaska would promulgate detailed rules of procedure providing for the preparation and forwarding of the record, hearing procedures, etc. In general, it is expected that these rules would be identical with those proposed to implement the federal legislation. Upon the institution of an appeal the clerk of court would forward to the appellate court the probation officer's report, the district attorney's recommendation, the defendant's statement, the written statement of the judge explaining in detail why the sentence was imposed and any other written material which was before the trial judge at the time he imposed the sentence. The record would also include a transcript of the proceedings held in court at the time the sentence was imposed. No other record would be forwarded and the appeal would be determined by the court on the record unless in its discretion it ordered the production of the defendant before the court. Such production would be required in any case where the court considered increasing the sentence. According to Judge Nesbitt, the additional expense to the state which would result from providing appellate review would be negligible.

The effective date is six months from the date of enactment in order to give the courts time to formulate rules or procedure. The act is applicable only to sentences imposed after its effective date, as has been provided in the federal legislation.

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Barry Jackson  
Chairman  
House Judiciary Committee