MISCELLANOUS

Supreme Court
State of Alaska

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B U L L E T I N

March 24, 1971

TO: Members, Alaska Supreme Court
Members, Alaska Superior and District Courts
Members, Alaska State Legislature
Members, Alaska Judicial Council
Members, Alaska Court Administration Staff
President, Alaska Bar Association
President, Anchorage Bar Association

FROM: George F. Boney, Chief Justice
Alaska Supreme Court

RE: National Conference on the Judiciary

For your information I am enclosing copies of the classic addresses made by President Nixon and Chief Justice Burger at the National Conference on the Judiciary at Williamsburg, Virginia on March 11 and 12, 1971.

George F. Boney

Enclosures

FOR RELEASE ON DELIVERY
THURSDAY, MARCH 11, 1971

MARCH 11, 1971

Office of the White House Press Secretary
(Williamsburg, Virginia)

THE WHITE HOUSE

TEXT OF AN ADDRESS BY THE PRESIDENT
NATIONAL CONFERENCE ON THE JUDICIARY
WILLIAMSBURG, VIRGINIA

As one who has practiced law; as one who deeply believes in the rule of law; and as one who now holds the responsibility for faithful execution of the laws of the United States, I am honored to give the opening address to this National Conference on the Judiciary.

It is fitting that you come together here in Williamsburg. Like this place, your meeting is historic. Never in the history of this Nation has there been such a gathering of distinguished men of the judicial systems of our States. I salute you all for your willingness to come to grips with the need for court reform and modernization. And I would like to salute especially the man who has been the driving force for court reform; a man whose zeal for reshaping the judicial system to the need of the times carries on the great tradition begun by Chief Justice John Marshall -- the Chief Justice of the United States, Warren Burger.

I recall that when I took my bar examination in New York City a few years ago, I dwelt at some length on the wisdom of the separation of powers. My presence here today indicates in no way an erosion of that concept; as a matter of fact, I have come under precedents established by George Washington and John Adams who both spoke out for the need for judicial reform. And President Lincoln, in his first annual message to the Congress, made an observation that is strikingly current -- that, in his words, "the country generally has outgrown our present judiciary system."

There is also a Lincoln story -- an authentic one -- that illustrates the relationship of the judicial and executive branches. When Confederate forces were advancing on Washington, President Lincoln went to observe the battle at Fort Stevens. It was his only exposure to actual gunfire during the Civil War -- and he climbed up on a parapet, against the advice of the military commander, to see what was going on. When, not five feet from the President, a man was felled by a bullet, a young Union captain shouted at the President: "Get down, you fool!" Lincoln climbed down and said gratefully to the captain: "I'm glad you know how to talk to a civilian."

The name of the young man who shouted "Get down, you fool!" was Oliver Wendell Holmes, who went on to make history in the law. From that day to this, there has never been a more honest and heartfelt remark made to the head of the executive branch by a member of the judicial branch -- though a lot of judges over the years must have felt the same way.

Let me address you today in more temperate words, but in the same spirit of candor.

The purpose of this conference is "to improve the process of justice." We all know how urgent the need is for that improvement at both the State

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and Federal level. Interminable delays in civil cases; unconscionable delays in criminal cases; inconsistent and unfair bail impositions; a steadily growing backlog of work that threatens to make the delays worse tomorrow than they are today -- all this concerns everyone who wants to see justice done.

Overcrowded penal institutions; unremitting pressure on judges and prosecutors to process cases by plea bargaining, without the safeguards recently set forth by the American Bar Association; the clogging of court calendars with inappropriate or relatively unimportant matters -- all this sends everyone in the system of justice home at night feeling as if they have been trying to brush back a flood with a broom.

Many hardworking, dedicated judges, lawyers, penologists and law enforcement officials are coming to this conclusion: A system of criminal justice that can guarantee neither a speedy trial nor a safe community cannot excuse its failure by pointing to an elaborate system of safeguards for the accused. Justice dictates not only that the innocent man go free, but that the guilty be punished for his crimes.

When the average citizen comes into court as a party or a witness, and he sees that court bogged down and unable to function effectively, he wonders how this was permitted to happen. Who is to blame? Members of the bench and the bar are not alone responsible for the congestion of justice.

The Nation has turned increasingly to the courts to cure deep-seated ills of our society -- and the courts have responded; as a result, they have burdens unknown to the legal system a generation ago. In addition, the courts had to bear the brunt of the rise in crime -- almost 150% higher in one decade, an explosion unparalleled in our history.

And now we see the courts being turned to, as they should be, to enter still more fields -- from offenses against the environment to new facets of consumer protection and a fresh concern for small claimants. We know, too, that the court system has added to its own workload by enlarging the rights of the accused, providing more counsel in order to protect basic liberties.

Our courts are overloaded for the best of reasons: because our society found the courts willing -- and partially able -- to assume the burden of its gravest problems. Throughout a tumultuous generation, our system of justice has helped America improve herself; there is an urgent need now for America to help the courts improve our system of justice.

But if we limit ourselves to calling for more judges, more police, more lawyers operating in the same system, we will produce more backlogs, more delays, more litigation, more jails and more criminals. "More of the same" is not the answer. What is needed now is genuine reform -- the kind of change that requires imagination and daring, that demands a focus on ultimate goals.

The ultimate goal of changing the process of justice is not to put more people in jail or merely to provide a faster flow of litigation -- it is to resolve conflict speedily but fairly, to reverse the trend toward crime and violence, to reinstill a respect for law in all our people.

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The watchword of my own administration has been reform. As we have undertaken it in many fields, this is what we have found. "Reform" as an abstraction is something that everybody is for, but reform as a specific is something that a lot of people are against.

A good example of this can be found in the law: Everyone is for a "speedy trial" as a constitutional principle, but there is a good deal of resistance to a speedy trial in practice.

The founders of this nation wrote these words into the Bill of Rights: "the accused shall enjoy the right to a speedy and public trial." The word "speedy" was nowhere modified or watered down. We have to assume they meant exactly what they said -- a speedy trial.

It is not an impossible goal. In criminal cases in Great Britain today, most accused persons are brought to trial within 60 days after arrest. Most appeals are decided within three months after they are filed.

But here in the United States, this is what we see: In case after case, the delay between arrest and trial is far too long. In New York and Philadelphia the delay is over five months; in the State of Ohio, over six months; in Chicago, an accused man waits six to nine months before his case comes up.

In case after case, the appeal process is misused -- to obstruct rather than advance the cause of justice. Throughout the State systems, the average time it takes to process an appeal is estimated to be as long as 18 months. The greater the delay in commencing a trial, or retrial resulting from an appeal, the greater the likelihood that witnesses will be unavailable and other evidence difficult to preserve and present. This means the failure of the process of justice.

The law's delay creates bail problems, as well as overcrowded jails; it forces judges to accept pleas of guilty to lesser offenses just to process the caseload -- to "give away the courthouse for the sake of the calendar." Without proper safeguards, this can turn a court of justice into a mill of injustice.

In his perceptive message on "The State of the Federal Judiciary," Chief Justice Burger makes the point that speedier trials would be a deterrent to crime. I am certain that this holds true in the courts of all jurisdictions.

Justice delayed is not only justice denied -- it is also justice circumvented, justice mocked, and the system of justice undermined.

What can be done to break the logjam of justice today, to ensure the right to a speedy trial -- and to enhance respect for law? We have to find ways to clear the courts of the endless stream of "victimless crimes" that get in the way of serious consideration of serious crimes. There are more important matters for highly skilled judges and prosecutors than minor traffic offenses, loitering and drunkeness.

We should open our eyes -- as the medical profession is doing -- to the use of paraprofessionals in the law. Working under the supervision of trained attorneys, "parajudges" could deal with many of the essentially administrative matters of the law, freeing the judge to do what only he can do: to judge. The development of the new office of magistrates in the Federal System is a step in the right direction. In addition, we should take advantage of many technical advances, such as electronic information retrieval, to expedite the result in both new and traditional areas of the law.

But new efficiencies alone, important as they are, are not enough to reinstill respect in our system of justice. A courtroom must be a place where a fair balance must be struck between the rights of society and the rights of the individual.

We all know how the drama of a courtroom often lends itself to exploitation, and, whether it is deliberate or inadvertent, such exploitation is something we must all be alert to prevent. All too often, the right of the accused to a fair trial is eroded by prejudicial publicity. We must never forget that a primary purpose underlying the defendant's right to a speedy and public trial is to prevent star-chamber proceedings, and not to put on an exciting show or to satisfy public curiosity at the expense of the defendant.

In this regard, I strongly agree with the Chief Justice's view that the filming of judicial proceedings, or the introduction of live television to the courtroom, would be a mistake. The solemn business of justice cannot be subject to the command of "lights, camera, action."

The white light of publicity can be a cruel glare, often damaging to the innocent bystander thrust into it, and doubly damaging to the innocent victims of violence. Here again a balance must be struck: The right of a free press must be weighed carefully against an individual's right to privacy.

Sometimes, however, the shoe is on the other foot: Society must be protected from the exploitation of the courts by publicity-seekers. Neither the rights of society nor the rights of the individual are being protected when a court tolerates anyone's abuse of the judicial process. When a court becomes a stage, or the center ring of a circus, it ceases to be a court. The vast majority of Americans are grateful to those judges who insist on order in their courts and who will not be bullied or stampeded by those who hold in contempt all this nation's judicial system stands for.

The reasons for safeguarding the dignity of the courtroom and clearing away the underbrush that delays the process of justice go far beyond questions of taste and tradition. They go to the central issue confronting American justice today.

How can we answer the need for more, and more effective, access to the courts for the resolution of large and small controversies, and the protection of individual and community interests? The right to representation by counsel and the prompt disposition of cases -- advocacy and adjudication -- are fundamental rights that must be assured to all our citizens.

In a society that cherishes change; in a society that enshrines diversity in its constitution; in a system of justice that pits one adversary against another to find the truth -- there will always be conflict. Taken to the street, conflict is a destructive force; taken to the courts, conflict can be a creative force.

What can be done to make certain that civil conflict is resolved in the peaceful arena of the courtroom, and criminal charges lead to justice for both the accused and the community? The charge to all of us is clear.

We must make it possible for judges to spend more time judging, by giving them professional help for administrative tasks. We must change the criminal court system, and provide the manpower -- in terms of court staffs, prosecutors, and defense counsel -- to bring about speedier trials and appeals.

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We must ensure the fundamental civil right of every American -- the right to be secure in his home and on the streets. We must make it possible for the civil litigant to get a hearing on his case in the same year he files it.

We must make it possible for each community to train its police to carry out their duties, using the most modern methods of detection and crime prevention. We must make it possible for the convicted criminal to receive constructive training while in confinement, instead of what he receives now -- an advanced course in crime.

The time has come to repudiate once and for all the idea that prisons are warehouses for human rubbish; our correctional systems must be changed to make them places that will correct and educate. And, of special concern to this conference, we must strengthen the State court systems to enable them to fulfill their historic role as the tribunals of justice nearest and most responsive to the people.

The Federal Government has been treating the process of justice as a matter of the highest priority. In the budget for the coming year, the Law Enforcement Assistance Administration will be enabled to vigorously expand its aid to State and local governments. Close to one half billion dollars a year will now go to strengthen local efforts to reform court procedures, police methods and correctional action and other related needs. In my new special revenue sharing proposal, law enforcement is an area that receives increased attention and greater funding -- in a way that permits States and localities to determine their own priorities.

The District of Columbia, the only American city under direct Federal supervision, now has legislation and funding which reorganizes its court system, provides enough judges to bring accused persons to trial promptly, and protects the public against habitual offenders. We hope that this new reform legislation may serve as an example to other communities throughout the Nation.

And today I am endorsing the concept of a suggestion that I understand Chief Justice Burger will make to you tomorrow: the establishment of a National Center for State Courts.

This will make it possible for State courts to conduct research into problems of procedure, administration and training for State and local judges and their administrative personnel; it could serve as a clearinghouse for the exchange of information about State court problems and reforms. A Federal Judicial Center along these lines already exists for the Federal court system and has proven its worth; the time is overdue for State courts to have such a facility available. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

The executive branch will continue to help in every way, but the primary impetus for reforming and improving the judicial process should come from within the system itself. Your presence here is evidence of your deep concern; my presence here bears witness to the concern of all the American people regardless of party, occupation, race or economic condition, for the overhaul of a system of justice that has been neglected too long.

I began my remarks by referring to an episode involving Justice Oliver Wendell Holmes. There is another remark of Holmes not very well known, that reveals an insight it would be well for us to have today.

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Judge Learned Hand told of the day that he drove Justice Holmes to a Supreme Court session in a horsedrawn carriage. As he dropped the Justice off in front of the Capitol, Learned Hand said, "Well, sir, goodbye. Do justice!" Mr. Justice Holmes turned and said, most severely, "That is not my job. My job is to play the game according to the rules."

The point of that remark, and the reason that Learned Hand repeated it after he had reached the pinnacle of respect in our profession, was this: Every judge, every attorney, every policeman wants to "do justice." But the only way that can be accomplished, the only way justice can truly be done in any society, is for each member of that society to subject himself to the rule of law -- neither to set himself above the law in the name of justice, nor to set himself outside the law in the name of justice.

We shall become a genuinely just society only by "playing the game according to the rules," and when the rules become outdated or are shown to be unfair, by lawfully and peaceably changing those rules.

The genius of our system, the life force of the American Way, is our ability to hold fast to the rules that we know to be right and to change the rules that we see to be wrong. In that regard, we would all do well to remember our constitutional roles: for the legislatures, to set forth the rules; for the judiciary, to interpret them; for the executive, to carry them out.

The American Revolution did not end two centuries ago; it is a living process. It must constantly be reexamined and reformed. At one and the same time, it is as unchanging as the spirit of laws and as changing as the needs of our people.

We live in a time when headlines are made by those few who want to tear down our institutions, by those who say they defy the law. But we also live in a time when history is made by those who are willing to reform and rebuild our institutions -- and that can only be accomplished by those who respect the law.

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Remarks of Warren E. Burger
Chief Justice of the United States
National Conference on the Judiciary
Williamsburg, Virginia
March 12, 1971 - 9:00 a.m.

FOR RELEASE
ON DELIVERY

DEFERRED MAINTENANCE

This Conference is unique in one respect that we should recognize at the outset for it brings together a cross-section of state and federal judges and of state and federal law enforcement authorities, and others seeking to avert an impending crises in the courts. The only counterpart to this Conference in the past century was the Attorney General's Conference on Court Congestion and Delay convened by Attorney General Herbert Brownell more than fifteen years ago. Fifty years before Attorney General Brownell called his Conference, Roscoe Pound had warned the legal profession in the strongest terms that we were on the threshold of a crisis. Periodically we respond and experience some relief but we are soon overwhelmed by a new tide of problems.

Today the American system of criminal justice in every phase -- the police function, the prosecution and defense, the courts and the correctional machinery -- is suffering from a severe case of deferred maintenance. By and large, this is true at the state, local and federal levels. The failure of our machinery is now a matter of common knowledge, fully documented by innumerable studies and surveys.

As a consequence of this deferred maintenance we see

First, that the perpetrators of most criminal acts are not detected, arrested and brought to trial;

Second, those who are apprehended, arrested and charged are not tried promptly because we allow unconscionable delays that pervert both the right of the defendant and the public to a speedy trial of every criminal charge; and

Third, the convicted persons are not punished promptly after conviction because of delay in the appellate process. Finally, even after the end of litigation, those who are sentenced to confinement are not corrected or rehabilitated, and the majority of them return to commit new crimes. The primary responsibility of judges, of course, is for the operation of the judicial

machinery but this does not mean we can ignore the police function or the shortcomings of the correctional systems.

At each of these three stages -- the enforcement, the trial, the correction -- the deferred maintenance became apparent when the machinery was forced to carry too heavy a load. This is the thing that happens to any machinery whether it is an industrial plant, an automobile or a dishwasher. It can be no comfort to us that this deferred maintenance crisis is shared by others; by cities and in housing, in the field of medical care, in environmental protection, and many other fields. All of these problems are important, but the administration of justice is the adhesive -- the very glue -- that keeps the parts of an organized society from flying apart. Man can tolerate many shortcomings of his existence, but history teaches us that great societies have foundered for want of an adequate system of justice, any by that I mean justice in its broadest sense.

I have said nothing of civil justice -- that is the resolution of cases between private citizens or between citizens and government. This unhappily is becoming the stepchild of the law as criminal justice once was. Most people with civil claims, including those in the middle economic echelons, who cannot afford the heavy costs of litigation and who cannot qualify for public or government-subsidized legal assistance, are forced to stand by in frustration, and often in want, while they watch the passage of time eat up the value of their case. The public has been quiet and patient, sensing on the one hand the need to improve the quality of criminal justice but also experiencing frustration at the inability to vindicate private claims and rights.

We are rapidly approaching the point where this quiet and patient segment of Americans will totally lose patience with the cumbersome system that makes people wait two, three, four or more years to dispose of an ordinary civil claim while they witness flagrant defiance of law by a growing number of law-breakers who jeopardize cities and towns and life and property of law-abiding people, and monopolize the courts in the process. The

courts must be enabled to take care of both civil and criminal litigants without prejudice or neglect of either.

THIS IS WHY WE ARE HERE TODAY.

The question is -- what will happen as a result of our being here? What will each of us do when we return to the daily tasks we have temporarily laid aside to gather at this Conference? Let me suggest some of the problem areas and then let me venture some thoughts on what we might try to do about them.

There are many areas which we should study and consider, and indeed, that we must consider, but if we try too much at once we may fail in all our endeavors. I am thinking, for example, of substantive problems which cry out for re-examination, including the handling of personal injury claims, which especially clog the state courts; the need to ask questions about other areas of jurisdiction, such as receivorships of insolvent debtors, the adoption of children, land-title registration in some states, and possibly even such things as divorce jurisdiction and child-custody matters. We need a comprehensive re-examination of the whole basis of jurisdiction in order to eliminate whenever possible all matters which may be better administered by others so as to restore the courts to their basic function of dealing with cases and controversies.

We can see in the development of common law institutions many examples of changing jurisdiction and evolution of new remedies. I suggest no specific changes but I trust it will not be regarded as subversive to suggest the need for study and thought on these problems, remembering that subjects once committed to the courts are not the province of the other governmental bodies. The common law tradition teaches that rights and remedies are never fixed or static but a continuing process of change. For example, working men once had either no rights at all or common law rights based on negligence when they were injured in their work. The deficiencies of the common law remedies inspired lawyers to find other and better ways of dealing with the claims of injured workmen and I think no one would seriously consider turning the clock back to the old ways. A large area of

regulatory activity was once imposed on courts but for the larger part of this century that has been vested in a wide array of administrative and regulatory bodies with limited judicial review.

All of us attending this Conference share and are the beneficiaries of the great common law tradition that undergirds American jurisprudence and virtually all aspects of our procedure, both state and federal. As lawyers and judges we can be proud of the great tradition of the common law and even have a pardonable pride in the improvements and developments that American lawyers and judges have added to it. We do not disparage or undermine the common law when we consider change. Indeed, change is the very essence -- the very heart -- of the common law concept that springs from England and has been followed in all English-speaking countries the world over.

PRIORITIES

The challenges to our systems of justice are colossal and immediate and we must assign priorities. I would begin by giving priority to methods and machinery, to procedure and techniques, to management and administration of judicial resources even over the much-needed reexamination of substantive legal institutions that are out of date. That reexamination is importan', but 't is inevitably a long range undertaking and it can wait.

I have said before, but I hope it will bear repeating, that with reference to methods and procedure we may be carrying continuity and tradition too far when we see that John Adams, Hamilton or Burr, Jefferson or Marshall, reincarnated, could step into any court today and after a minimal briefing on procedure and up-dating in certain areas of law, try a case with the best of today's lawyers. Those great eighteenth century lawyers would need no more than a hurried briefing and a Brooks' Bros. suit. They would not even need a hair cut, given the styles of our day.

This is not necessarily bad, and I propose nothing specific on how we should dhange our methods of resolving conflicts in the courtroom, but I do know this -- and so does anyone who has read legal history and read the newspapers in recent years - that John Adams, and his reincarnated col-

leagues at the bar, would be shocked and bewildered at some of the antics and spectacles witnessed today in the courtrooms of America. They would be as shocked and baffled as are a vast number of contemporary Americans and friends of America all over the world. They would not be able to understand why so many cases take weeks or months to try. No one could explain why the jury selection process, for example, should itself become a major piece of litigation consuming days or weeks. Few people can understand it and the public is beginning to ask some searching questions on the subject.

STATE-FEDERAL COOPERATION

I need not burden this well-informed audience on the subject of the tension and the strains existing between the state and federal courts in recent years. Because of the existence of those problems and the reasons underlying them I urged last August, at the ABA Convention in St. Louis, that the Chief Justice of each state take the initiative to create an informal ad hoc state-federal judicial council in each state. The purpose, of course, was to have these judges meet together informally to develop cooperation to reduce the tensions that have existed in recent years. I was pleasantly surprised, even astonished, at the speed with which the Chief Justices responded, for I am now informed that such Councils are in actual operation in 32 of the states. Many of these Councils have been created by formal order of the State Supreme Court. I am also informed that once the channels of communication were opened these state and federal judges found other areas of fruitful cooperation and exchange of ideas. I regard this development of such importance that I wish to express my appreciation to the Conference of State Chief Justices and to Chief Justice Calvert of Texas, its Chairman.

In urging the cooperation between the state and federal judges, and in urging the state judges to call upon the state bar associations and on the American Bar Association, I have no thought whatever that all state court systems or all judges be cast in one mold. Far from this, I have an abiding conviction that the strength of our entire system in this country and the

essence of true Federalism lies in diversity among the states. It will not impair this diversity, however, to work together to develop effective post-conviction remedies for example, or common standards of judicial administration, common standards of professional conduct for lawyers, and, indeed, for judges, or the improvement in the method of selection, the tenure, and compensation of judges.

The diversity that has existed in our system and the innovativeness of state judges accounts for many of the great improvements that the federal system has adopted from the states. One of the most crucial is in the developing area of using trained court administrators or executives in the administration of the courts. The states have been a whole generation ahead of the federal system in this matter. When we sought to create the Institute of Court Management in 1969 the first step was to call on state court administrators for guidance and advice.

We should never forget that under our federal system, the basic structure of the courts of this country contemplated that state courts would deal with local matters while federal courts would serve a limited and narrow function. I hope we will never become so bigoted as to think that state judges are any less devoted to the principles of the federal Constitution than other judges and lawyers.

STANDARDS OF ADMINISTRATION

I do not especially like pharases like "management of judicial resources," or "maximum utilization of judge power." They seem stilted to me as they do to most lawyers and judges. But these phrases are simply "shorthand" and if we accept them as such they become tolerable. The important thing is the concept underlying these "shorthand" terms. Every profession and every area of human activity has had to grapple with the hard realities behind the shorthand. The difference is judges and lawyers have lagged far behind the rest. I do not suggest that justice can ever become automated or that production line processes are adaptable to courts.

But we must acknowledge that the practice of the healing arts, for example, is surely a sensitive and delicate matter, perhaps as much so as the administration of justice. Yet the medical profession has responded and necessity has forced innovative changes that make it possible today for one physician or surgeon, depending on the individual, to do from three to ten or fifteen times what his counterpart could do even as recently as twenty or thirty years ago. And with this enormous increase in productivity, by and large we have in this country a better quality of medical care today than at any time in the history of mankind.

In terms of methods, machinery and equipment, the flow of papers -- and we know the business of courts depends on the flow of papers -- most courts have changed very little fundamentally in a hundred years or more. I know of no comprehensive surveys, but spot checks have shown that the ancient ledger type of record books, sixteen or eighteen inches wide, twenty-four or twenty-six inches high, and four inches thick are still used in a very large number of courts and these cumbersome books, hazardous to handle, still call for longhand entries concerning cases. I mention this only as one symptom of our tendency to cling to old ways. We know that banks, factories, department stores, hospitals and many government agencies have cast off anachronisms of this kind.

With relatively few exceptions, we still call jurors as in the past. We still herd them into a common room in numbers often double the real need because of obsolete concepts of arranging and managing their use. This is often complicated by the unregulated arbitrariness of a handful of judges, for example, who demand more jurors than they can possibly use to be allocated each day for their exclusive use. There is almost a total absence of even the most primitive techniques in predicting the need for jurors just as there is a large vacuum in the standards and procedures to coordinate the steps of bringing a case and all of its components -- the lawyers, witnesses, experts, jurors and court staff -- to the same place at the same time.

Happily, a very distinguished committee of the American Bar Association under the chairmanship of Judge Freedman of the United States Court of Appeals of the Third Circuit is now launching a comprehensive program of bringing up to date the minimum standards of judicial administration.

Independent of what we do in the courtroom itself, we need careful study to make sure that every case which reaches the courtroom stage is there only after every possibility of settlement has been exhausted. Those parties who impose upon the judicial process and clog its functioning by carrying the cases through jury selection before making a settlement which could have been made earlier should be subject to the risk of a very substantial discretionary cost assessment at the hands of the trial judge who can evaluate these abuses of the system. Someone must remind the bar and the public of the enormous cost of a trial. Reliable estimates have been made indicating that the cost is in the meighborhood of $250 per working hour in some courts, not including plant and equipment cost -- or lawyers.

COURT EXECUTIVE OFFICERS

As litigation has grown and multiple-judge courts have steadily enlarged, the continued use of the old equipment and old methods has brought about a virtual breakdown in many places and a slowdown everywhere in the efficiency and functioning of courts. The judicial system and all its components have been subjected to the same stresses and strains as hospitals and other enterprises. The difference is that, thirty or forty years ago, doctors and nurses recognized the importance of system and management in order to deliver to the patients adequate medical care. This resulted, as I have pointed out on other occasions, in the development of hospital administrators and today there is no hospital of any size in this country without a trained hospital administrator who is the chief executive officer dealing with the management and efficient utilization of all of the resources of the institution. Courts and judges have, with few exceptions, not responded in this way. To some extent, imaginative and resourceful judges and court clerks have moved partially into the vacuum, but the function of a clerk and the function of a court executive are very different, and a

court clerk cannot be expected to perform both functions.

From the day I took office, twenty-one months ago, this seemed to me the most pressing need of the courts of this country, and particularly so in my area of responsibility, the federal courts. The first step I took was to lay the foundations for a facility to train executives and I requested the American Bar Association to take the leadership in accomplishing this. That Association did so with the American Judicature Society and the Institute of Judicial Administration as co-sponsors, creating the Institute of Court Management at the University of Denver Law School. That Institute has now graduated the first group of trainees with an intensive full-time course over a period of six months including actual field training in the various courts. It will train two additional classes this year. This is not a federal facility -- I expect most of its output will go to state court systems.

In the meantime, the Congress has taken one of the most important steps in a generation in the administration of justice by providing for a Court Executive in each of the eleven Federal Circuits. The Court Executive will work under the direction of the Judicial Council of each Circuit. I need not say, surely, to an audience including many Chief Judges and administrative judges, that this will not only relieve Chief Judges to perform their basic judicial functions, but it will provide a person who will, in time, be able to develop a new methods and new processes which busy judges could not do in the past.

The function of a Court Executive is something non of us really knows very much about. There are only a handful of court administrators or executives in this country and up to now they are all self-taught. The few who were in being were, for the most part, called upon to be members of the teaching faculty for the new Court Management Institute. The concept of Court Executive or Court Administrator will have its detractors but I predict they will not be heard for very long. The history books tell us how the Admirals reacted when General William Mitchell insisted that an airplane could sink a battleship.

This desperate need for court executive officers does not alter the fact that it will require great patience and industrious homework on the part of judges and chief judges to learn to utilize these officers for their courts.

RULEMAKING POWER

A great many of the infirmities in our procedures could be cured if judges had broad rulemaking power and exercised that power. The best example of this was given a generation ago in the Federal Rules of Civil Procedure and later in the Criminal and Appellate Procedure Rules.

For the past 30 years or more state legislatures, like the Congress, have been overwhelmed by a multitude of new problems and it is increasingly difficult to get their attention on mundane subjects like rules or procedure and other internal matters of the courts. In addition, judges, by and large, have been under increasing pressure of their own daily work and have not brought these matters to the legislators.

The rulemaking process as developed in this country beginning 35 years ago is the best solution yet developed for sound procedural change. Since it is a cooperative process involving not only the legislative and judicial branches officially, but lawyers, judges and law professors, it can synthesize the best thinking at every level.

If your state does not provide for rulemaking power comparable to that vested in the Supreme Court of the United States in conjunction with Congress, I urge you to study closely the potential of this mechanism. In federal habeas corpus review of state cases it could have saved a great deal of confusion in recent years. Flexible rulemaking processes could have promptly developed post-conviction remedy procedures to blunt the impact of the imposition of federal standards on the states.

SELECTION, TENURE AND COMPENSATION OF JUDGES

The combined experience of this country for nearly two hundred years now, with elective judges in most of the states holding office for limited

terms and federal judges who are appointed with tenure, affords a basis for a careful reexamination of the whole method of the selection of judges. This is part of the long range problem, but it deserves some mention. The aggregate of two centuries of experience should be sufficient to affort a basis for a comprehensive reexamination of the methods of selection and the tenure of state judges. In saying this, I, of course, intend no reflection whatever on those state systems of limited terms and the many splendid judges in those states.

It may be that the fine quality of judicial work of state judges is in spite of, not because of, the method of selection.

The election of judges for limited terms is a subject on which reasonable men can reasonable have different views. Nevertheless the very nature of the judicial function calls for some comprehensive studies directed to the alternative methods developed in the last generation in some states. These alternatives tend to preserve the virtues of popular choice of judges and at the same time develop a high degree of professionalism, offering an inducement for competent lawyers to make a career of the bench.

We know that while there are certain patterns common in the fifty states as to the selection and tenure of judges, that there is at the same time a wide disparity in the compensation. In such states as New York, California and Illinois, to mention but three of the large states, the compensation of judges of the highest courts is as much as three times the compensation of their counterparts in some other states of the Union.

As lawyers and judges we know that the function of the courts in a small state is essentially the same as the function of the courts in the larger state. The size of the state has no relationship to the nature of the function, the degree of the responsibility, and the degree of the professional competence called for. It is, therefore, an anomaly for a wide disparity to continue. At the same time I do not suggest, by any means, that there need be a rigid, uniform standard of compensation or tenure for all the states. All I suggest is that the judges in the small states are performing

essentially the same function as that of their brothers in a large state, and the conditions of their service should not vary excessively. It is not a wholesome or a healthy thing for the administration of justice to have the highest court of a geographically large and economically powerful state receive two or three times as much as his counterpart a few hundred miles away.

A NATIONAL CENTER FOR STATE COURTS

As I range over this rather wide variety of subjects you are bound to take notice that in many instances I have been obliged to refer to matters of common or general knowledge or the result of spot checks, or other sources that are not wholly trustworthy. This suggests strongly the need for some facility that will accumulate and make available all information necessary for comprehensive examination of the problems of the judiciary in the fifty states. Recently a judicial conference developed an accumulation of 500 or more specific problems of courts.

Each of the points I have raised in the list of what seem to me the urgent priorities can be more readily treated and with better solutions if there is a pooling of ideas and efforts of the states.

For a long time we have talked of the need for a closer exchange and closer cooperation among the states and between the states and the federal courts on judicial problems. No state is without grave problems in the administration of justice. The problems vary chiefly in degree from those states with grave troubles to those on the threshold of disaster in their courts. The valuable work of the National College of Trial Judges is just one example of the value of cooperative enterprise.

We now have in this country a great ferment for court improvement which has been gaining momentum slowly over a long period of time. More recently, this has taken on a new thrust and force under the leadership of the American Bar Association. The time has come, and I submit that it is here and not at this Conference, to make the initial decision and bring into being some kind of national clearinghouse or center to serve all the states and to cooperate with all the agencies seeking to improve justice at every

level. The need is great, and the time is now, and I hope this Conference will consider creating a working committee to this end before you adjourn. I know that you will do many important things while you are here to the benefit of our common problems, but if you do no more than launch this much-needed service agency for the state courts, your time and attendance here would be justified.

I hope that in raising this subject of a need for a facility to serve as a clearing house and service agency for the states you will not think me unduly presumptuous if I make some specific suggestions for your consideration.

It seems to me obvious that the states should make the final choices and the final decisions. In offering these thoughts, I draw particularly on my experience in the twenty-one months I have been in my present office. I now see the legal profession's strongest voice, the American Bar Association, from a point of view which I never fully appreciated in my years of private practice or even in the period when I was a member of the Court of Appeals.

The American Bar Association is a force for enormous, almost unlimited, good with respect to every problem in the administration of justice. It is a force that cannot be directed or controlled by any particular group or any selfish interest because it includes approximately 150,000 lawyers and judges and law professors representing 1,700 state and local bar associations and other legal groups. Its governing body, the House of Delegates, represents 90% of all the practicing lawyers in this country. I mention these factors because the American Bar Association is essentially a grass-roots institution whose components spring from the 50 states. The facilities and power, the influence and prestige of this association are literally on the door step of every state capital through the State Bar Association, and that power and influence can be put to work in terms of achieving the objectives I have suggested to you.

My suggestion, therefore, is that in shaping the national organization or center to serve all the states, that you consider calling primarily on this great association and its 50 component state associations, along with other

groups that specialized in judicial administration. There area additional existing structures representative of all the states and a cross section of the legal profession. I refer now to the American Judicature Society, the Institute of Judicial Administration, the Conference of State Trial Judges, the Appellate Judges Conference, the Council of State Governments, and the Conference of Chief Justices. I am confident there will be widespread interest in the formation of such a group as this but it will take time to marshal all of the large resources necessary to its accomplishment. To build soundly, you must build carefully. You must have plans and time. This is not a matter than can be adequately dealt with hastily in a few hours in a busy Conference such as you are now beginning. A Steering Committee can select five to ten representative leaders empowered to convene a larger group to perfect an organization.

The first step will be the decision to create a national center for state courts of the kind I outlined. It is desperately needed and long overdue.

In emphasizing the problems of administration, management and efficiency we must always remember that efficient administration is the tool, not the goal, of justice. Therefore it is as a means to an end that we should place high priority on changes in our methods and our machinery. The noblest legal principles will be sterile and meaningless if they cannot be made to work.

In closing, I offer the full cooperation of my own office and the facilities of the Federal Judicial Center and The Administrative Office of the United States Courts. But bearing in mind my own concepts of federalism I will participate only when you ask me to do so.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

DELANEY, WILES, MOORE, HAYES & REITMAN, INC.
ATTORNEYS AT LAW
360 K STREET
ANCHORAGE, ALASKA 99501

TELEPHONE 279-3581
AREA CODE 907

JAMES J. DELANEY, JR.
EUGENE F. WILES
DANIEL A. MOORE, JR.
GEORGE N. HAYES
STANLEY H. REITMAN
JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
RICHARD J. WILLOUGHBY
ROBERT W. VATER
DANIEL A. GERETY

February 2, 1971

Executive Director
Legislative Council
Pouch V
Juneau, Alaska 99801

Dear Sir:

Re: Alaska nonprofit corporations and trusts - Tax Reform Act of 1969

Enclosed is a self-explanatory letter sent to Mary LaFollette of the Alaska Bar Association on January 20, 1971, pertaining to proposed non-controversial legislation.

I am also enclosing drafts of proposed legislation to which I have not assigned any Alaska statute numbers, pending review by your office.

Will appreciate your reviewing this proposed legislation and recommending its passage to the Judiciary Committees of both houses of the Legislature.

Very truly yours,

Stanley H. Reitman

SHR/mm

cc: Senator Robert Ziegler, Chairman
Senate Judiciary Committee

Honorable William Moran, Chairman
House Judiciary Committee

Ms. Mary F. LaFollette
Box 279, Anchorage

Enclosures to each

DELANEY, WILES, MOORE, HAYES & REITMAN, INC.
ATTORNEYS AT LAW
360 K STREET
ANCHORAGE, ALASKA 99501

TELEPHONE 279-3581
AREA CODE 907

JAMES J. DELANEY, JR.
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JOHN K. BRUBAKER
RAYMOND E. PLUMMER, JR.
RICHARD J. WILLOUGHBY
ROBERT W. VATER
DANIEL A. GERETY

January 20, 1971

Ms. Mary F. LaFollette
Executive Director and Bar Counsel
Alaska Bar Association
Box 279
Anchorage, Alaska 99501

Dear Mary:

Re: Work of the Committee on Corporation, Banking, Business Law and Taxation

At the present time the Committee is working on a review of the Uniform Commercial Credit Code. We had been meeting every two weeks, with a minor interruption over the holidays. Presently we are meeting once a week. This review more than likely will not be completed before a minimum of sixty days. Accordingly, any legislative recommendations for this session are not contemplated.

As to our Model Business Corporation Act, as you may recall, I had indicated to our Board of Governors the Committee was going to draft legislation intended to update this uniform Act. In discussing this objective, the Committee members' concensus was that we defer making any suggestions regarding the existing Model Act pending a review and analysis of some of the more modern corporation acts recently enacted by the States of Delaware and New York. Rather than amend the Act piecemeal, it was felt a more comprehensive review should be made of the latest thinking in the field of corporate statutory law. The Committee now has set a goal of undertaking such review after the UCCC study is behind us.

The only legislation the Committee currently recommends are two rather technical changes in the area of non-profit corporations and administration of trusts, grounded upon the Federal 1969 Tax Reform Act. In the latter area we do

not have any statutory law. Enclosed is a self-explanatory letter dated October 30, 1970 from the Chairman of the Section on Real Property, Probate and Trust Law of the American Bar Association. Mary, you will recall this letter initially flowed through your hands before it reached my desk.

The enactment of these suggested provisions will obviate or eliminate the need for amendments of non-profit corporations and trusts which operate in the private foundation area. Admittedly, in Alaska there may not be more than a handful of such organizations. Personally, I am aware of at least four or five. To amend a non-profit corporation is not a significant technical problem, as our non-profit statute provides a procedure for doing so. However, with respect to trusts, and particularly testamentary trusts, a court proceeding will be necessary. In our view, the suggested ABA language pertaining to non-profit corporations can be readily added to the statute in 10.20. As to the trust language, it is admittedly a little more troublesome to find a home or area of the Alaska statutes to tie into. Apparently Title 13 may be the most logical title.

This probably should be cleared with personnel of the Alaska Legislative Council.

Best regards,

Stanley H. Reitman

Stanley H. Reitman

SHR/mm

Enclosure

Section of Real Property, Probate and Trust Law

AMERICAN BAR ASSOCIATION

1155 East 60th, Chicago, Illinois 60637 Telephone (312) 493-0533

October 30, 1970

NOV 17 1970

Dear Sir: ALASKA BAR ASSOCIATION,

A serious and urgent problem has been presented to all Private Foundations by the Tax Reform Act of 1969. That Act requires all existing Private Foundations, in order to maintain exemption from Federal Income taxation, to change their governing instruments to comply with the Act or to bring suit to reform their instruments. This must be done before January 1, 1972. [Internal Revenue Code Sec. 508 (e)].

The Section of Real Property Probate and Trust Law of the American Bar Association has been disturbed by the possible crowding of court dockets and confusion caused by such suits and by the damage which might be done to those Private Foundations which for any reason failed to take action before the deadline. The Internal Revenue Service has indicated that the requirements of the Act can be met by statutes passed by the several states. To be most useful any such statute should be adopted in the 1971 Legislative session.

Accordingly, as a matter of information and to furnish a vehicle for study and consideration, a subcommittee of this Section's Committee on Charitable Trusts has prepared two draft acts - one for corporations and one for trusts.

Copies of these two draft acts are enclosed. The shortness of time has so far made it impossible to have these drafts considered by other appropriate bodies of the American Bar Association or other organizations to whom we are also sending copies. We hope you will find these drafts helpful. If you wish additional copies or further information, please get in touch with John E. Rogerson, One Boston Place, Boston. Massachusetts 02108, Telephone 617-723-7020, the Chairman of the Committee which prepared these drafts.

Sincerely yours,

G. Van Velsor Wolf

Chairman

THESE DRAFTS HAVE BEEN PREPARED BY A SUBCOMMITTEE OF THE COMMITTEE ON CHARITABLE TRUSTS OF THE SECTION OF REAL PROPERTY PROBATE AND TRUST LAW OF THE AMERICAN BAR ASSOCIATION AND ARE SUBMITTED FOR INFORMATION, CONSIDERATION AND DISCUSSION ONLY. THEY HAVE NOT YET BEEN CONSIDERED OR RECOMMENDED FOR ADOPTION BY THE AMERICAN BAR ASSOCIATION OR ANY OF ITS SECTIONS.

(1) No corporation which is a "private foundation" as defined in §509(a) of the Internal Revenue Code of 1954, shall

(a) engage in any act of "self-dealing" (as defined in §4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retain any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) make any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945(a) of the Internal Revenue Code of 1954.

(2) Each corporation which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its articles of organization, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942(a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the articles of organization or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

(1) In the administration of any trust which is a "private foundation", as defined in §509 of the Internal Revenue Code of 1954, a "charitable trust", as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, or a "split-interest trust" as defined in §4947 (a) (2) of the Internal Revenue Code of 1954, the following acts shall be prohibited:

(a) engaging in any act of "self-dealing" (as defined in §4941 (d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941 (a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943 (c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4943 (a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944 (a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945 (d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945 (a) of the Internal Revenue Code of 1954;

provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of §4947 of the Internal Revenue Code of 1954.

(2) In the administration of any trust which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954, or which is a "charitable trust" as defined in §4947 (a) (1) of the Internal Revenue Code of 1954, there shall be distributed, for the purposes specified in the trust instrument, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942 (a) of the Internal Revenue Code of 1954.

(3) The provisions of §§1 and 2 shall not apply to any trust to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the instrument governing such trust and that the same may not properly be changed to conform to such sections.

(4) Nothing in this act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

(5) All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA

February 26, 1971

The Honorable Governor William A. Egan
Pouch A
State Capitol
Juneau, Alaska

Re: Juneau Court Facilities

Dear Governor Egan:

At present the Alaska Court System facilities in Juneau are located in the State Capitol building. These facilities are inadequate for present needs not only from the standpoint of inadequate space but also by way of the nature of the facilities and their physical layout. Plans for the new state office building in Juneau do not include space for the Alaska Court System. For this reason, there is an urgent need that a separate court facility be constructed in Juneau.

At my request, the Juneau Bar Association formed a committee to inquire into the needs and requirements of a State courthouse in Juneau. Recommendations were received by that committee from those agencies having a potential requirement for space in a new court facility. The following is a summary of those recommendations:

(a) Supreme Court - Justice John H. Dimond, of the Supreme Court residing in Juneau, provided an estimate in the amount of 8,239 square feet for the Supreme Court. This estimate includes a courtroom, offices for five justices, secretaries' office and reception area, offices for two law clerks, clerk's office, chief deputy and deputy clerk's office, workroom area, supply and storage area, restrooms and library facility. It is anticipated to be adequate for the Supreme Court needs in the foreseeable future.

(b) Superior Court - Presiding Judge Thomas B. Stewart has provided an estimate of total space requirements of the Superior Court of a minimum of 25,000 to 30,000 square feet of floor space. This area would be sufficient for the following facilities: two courtrooms, two jury rooms, one judges' robing room, one conference room, two judge's chambers with reception rooms and secretarial space, one office for visiting judge, one office for two law clerks, one jury assembly room, one witness assembly room, two attorney-witness conference rooms, one judges' lounge, one attorneys' lounge, one judges' library, one pressroom, one office for Clerk of Court, one office for Court Trustee functions, one office for marriage counselor functions, one office for clerk's counter and general filing space, one office for transcribing functions, and one public law library for a capacity of 50,000 volumes.

(c) District Court - Presiding District Judge Bruce Monroe estimates a 25,000 to 30,000 square feet requirement to include three courtrooms, two of which are suitable for jury trials. This space would also accommodate court personnel for the District Court including: a coroner-public administrator and clerical personnel, office spaces and counter area to accommodate five clerks, one secretarial space and a reception room for the judges' chambers, witness lounges, jury lounges, and attorneys' conference rooms.

(d) Recording Office - Judge Monroe states that if land records are kept on microfilm, the above estimate for District Court space should be adequate for a recording office.

(e) Administrative Office - The office of the Administrative Director, Alaska Court System, recommends that 2,000 square feet be available for administrative personnel to include a 600 square foot conference room which would provide space for executive meetings and work space for visiting Anchorage personnel.

(f) State Police Service Section - Mr. Personnet, former Commissioner of the Department of Public Safety, estimated that Juneau judicial services functions would require space of approximately 1,000 square feet.

(g) Press facilities - 300 square feet estimated.

(h) Health and Welfare - Mr. Keith Stell, Regional Administrator of Probation and Parole, estimates that 1,540 square feet of office space are needed for six probation officers, a regional administrator and secretarial staff. Also needed are adequate separate holding facilities for adult and juvenile prisoners brought to court for arraignment or trial. Two cells of a total of 300 square feet should be adequate. Mr. Stell believes that juvenile short-term detention facilities should be in another building near the court.

The Alaska Judicial Council recommends that monies be appropriated during the current legislature for preconstruction planning and site acquisition for the Juneau Court facility to satisfy the requirements set forth above. We are attaching copies of correspondence describing in detail the needs of the agencies listed above.

Very truly yours,

George F. Boney

George F. Boney
Chairman
Alaska Judicial Council

cc: Justice Dimond
Judge Stewart
Judge Monroe
Commissioner Chapple
Robert Reeves
Keith Stell
William Ruddy
All Members, Alaska Judicial Council

P.O. Box 1224

February 26, 1971

Mr. Russell Dunn
Staff Executive
Alaska Judicial Counsel
429 "D" Street, Suit 201
Anchorage, Alaska 9[illegible]1

Dear Mr. Dunn:

In response to our telephone conversation of this date, let me reconfirm the information I discussed with you.

I believe that Mr. Cain has adequately summarized our space needs in terms of the Probation Office in the new court building. Hopefully this space will be in a close proximity to the Superior Court (like on the same floor). I do want to clarify, too, the difference between a holding cell and a detention facility. First of all, the detention facility should be in a more informal setting and not in the Court building itself. In terms of planning then, for this particular structure I do not think that you should consider the space needs of a detention facility. The holding cell is another matter entirely, however, and I believe that it should be considered.

Alaska Statutes indicate that you cannot hold juvenile inmates in the presence of adult inmates. It often happens that secure cell-like holding facilities are needed at the same time in the Court House. Therefore, plans should be made for separate holding facilities for both juveniles and adults. These facilities should be designed to hold individuals for no longer than one hour at most. They need not be large but they do need to be secure. I believe that 150 square feet for each holding facility would be adequate. That would be a total of 300 square feet for both adults and juveniles.

Thank you for your patience in this matter and I am sorry to say that the letter John sent to you was apparently sent to the wrong address and returned to us. It is in the mail now and for that matter you should have received it again by this time. If we can be of any further assistance, please let us know as we are as anxious as anyone to see that the new Court facility has adequate space for our program needs.

Sincerely,

Keith Stoll
Southeastern Regional Administrator
Probation-Parole

KS:cp

P. O. Box 1224
Juneau, Alaska 99801

February 22, 1971

Mr. Russell Dunn
Staff Executive, Judicial Counsel
201429 "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

This will confirm our telephone conversation of 2/19/71, concerning space needs for the Probation Office in the proposed Juneau Court Facility. It is our understanding that you are now in the process of preparing plans for this.

The Probation Office would need approximately 1540 square foot. This breaks down as follows:

6 Probation Officers @ 120 sq. ft. each =	720 sq. ft.
Regional Administrator's Office	200 sq. ft.
Space for 3 Secretaries	240 sq. ft.
Conference Room	180 sq. ft.
Reception Area	200 sq. ft.
Total	1,540 sq. ft.

To the best of my knowledge, this would be the extent of our space need in the court facility. We are assuming that Mr. Stoll, in his letter to you of October 21, 1970, did not intend to convey the thought that a detention facility should be built into the court building itself, but rather be located elsewhere. We think 150 square foot would be adequate for a juvenile holding cell for the court.

We would be pleased to hear from you as plans for the court facility progress. We are presently in dire need of space. We have two staff vacancies which we are unable to fill for lack of working area.

Sincerely,

John L. Cain
Probation-Parole Officer

JLC/mjr

Alaska Court System

State of Alaska

...IVE DIRECTOR
...BOTT

OFFICE OF ADMINISTRATIVE DIRECTOR

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

March 1, 1971

Theodore R. Dunn, Esq.
Secretary to the Judicial Council
... "D" Street
Anchorage, Alaska 99501

Dear Mr. Dunn:

The Office of the Administrative Director for the Court System will require at least ...,000 square feet of space in the new court building which is being planned for Juneau. This office intends to maintain a full time Assistant Court Administrative Director in the Juneau area with offices for backup as well as a full conference room.

This space will be needed immediately upon completion of the new court building.

Sincerely,

John W. Abbott

John W. Abbott

/cg

Supreme Court
State of Alaska

October 9, 1970

POUCH U
CAPITOL BUILDING
JUNEAU, ALASKA
99801

William G. Ruddy, Esq.
President, Juneau Bar Association
Box 1211
Juneau, Alaska 99801

Dear Bill:

This is in reference to Chief Justice Boney's letter to you of September 29, 1970 regarding the court building at Juneau. On page 3 Chief Justice Boney suggests that you consult with me as to the requirements of the supreme court and that your committee come up with the recommended square foot estimate of the supreme court needs in the new building.

Attached is a document entitled "Projected Space Requirements for Supreme Court". The total area which we shall require, 8,239 square feet, will take care of the needs of the supreme court in the foreseeable future.

It is my understanding that Mr. Eastaugh is Chairman of the Committee you appointed to investigate the needs and requirements for a state courthouse in Juneau. I am sending a copy of this letter and the enclosure to Mr. Eastaugh, as well as to Chief Justice Boney.

As I told you on the telephone the other day, it is most important that Chief Justice Boney have a report on the complete requirements for a state courthouse in Juneau in time for the Judicial Council meeting in Anchorage on October 23, 1970.

Sincerely,

John H. Dimond

John H. Dimond

cc: Chief Justice Boney
F. O. Eastaugh

Projected Space Requirements for Supreme Court

Courtroom	1,552	Square Feet
Offices for 5 Justices	1,800	" "
Secretary's Office & Reception	484	" "
Offices for 2 Law Clerk's	800	" "
Library	1,332	" "
Clerks Office	306	" "
Chief Deputy & Deputy Clerks Office	500	" "
Workroom Area	675	" "
Supply Room & Storage	500	" "
Rest Rooms:		
Mens	100	" "
Ladies Lounge & Restroom	190	" "
Total	8,239	" "

Superior Court
State of Alaska
FIRST JUDICIAL DISTRICT
STATE CAPITOL BUILDING
POUCH U
JUNEAU, ALASKA
99801

THOMAS B. STEWART
PRESIDING JUDGE

At Ketchikan
October 21, 1970

Honorable George F. Boney
Chairman, Alaska Judicial Council
941 - 4th Avenue
Anchorage, Alaska 99501

Dear Chief Justice Boney:

Your recent letter concerning a proposed new court building at Juneau coincided with a like request from the Juneau Bar Association for initial recommendations as to space needs of the superior court in such a structure. THis response is intended to answer both letters, as well as to provide information directly to the Alaska Judicial Council, which, I understand, will consider the subject at its next meeting.

In the brief time since these requests were received, my trial calendar has virtually no time to prepare adequately considered recommendations. The following statement of needs is therefore offered as only preliminary and subject to substantial revision upon opportunity for a complete review.

The structure should include at least the following facilities:

2 courtrooms
2 jury deliberation rooms (adjacent to the courts and with attendant bailiff space, with one room large enough for grand jury use)
1 judge's robing room
1 conference room (appropriate for children's proceedings, pre-trial conference, etc.)
2 judge's chambers, with an attendant reception room for secretaries to two judges
1 office for a visiting judge
1 office for two law clerks
1 jury assembly room
1 witness assembly room
2 attorney-witness conference rooms
1 judges' lounge
1 attorneys' lounge
1 judges' library
1 press room

1 office for the clerk of court
1 office for court trustee functions
1 office for marriage counselor functions
1 office for clerk's counter and general filing space
1 office for transcribing functions
1 public law library, with associated "stack" space for 50,000 volumes

The above space would serve only operations of the superior court, apart from related legal and staff services, and it would require a minimum of 25,000-30,000 square feet of floor space. This estimate would include circulation space, public toilets, mechanical services and stairways.

Consideration must of course be given to court-related functions such as those of the district attorney, public defender, probation and parole, process services of the State Police, holding cells for prisoner-defendants, etc. Particular concern must be taken (in early planning stages) for unique acoustical requirements for court recording, court furnishings, and other special needs of court operations. All courtrooms should be interior space without window exposures to outside traffic noise and other distractions. Attention must be given to private access to and private circulation within working areas for judges. Air conditioning apparatus without attendant background noise is essential in the courtrooms.

Some general considerations of major importance include ample off-street parking, substantial setback of the structure to permit dignified landscaping of the surrounding grounds, and exterior design and location fitted within the long-range state capital complex plans.

I will look forward to the opportunity to participate in more detailed and systematic planning for this significant capital improvement program for better judicial administration at Juneau.

Very truly yours,

Thomas B. Stewart

Thomas B. Stewart

cc: Juneau Bar Association

District Magistrate Court
State of Alaska
FIRST JUDICIAL DISTRICT
BOX 2344
JUNEAU, ALASKA
99801

November 6, 1970

Frank Doogan
Attorney At Law
311 Franklin Street
Juneau, Alaska 99801

RE: Juneau District
Court Facilities.

Dear Frank;

You have asked that I be more specific, in terms of square footage, about the anticipated requirements of the District Court at Juneau. I have included a copy of a letter to William G. Ruddy, President of the Juneau Bar Association, for your reference. In this letter I outline this Court's anticipated needs simply by describing the number of rooms and uses for those rooms. The comments in this letter should be read in light of my earlier letter to Mr. Ruddy.

It is my present belief that the needs of the District Court can be fulfilled with a minimum of 25,000 to 30,000 square feet of floor space. This footage would include three courtrooms. Two of the courtrooms should be capable of handling jury trials while the other should be designed as an arraignment room and a court-room for trials without jury. The latter courtroom would also be used for coroner's hearings, motions and hearings of that general nature. The footage should accommodate support personnel for the District Court which would include:

1. Coroner-Public Administrator and one clerical personnel for his office.

2. Office space and counter area to accommodate five clerks.

3. One secretarial position and reception room for the judges chambers.

4. Attendant rooms for witness lounges, jury lounges and attorneys conference rooms.

It should be noted that all courtrooms should be in accordance with established American Bar Association standards for newly constructed courtrooms. The same standards should also be applied to attendant rooms such as jury chambers, witness lounges and attorneys conference rooms.

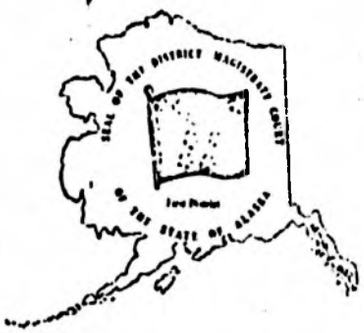
With approximately 25,000 to 30,000 square feet it is my belief anticipated growth of this area could be accommodated. I would anticipate a maximum of four judges could work out of the three courtrooms should our case load ever require additional judges. Prior to that time excess court space could be utilized, on an as needed basis, by Superior Court overages. I would also predict that a minimum of 25,000 to 30,000 square feet would allow additional attendant personnel such as law clerks to serve the District Judges.

If you have any further questions I will be happy to give you my opinion. Please do not hesitate to call on me.

Very truly yours,

Bruce

Bruce Monroe,
Presiding District Judge



District Magistrate Court

State of Alaska

FIRST JUDICIAL DISTRICT

BOX 2344

JUNEAU, ALASKA

99801

October 14, 1970

William G. Ruddy, Esq.
Juneau Bar Association
P. O. Box 1211
Juneau, Alaska 99801

Dear Bill:

Thank you for providing me with your correspondence with Chief Justice Boney. With very little changes, perhaps only in terminology, I would subscribe to his basic proposal for District Court facilities.

With anticipated growth I predict the District Court will need at least two courtrooms capable of handling jury trials and one courtroom for trials without jury. We will need an office for the Coroner-Public Administrator and one clerical personnel for his office. We will need one office space and counter area to accommodate five clerks. As many as three of these clerks might be in court at one time while others attend to clerical chores and serve the public. There should be one room devoted to secretarial help and a reception room for the judges chambers. We would also need attendant rooms for a witness lounge and jury lounge.

With two courtrooms capable of conducting jury trials and one courtroom which could be used for trials without a jury, arraignments, motions and coroners deliberations we would have the necessary flexibility to accommodate as many as four District Judges should the caseload ever justify this number.

I have not taken into account library facilities or recording office for the District Court. It is my understanding long term planning includes removing the recording function from the offices of the District Court. Should the District Court retain the recording function space would depend upon whether or not micro-filming would be used. This decision rests with the Chief Justice and I'm not familiar with his feelings in this matter.

Very truly yours,

Bruce

Bruce Monroe,
Presiding District Judge

Chief Justice Boney
The Honorable Thomas B. Stewart
Mr. Douglas Gregg

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

POUCH N, CAPITOL BUILDING
JUNEAU 99801

October 16, 1970

Mr. Allan A. Engstrom
Attorney at Law
217 Second Street
Juneau, Alaska 99801

Dear Mr. Engstrom:

As per your request, office space requirements for the Juneau Judicial Services functions at the present time and in the foreseeable future should not exceed 1,000 square feet.

Very truly yours,

Mel J. Personett
Commissioner

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF HEALTH & WELFARE

DIVISION OF CORRECTIONS

P. O. Box 1224
~~DIVISION~~ JUNEAU 99801

October 21, 1970

RECEIVED
OCT 22 1970

Mr. F. O. Eastaugh
Juneau Bar Association
Chairman, Committee on
Proposed Juneau Courthouse
P. O. Box 1211
Juneau, Alaska 99801

Dear Mr. Eastaugh:

With reference to our telephone conversation of yesterday, let me offer the following information concerning the proposed Juneau Court facility. Speaking specifically to the needs of probation for the future, keeping in mind an increased emphasis on the community service type programming I see that probation services are becoming involved in three basic spheres which in turn will have their impact upon the office space, location and function. In my brief analysis of the problem and projected needs, I am keeping in mind the statistics you referred to me concerning population growth in the Juneau area by 1975 and 1980 as set out by the State Department of Labor; these figures being 25,000 and 27,000 respectively.

The three program areas which I made reference to earlier are the relationship with the Superior Court-Children's Court, the relationship with the community and the working relationship the Probation Office should have with the detention facility located in a close proximity with the Children's Court. So when we speak of office space for probation, we are really talking about program service space and our programs are in these three basic areas. I believe they are all best utilized in a close proximity to the Superior Court, however, not all in the same building. For example, at the present time, we are establishing a Neighborhood Probation Center in downtown Juneau which is funded largely by Law Enforcement Assistance Act funds, Model City funds and State funds. This Center calls for a staff of four which includes three probation officers. At the same time, we have our offices in the Capitol Building which are in very close proximity to Superior Court. This is very helpful and is to be desired. Communication with the Superior Court is a necessity for the best possible programming. (As an aside, I would like to state that I think it is very difficult

for the Anchorage Probation Office to complete a satisfactory job for the Superior Court in Anchorage when there are many blocks across town, a fact in itself which creates barriers to communication, breakdown in communication and distorted communication, all of which work to the detriment of the program trying to be established.)

I would like then to project briefly our needs in these three categorical spheres as follows:

1) Office space immediately accessible to the Superior Court (in the same building). Space should be available here for not less than six probation officers, one office for Regional Administrator and secretarial staff of three. At this time, we have positions as follows: One Regional Administrator, five Probation Officers and a secretarial staff of two.

2) The second area under discussion will be the Neighborhood Probation Center which is a "store front" type facility which should be located in downtown Juneau close to the movie theaters and restaurants, also within a short distance of the Superior Court facility. This office should be staffed with at least four, hopefully, five probation officers, plus a clerical staff of two. Work at this level is primarily that of prevention of delinquency and work with the young child, the first offender, as well as school dropouts and large amounts of time devoted to community program participation.

3) The third basic area I have mentioned is the short term detention facility for juveniles (this is not to be confused with the very short time holding cell for adult prisoners being brought to Court on arraignment or some other purpose). The detention facility could be placed in a close proximity with the Court to aid in communication as mentioned previously and it should be under the direction of the Regional Administrator of Probation and Parole. The Children's Court Rules indicate clearly that the Superior Court Judge or his designee have the power to detain or release children based on protection to themselves, society, or to insure their presence at further court hearings. The primary reason for the location of the facility, however, is that re-

should not be severed upon the child being placed in a detention facility. Attempts should be made repeatedly to resolve the problems that are causing the child to behave in an unacceptable manner. These problem-solving attempts are only hampered by the inability of a parent or relative to be able to converse with their child because the facility is located several miles out of town and they have not taxi fare or transportation to and from the detention unit. These problems can be solved if a detention unit is placed in close proximity to the Superior Court in the more populated area of the City of Juneau.

As to the location of the Court itself, I personally believe that the Court should be located within the city limits of Juneau within reasonable walking distance of the Federal Building and the new Capitol Office Building and provided with adequate parking.

To summarize briefly then, we need three basic offices, one unit works very close with the Superior Court, the second unit concentrates larger amounts of time to prevention and community activities and the third unit is a d tention type facility staffed appropriately for twenty-fou hour service and under the direction of the Regional Administrator, Probation and Parole of the Division of Corrections.

All of the above units must be close to the courthouse. The first unit and the last unit should be incorporated in the design of the structure.

Sincerely,

Keith Stell
Regional Administrator
Probation-Parole

KS/mjr
cc: Hon. Thomas B. Stewart, Superior Court Judge
Mr. Charles Adams, Director
Division of Corrections

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

P. F. ROBERTSON (1885-1960)
W. I. MONAGLE
F. O. EASTAUGH
R. J. ANNIS
J. D. BRADLEY
W. G. RUDDY
T. P. BLANTON
L. R. JACOBSON
R. B. BAKER

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-[illegible]
CABLE ADDRESS: [illegible]HEA

October 22, 1970

COPY

W. G. Ruddy, President
Juneau Bar Association
Juneau, Alaska

Re: State Courthouse Committee

Dear Bill:

The committee you appointed met October 12th and divided the assignments between themselves, the results of which are as follows:

1. Supreme Court Requirements - letter from Justice Dimond. Area requirement estimated as 8,239 square feet.

2. Superior Court Requirements - letter from Judge Stewart through Robert Boochever. Area requirement estimated as between 20,000-30,000 square feet without related facilities allowance.

3. District Court - letter from Judge Monroe. Functional needs described but no estimated area requirements included.

4. Public Safety - letter from Commissioner Personett. Area needs estimated at 1,000 square feet.

5. Press - no letters yet received, but orally I have been informed an area approximately 300 square feet would be sufficient.

6. Division of Corrections - letter from Keith Stell describing the needed functions but not providing area requirements.

Due to the delay in getting the foregoing from some of the sources, I am sending a copy of this letter, with copies of all of the mentioned letters, directly to Frank Doogan to carry to the meeting of the Judicial Council.

I cannot add anything more at this time, except to request Frank to convey to the Council the recommendation from the Juneau Bar Association that there is a great need for the project. The Committee will meet again soon and further consider these matters and this preliminary report.

Very truly yours,

F. O. Eastaugh

FOE:ab

cc: Frank Doogan w/encl.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

PROPOSED ACT DEALING WITH THE
ADMINISTRATION OF TRUSTS IN THE STATE OF ALASKA
WITH REFERENCE TO THE FEDERAL TAX REFORM ACT OF
1969

1. In the administration of any trust which is a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954, "charitable trust" as described in Section 4947(a)(1) of the Internal Revenue Code of 1954, or "split-interest trust" as described in Section 4947(a)(2) of the Internal Revenue Code of 1954, the acts described in Section 2 shall be prohibited.

2. The trust instrument of any trust described in Section 1 above shall be deemed to contain provisions prohibiting the trustee from:

(a) engaging in any act of "self-dealing" as defined in §4941(d) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) making any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by §4945(a) of the the Internal Revenue Code of 1954;

provided, however, that this section shall not apply either to those split-interest trusts or to amounts thereof which are not subject to the prohibitions applicable to private foundations by reason of the provisions of §4947 of the Internal Revenue Code of 1954.

3. The trust instrument of each trust described in Section 2 above, except "split-interest" trusts, shall be deemed to contain a provision requiring the Trustee to distribute, for the purposes specified in the trust instrument, for each taxable year of the trust, amounts at least sufficient to avoid liability for the tax imposed by Section 4942(a) of the Internal Revenue Code of 1954.

4. Nothing in this Act shall impair the rights and powers of the courts or the attorney general of this state with respect to any trust.

5. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue laws.

6. Nothing in this Act shall limit the power of a person who creates a trust after the effective date of this Act or the power of a person who has retained or has been granted the right to amend a trust created before the effective date of this Act, to include a specific provision in the trust instrument or an amendment thereto, as the case may be, which provides that some or all of the provisions of Sections 2 and 3 of this Act shall have no application to such trust.

7. If any provision of this Act or the application thereof to any trust is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

PROPOSED ACT DEALING WITH
ALASKA NONPROFIT CORPORATION ACT
WITH REFERENCE TO THE TAX REFORM ACT OF
1969

1. This Act shall apply to every Alaska nonprofit corporation to which A.S. 10.20 applies, and which is a "private foundation" as defined in §509 of the Internal Revenue Code of 1954, and which has been or shall be incorporated under the laws of the State of Alaska.

2. The articles of incorporation of every corporation to which this Act applies shall be deemed to contain provisions prohibiting the corporation from:

(a) engaging in any act of "self-dealing" (as defined in §4941(d) of the Internal Revenue code of 1954), which would give rise to any liability for the tax imposed by §4941(a) of the Internal Revenue Code of 1954;

(b) retaining any "excess business holdings" (as defined in §4943(c) of the Internal Revenue Code of 1954), which would give rise to any liability for the tax imposed by §4943(a) of the Internal Revenue Code of 1954;

(c) making any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of §4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by §4944(a) of the Internal Revenue Code of 1954; and

(d) making any "taxable expenditures" (as defined in §4945(d) of the Internal Revenue Code of 1954) which would give rise to any liability for the tax imposed by

§4945(a) of the Internal Revenue Code of 1954.

3. The articles of incorporation of every corporation to which this Act applies shall be deemed to contain a provision requiring such corporation to distribute, for the purposes specified in its articles of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by §4942(a) of the Internal Revenue Code of 1954.

4. Nothing in this Act shall impair the rights and powers of the courts or the attorney general of this state with respect to any corporation.

5. All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future Internal Revenue Laws.

6. Nothing in this Act shall limit the power of any nonprofit corporation now or hereafter incorporated under the laws of the State of Alaska:

(a) to at any time amend its articles of incorporation or other instrument governing such corporation by any amendment process open to such corporation under the laws of the State of Alaska to provide that some or all provisions of sections 2 and 3 of this Act shall have no application to such corporation, or

(b) in the case of any such corporation formed after the effective date of this Act, to provide in its articles of incorporation that some or all provisions of sections 2 and 3 of this Act shall have no application to such corporation.

7. If any provision of this Act or the application thereof is held invalid, such invalidity shall not affect the other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

February 10, 1971

The Honorable William A. Egan
Governor, State of Alaska
Pouch A
Juneau, Alaska 99801

Dear Bill:

Re: Anchorage Judicial Complex

As I agreed to during our conversation in Juneau on February 5, I am enclosing for your consideration the report concerning the adequacies of the proposed additions of the judicial complex in Anchorage.

In order to meet the needs through 1975, the courts must have a building addition of 128,350 square feet. This building would be adequate to house all the courts in the Anchorage area, along with the offices of other state agencies which participate in the administration of justice. Adequate space would be provided for the attorney general, district attorney, public defender, and the Division of Corrections. This facility would provide adequate holding cells and feeding facilities for prisoners who would be transported from the new state jail at Eagle River to the state courthouse. At the present time we have $3,782,000 to construct an addition to our present courthouse. Present construction estimates supplied to us by the architect average $50 per square foot. This means that our total costs would be $6,417,500. It is my opinion that it is imperative that we obtain authorization for the issuance of additional ASHA bonds in the amount of $2,645,500.

As I mentioned to you in our conversation, the court has no way to expand except to the four lots to the east. Three of these lots are vacant and one has a building which is approximately 35 years old. From the best information obtainable, I believe that the maximum value of these four lots including the building should not exceed $500,000.

It would be deeply appreciated if you would consider recommending these capital improvements and submitting a bill to the legislature during this session. If the enabling legislation is passed this session, construction could begin during this construction season. In order to expedite this matter, I am sending Robert N. Reeves, administrative director, to meet with you and your designated commissioners.

If you have any further questions concerning this matter, please do not hesitate to call upon me.

With very good wishes, I remain,

Most sincerely,

George F. Boney
Chief Justice

GFB:ch

Supreme Court

State of Alaska

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

February 10, 1971

Mr. Robert N. Reeves
Administrative Director
Alaska Court System
941 Fourth Avenue
Anchorage, Alaska 99501

Dear Mr. Reeves:

As chairman of the committee on space requirements for the new courthouse, I am including herewith a copy of the report and recommendations of the committee concerning space requirements for the new courthouse. These recommendations were agreed to by the members of the committee herein, and constitute the considered opinion of the people involved. It is further the very strong recommendation of the committee that it would be far better to await construction on an adequate building than it would be to start construction on a building with inadequate space at the present time. The committee specifically recommends the following steps be taken:

1. That the remaining four lots in the courtroom block be immediately acquired for long-term expansion plans of the court system.

2. That the present building be primarily occupied by the District Court and offices and that a minimum of modification of the building take place until a comprehensive plan can be worked out taking into account borough-city unification, area-wide police services and assumption of city court facilities in the present building.

3. That the new building to be built include as large a square footage on each floor as possible, but in the minimum from 18,000 to 20,000 square feet, in order to permit the grouping of the various services as closely as possible for reasons of both efficiency and public convenience.

4. That in long-range planning the new court building be primarily a superior court building with the law library on the first floor and in the basement, with the upper floors being occupied by the supreme court and the court administrative office. It is ultimately considered that the supreme court and the administrative office in future expansion would be removed from the building the the superior court ultimately to be expanded throughout the entire structure.

5. That at the present time the public defender's office, the attorney general's office, the district attorney's office, the state police judicial services section, the division of corrections, and if at all possible, the borough attorney's prosecuting office be incorporated into the office space in the existing structure, and on one full floor of the new building to be built. In the ultimate long-range plan, these offices would be moved to the third phase of the project, along with the supreme court, and the ultimate need for parking which would be incorporated into a third building.

6. That as presently conceived the building of approximately five stories and a full basement with 12,000 square feet per floor is simply not sufficient to permit reasonable operation for any of the member agencies which might occupy the building and does not provide sufficient net working space to permit efficiency of operation. This can readily be seen by the listing of space requirements which follows for the various courts and agencies:

Superior Court -	67,000 sq. feet
District Court -	40,000 sq. feet
Attorney General -	6,000 sq. feet
District Attorney -	5,000 sq. feet
Public Defender -	3,100 sq. feet
Division of Corrections - (Probation & Jail holding facilities)	7,000 sq. feet
Borough Attorney -	750 sq. feet

Supreme Court Administrative Office -	16,600 sq. feet
Law Library -	18,000 sq. feet
Administrative office supply facility -	7,000 sq. feet
Supreme Court -	18,000 sq. feet
TOTAL SPACE REQUIREMENTS FOR THREE TO FIVE YEAR PROJECTIONS:	186,350 sq. feet

When you subtract from this total the usable square footage in the present building of 58,000 square feet, we are left with an immediate space requirement for a three-year projection which would be the approximate time for completion of the building, of 128,350 square feet. Thus, in any building which would only have five floors and a full basement, including 70,000 usable square feet, of which one-third must be reduced for the public spaces necessary in high-rise buildings, we have a building not capable of efficient use by anyone.

7. We urge that immediate steps be taken to authorize additional AHA Bonds in the approximate amount of $2,500,000 to $3,000,000 to complete the erection of an adequate courthouse and supporting services building necessary in Anchorage at the present time, and which would not take into account the possible building of the pipeline or the Native Land Claims settlement, both of which could substantially increase the need referred to herein.

Sincerely yours,

Robert C. Erwin
Associate Justice

James M. Fitzgerald
Presiding Superior Court Judge

Paul Jones
Presiding District Court Judge

Seaborn J. Buckalew
District Attorney

Herbert D. Soll
Public Defender

Robert Hartig
Assistant Attorney General

Edward B. Coleman
Regional Administrator
for Division of Corrections

March 1, 1971

Mr. William J. Moran
Chairman, House Judiciary Committee
Pouch 5
Juneau, Alaska 99801

Mr. Robert Ziegler
Chairman, Senate Judiciary Committee
Pouch 5
Juneau, Alaska 99801

Gentlemen:

This letter is simply to inform you of certain problems which are presently facing the court system at Anchorage, Alaska, with regard to the new addition to be constructed behind the present courthouse, and with certain additional statewide problems which call for immediate action on the supplemental appropriation.

At the present time, I am enclosing a letter which indicates the space requirements for the various agencies who wish office facilities in the new building. As you are aware, ASHA bond financing had been arranged by the last legislature, and the sum of $4,500,000 was available for the construction of this new courthouse facility. The construction budget is approximately $3,750,000 at the present time, with the other costs going to design, etc. We have preliminary estimates from the architect, Mr. Don Coolidge, which indicate that for the construction budget as presently noted, that a building of approximately 70,000 gross square feet can be built and that

amount must be reduced by approximately 15% for public space, etc., available to the court system.

The immediate problem is the fact that the superior court alone at Anchorage, Alaska, needs space of 67,000 square feet in order to take care of the present expansion of superior court judges in Anchorage and to have available facilities at the time that the new courthouse opens approximately two years hence.

The superior court in Anchorage has experienced unprecedented growth at the present time and well in advance of any possible anticipated growth which is a result of the pipeline or native land claims settlement. Judge Fitzgerald has indicated that the superior court has seven resident superior court judges and has the use of one full-time extra superior court judge by virtue of reassignment of either Judge Hanson of Kenai or Judge Burke of Kodiak, with a total of eight superior court judges available at any one time. Additionally, Judge Sanders has been brought to Anchorage at various times in order to handle matters because of the large workload in this area. In the present structure at 941 Fourth Avenue, Anchorage, Alaska, there are only four superior court courtrooms, and a fifth superior court courtroom for family matters was constructed on the first floor, approximately a year ago. Additionally, there is no office space for the additional superior court judges and at the present time, Judge Hanson, Judge Burke and Judge Singleton are making do with makeshift offices with an absolute minimum of space to work.

In order to make the maximum possible use out of the courtroom space available, Judge Fitzgerald ordered double shifting of the courts with court starting in each courtroom at 8:00 a.m. and going through to 1:00 p.m., when the judge on the morning shift would vacate the bench, and the judge on the afternoon shift would take up with a totally new trial from 1:00 p.m. to 6:30 to 7:00 p.m. While this has given us a maximum utilization of the courtroom facilities, it has not been possible to satisfy many of the complaints of the supporting staff who understandably are reluctant to

come to work at 7:30 in the morning and continue through to 6:30 at night. This necessitates a shifting of the personnel so far as hours of employment are concerned, and, of course, gives us quite a problem with the paperwork attendant with the filing and trial of all cases. The supporting staff is almost always required to do certain work in the clerk's office to make certain that we have no problems in that regard.

The shifting has caused serious burdens on them, but so far they have gone along because of the necessity to clear trials.

The double shifting has created another problem, and that is with the calendaring of a large number of cases. A trial court administrator was obtained after aid was given by the legislature for this position, and at the present time, he has taken over the very difficult chore of calendaring all of the cases in the superior court with the exception of family court division, in order to free Judge Fitzgerald of a great number of administrative burdens which were growing impossible. This aid has been quite successful, and at the present time a calendar study by the accounting firm of Ernst & Ernst has prepared a preliminary draft of the calendar system which we hope will work in this district. It goes without saying that if there is no space for the judges to operate, a calendar study would seem to be somewhat useless under the circumstances.

In the district court, Judge Paul Jones has noted at least a 50% increase in cases from last year, due primarily to the new contract between the city and the Spenard Service Area of Anchorage. Police services are now available on a full-time basis in the Spenard area, which in the past was served by the State Police when they could get there. They did a fine job for the personnel that they had, but the State Police are not equipped to provide urban police services and in heavily populated areas. As a result of a comprehensive police activity in this area, 3,000 additional misdemeanor cases a month are coming into the district court at the courthouse at 941 Fourth Avenue. Previously, these cases were simply not filed,

and it is now taking almost the full time of two district court judges to handle what was not in existence four or five months ago. An attendant problem with this is the fact that the district court courtrooms at Anchorage are of very small size and will not accommodate more than 50 to 60 people at one time. Arraignments on traffic matters in the past few months bring in as many as 200 to 250 people, and there is not a courtroom to accommodate them.

An additional problem is created by the fact that the new courtrooms constructed on the first floor by the superior court have taken all of the district court jury facilities, etc., and at the present time the jurors mingle in the halls with those charged with traffic violations, and defendants in the cases they are about to sit on. This problem co-exists in the superior court where the use of every available square foot of space by both administrative and supporting functions and the judges themselves has taken away all jury assembly rooms, etc., and the jurors must stand in the hallway without chairs. The public, of course, is very upset about this situation, as are the jurors who must co-mingle with everyone, including lawyers, defendants and witnesses which appear in the trials.

Judge Jones indicates that an additional problem will be created because of the inability to get agreement with the Anchorage City Council for funding of court activities in the municipal court, which is presently carried on at 6th and C Street in Anchorage. The city has refused to enter into a new contract for judicial services, and to pay its share of expenses, and therefore it appears it will become necessary for us to vacate those facilities and to bring the city cases down to the 941 Fourth Avenue location. Since the city hears approximately 3,000 cases a month, the additional burden on the district court is not difficult to realize. An additional problem, however, will be created by the lack of jail holding facilities in the courthouse which is magnified by the problem that normally in city court there is arraignment of 40 to 50 prisoners every morning. These prisoners are misdemanant defendants who have

been arrested by the city police in downtown areas during the preceding evening. If they must be transferred to the present courthouse, then we have a definite security problem, both transporting and holding them. While a great deal can be done about arraigning them in the jail, etc., there is still the additional problem created by the sheer numbers of people involved in this particular transaction.

Judge Jones further anticipates substantial growth if there is a full unification of the City of Anchorage and the Greater Anchorage Area Borough, and he can predict an immediate one-third increase very similar to the increase which happened when the Spenard Service Area obtained extensive police services. Since the population in that area would be roughly equivalent to what happens in Spenard, the prediction would appear to be accurate, and will call for some rather fancy footwork so far as handling of traffic and misdemeanor matters is concerned.

Again, these requirements have been placed upon us in the absence of both a pipeline and a native land claims settlement, and we are almost unable to judge at the present time how great a growth will be necessary in the district court except that it appears that the growth will be very substantial. It is our present plan that as soon as the present courthouse has more space available, that the district court will expand into the area vacated by the superior court to take advantage of the necessary courtroom space, etc.

The aforementioned problems afford a very critical analysis of the problem facing the court system with regard to its supplemental appropriation, and the need for additional jury monies and construction costs for remodeling the courthouse in Anchorage. The tremendous increase of caseload in the district court, the double shifting in the superior court, and the increase by the Supreme Court of jury fees paid to each individual from $9 to $21 have seriously overtaxed the budget of the court system. In fact, at the present time, the jury fee account

has been overspent to approximately $75,000 and this matter increases by geometric proportions each month as we continue to double up on use of the facilities.

The Supreme Court is faced with the alternative of continuing to have jury trials to dispose of the cases in the time requirement set by the United States Constitution, or to in fact cut out jury trials because of the lack of money and the possibility of foundering our own budget in an attempt to keep the trials going. Unless the legislature provides some relief immediately, the Supreme Court will be forced to make a decision to stop all jury trials with the attendant disruption of calendars which are normally set six to seven months in advance, and with the attendant problem of figuring out methods of release for those prisoners who cannot be tried but who are available for trial because they have been incarcerated. It would not be permissible under prevailing constitutional law to deny a person a jury trial because of lack of money for such service and to keep him incarcerated during this period of time.

An additional part of the supplemental appropriation is the actual construction of two additional courtrooms in the present space in Anchorage, Alaska, which was made possible by moving out the probate department of the superior court which has been placed in a house trailer directly behind the courthouse, and the recorder's office which will be moved to the Voyager Hotel. While neither of these arrangements is satisfactory, it will at least give the present judges more space to hear cases and enable us to ease up on the double shifting problem which has overtaxed the administrative staff to a great degree.

These problems, of course, point out the urgent need for a building at Anchorage, Alaska, with sufficient space to accommodate the various purposes. The attached letter points out a need for approximately 128,000 square feet of usable space, and, of course, that is far in excess of the ability to pay at the present time. It is therefore the suggestion of the committee that all of the funds that are available be used immediately to

construct a superior court court building behind the present structure of four floors, with the top two floors being left entirely vacant and the other floors finished to take care of immeidate needs. Without question, before the building is moved into, there will be a requirement for a finishing of the third floor in order to accommodate even the available judges as well as a certain increase in the number of judges necessary to handle judicial duties in the superior court at Anchorage. We are anticipating a need for a minimum of 11 to 12 courtrooms, and, of course, the finishing only of the basement and the two floors on the present construction budget would not permit that many courtrooms to be constructed.

Because of the need for additional construction on the top two floors of the new courthouse, a need for a courthouse in Juneau, a need for a courthouse in Sitka, and requests from the federal government to purchase the courthouse in Nome, we would ask for authorization through ASHA bond financing or such other method as the legislature deems feasible, to provide monies for these various projects.

Particularly in Anchorage the funding would be such to permit the finishing of the superior court court building, the acquisition of the additional four lots in the courthouse block here in Anchorage at a cost of approximately $600,000, and the construction of a court-related office building which would house the Supreme Court of Alaska, the attorney general's office, the district attorney's office, the public defender's office, the highway section of the attorney general's office, the borough prosecution office, the Alaska court administrative office, and parking facilities. In this manner we could develop a plan for the orderly transition in the various buildings and provide service to the public which would be appropriate. We are not talking about judicial frills; we are talking about the basic minimum service that is required by the Constitution of the United States and of the State of Alaska.

While this letter is somewhat rambling in content, it is meant simply to set down on paper the problems which we are immediately faced with and the urgent need of seeking some sort of solutions to them. It is fairly obvious that if we have these problems without the building of a pipeline, or a native land claims settlement, their impact on this problem area may very well completely break down the machinery of justice which is necessary for a vitally functioning state.

Sincerely,

Robert C. Erwin

RCE:kf

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A UNIT IN THE ORIGINAL FILE.

Bush Justice

RICHARD WHITTAKER
ATTORNEY AT LAW
BOX 13 KETCHIKAN, ALASKA 99901
107 STEDMAN STREET CA 5-5333

April 24, 1971

The Honorable Chief Justice George Boney
Alaska Supreme Court
941 - Fourth Avenue
Anchorage, Alaska 99501

Dear Chief Justice Boney:

Your visit to Juneau and attendance at the meeting of the House of Representatives bush league meeting and a recent conversation I had with Justice Dimond have brought to mind a couple of matters which I wanted to mention to you, and I am taking the liberty of addressing myself to the problems by mail, in order to get them to your attention as quickly as possible.

The Supreme Court should be aware that in the early part of January of next session, the House Local Government Committee intends to work over the various bills which aim toward setting up a Department of Community and Regional Affairs, including the Rural Alaska Development Group bill, which would set up regional government and use it as a means of compelling service from State government. The committee and others are looking at several different ways of bringing State government closer to the people of the bush. Indeed, the House Local Government Committee in passing out the Governor's regional service area bill, did so on the theory that if nothing else, it would give people in the unorganized borough a chance to experiment with area government as a concept. What this is all leading up to is that in reading through the bush justice conference report, which I have at hand, it occurs to me that one of the basic concepts is completely incorrect. I refer of course to the fact that the State agency which so often has the most contact with villages on a regular basis is the Department of Public Safety. I simply do not believe that the State of Alaska puts its best foot forward when Troopers are sent to the villages. What should be sent is a governmental officer of relatively high rank, who is trained in all the departmental needs, and acts as an ombudsman of sorts, and who can do some investigatory work if necessary and transport prisoners if necessary, but who is a person who is able to develop action for areas which are lacking action and who serves perhaps as some

quasi-judicial authority. In short, a completely different concept. What we require now is a State Trooper who functions in this fashion, but of course it's impossible because of lack of training and a different direction. In the old days of Tammany Hall, the smiling Irish cop on the beat had many of the attributes I have set forth because he related to a political machine which was able to bring about answers outside of the police and legal machinery.

I think additionally that the Court should give considerable consideration to revising the Rules of Court which relate to the magistrate's court and indeed the District Court unless the District Court has become such a magnificent forum that no one except he who is represented by counsel may attend. I think that we need to completely review the need of a District Court in the bush, and even as it applies to larger communities, and provide rules and laws in its jurisdiction which are relatively easier of administration. Perhaps I am still in legislative shock. It occurs to me that a manual could be written and adopted setting forth both the criminal and civil jurisdiction and the rules of court which would solve 90% of the problems brought to court and which would allow two intelligent men without the need of counsel with a judge who is disposed to seek truth and justice, whatever they are, to accomplish the ends of justice. At least this must needs be done before the magistrate's court. Perhaps this is how that court functions now in any one given community, but I think that the lawyers amongst us can go a long way in helping to clarify some of the legal ideas which are involved in the use of the magistrate's court.

Thirdly, I should like to recommend most strongly that the Supreme Court review the situation of the small claims court. I know that as a general rule lawyers don't go there, but when I opened up my practice in Ketchikan before the advent of Legal Services, Inc., I did go to that court to defend persons who had been harrassed by collection agencies, and I found that there were no rules, and what rules there were were incomprehensible. The problem in the small claims court is that it is not a people's court as it was intended, but rather a court for the few, i.e., the collection agencies. I have discussed with other attorneys in Ketchikan the possibility of trying to work out a plan of attack on the need for rules in the small claims court as a project of the Ketchikan Bar Association, but none of us have had time to

do this, and I do not foresee in the near future any particular amount of time that I will have, the Legislature having done such damage to my law practice.

In conclusion, I want to applaud the court system for attending to the needs of the bush as it has, particularly in a time of crisis, where the court system is being accused of all kinds of strange things, including "crime in the streets", whatever that is. I have taken a view on the floor of the House of Representatives which is defensive of the court system. The court has come under attack whenever we talk about loaded dockets and criminal problems as if it were the court which had created these problems. I disagree that the court has, and have urged on my colleagues that it has been the State Police and the Department of Fish and Game and certain other agencies which have caused more problems than they seek to solve. I particularly like to refer to the "celebrated dingo" case at Fairbanks, which unfortunately is typical of the kind of thing the Department of Fish and Game likes to foist on the court system during the winter months when they have nothing better to do. I would further point out to the court that much time is utilized in the lesser courts of the State handling speeding matters, which is rather strange to me because I have been told by the Department of Highways that speed limits are set by following radar study and an averaging of speeds. If this is true, then it's ridiculous that the State Police waste the time of the court by bringing in anybody who has done any less than 20 miles over the speed limit, unless it truly can be said that he is driving in an unsafe fashion.

I do not seek an answer to this letter, as I know you are very busy, but did want to call these matters to your attention, and perhaps some time we could discuss them further.

Sincerely yours,

RICHARD WHITTAKER

RW:ca

cc: Associate Justice John H. Dimond
Alaska Legal Services, Inc.
Juneau
Ketchikan
Anchorage

THE FOLLOWING PAGES WERE TREATED AS
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Alaska Judicial Council

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUSH JUSTICE CONFERENCE

MT. ALYESKA

GIRDWOOD, ALASKA

DECEMBER 8 - DECEMBER 11

JUDICIAL COUNCIL MEMBERS

Chief Justice George F. Boney, Chairman
Lester W. Miller, Law Member, Anchorage
V. Paul Gavora, Lay Member, Fairbanks
Ken Brady, Lay Member, Anchorage
Frank M. Doogan, Law Member, Juneau
Peter D. Meland, Lay Member, Sitka
Michael A. Stepovich, Law Member, Fairbanks

CONFERENCE RESOLUTIONS

WHEREAS: THE QUALITY OF JUSTICE IN THE ALASKAN BUSH AREAS SHOULD BE IMPROVED:

BE IT RESOLVED THAT:

1. THE LOCUS OF DECISION-MAKING IN THE ADMINISTRATION OF JUSTICE IN VILLAGE ALASKA MUST MOVE CLOSER TO THE VILLAGE. TO ACHIEVE THIS RESULT THERE MUST BE GREATER NATIVE PARTICIPATION AT ALL LEVELS IN THE ADMINISTRATION OF JUSTICE.

a. There should be greater direct participation by Native citizens in the administration of justice at all levels, including their employment in policy-making positions in all agencies involved. Every agency should examine its qualifications requirements in order to revise them wherever they may arbitrarily exclude otherwise qualified Alaskan Natives. Examples include the height requirements for Alaska State Troopers, minor criminal records, formal education, etc..

b. Appointment of an Alaskan Native to membership on the Judicial Council and the Judicial Disqualification Commission is recommended.

c. The selection and removal of magistrates should be made more responsive to the desires of the communities served. Continuing critical evaluation of performance of duties by magistrates should be made. Consideration should be given to assigning principal responsibility for appointment and removal of magistrates to presiding district court judges.

d. The strengthening of village councils is central to the administration of justice in remote Alaska.

e. The Local Affairs Agency must be strengthened and upgraded to department level and its technical assistance functions fostered if there is to be successful administration of justice in the villages.

Representatives of the Local Affairs Agency should visit villages to work with local officials. They should help the villages draft and revise ordinances, facilitate participation of villages in revenue-sharing programs, and improve law enforcement techniques.

2. THERE MUST BE A GREATER ACCESS TO LEGAL SERVICES AND THE PROCESS OF JUSTICE IN VILLAGE ALASKA.

a. The ordinary method of travel in the bush is by air. To meet the basic requirements of regular travel and to enable emergency service, State Troopers should be authorized to operate leased or state owned aircraft for their official duties and to aid officers of the court and associated agencies in the performance of their duties.

b. The Alaska Legislature should fund a program creating village constables in village Alaska to be chosen by village governing bodies to serve at their pleasure and to act as village law enforcement officers with the support of the Alaska State Troopers.

c. The travel budgets of the superior and district courts should be increased so that they may hold trials where the parties and witnesses live. When trials are elsewhere, but witnesses live in the bush, the courts should use special masters to take evidence in the witnesses' villages. When actions are filed in places not accessible to defendants or their witnesses, changes of venue to the defendants' homes should be liberally allowed. These changes would facilitate more accurate factual determinations, avoid unfair default judgments, and provide education in judicial processes and substantive law in the bush.

d. The Supreme Court is encouraged to order at least an annual circuit court session of the superior court in the major community

in each House election district.

e. The State Legislature should fund staff offices in Bethel and Nome for Alaska Legal Services Corporation and a Public Defender Agency office in Bethel as a step toward creation and support of rural principal judicial centers.

f. Techniques should be explored to encourage the private bar associations to provide better services in Alaska villages. As an example, group legal services experiments in other states should be studied. Public interest law firm efforts might also be encouraged.

g. Every village should have a detention facility and a juvenile detention facility separate from the detention facility and standards should be established for such facilities. These are needed to protect villages from dangerous persons without delay and without unduly long incarceration because of transportation time.

h. Special emphasis must be given to the development of manpower capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public.

(1) The colleges and universities within the state should establish programs for the training and continuing education of magistrates, constables, paralegal and other associated personnel. Such programs should be developed and operated in cooperation with the Judicial Council, the Department of Public Safety, the Alaska Federation of Natives, and other appropriate agencies and organizations. Major emphasis should be placed on on-the-job training.

(2) The University of Alaska should establish an institute to train legal personnel in both rural and urban areas in Native culture and languages. Incentives should be provided for attendance at this institute.

(3) The Department of Education should develop curriculum

concerning legal concepts, processes, rights and remedies for junior high school students throughout Alaska.

(4) The colleges and universities within the state should establish adult education programs concerning legal concepts, processes, rights and remedies for Alaskan villages. This program should include dissemination of printed materials in attractive format which explain the rights of individuals under the statutes and decisions.

(5) A program should be established for recruiting bi-lingual lawyers fluent in English and another recognized language common to a region of Alaska to serve in Alaskan public programs which relate to the administration of justice. Such a program would work through law school scholarships and financial grants equivalent to what bi-lingual college graduates might otherwise earn if they chose to work in other Alaskan community leadership or service positions.

(6) The colleges and universities within the state should be encouraged to establish a training and continuing education program for the development of paralegal personnel. Persons participating in and successfully completing such a program should be considered for certification to counsel persons within the limits of their training and expertise.

i. Greater understanding of and more information about all direct and related aspects of judicial administration are needed to provide a basis for policy making, for establishing appropriate administrative arrangements, for training and education, and for improving other aspects of providing justice in rural areas. In particular, the cultural context and impact of judicial administration must be thoroughly understood by all involved in the system of bush justice. Toward these ends, the Judicial Council, the State Administration, the University of Alaska, and other appropriate organizations should initiate, sponsor

and undertake programs of research concerning such areas as the character and processes of village law-making, judicial administration, and law enforcement.

3. SOME MODIFICATIONS IN SUBSTANTIVE LAW ARE NECESSARY TO CORRECT INEQUITIES IN VILLAGE ALASKA. SUCH MODIFICATIONS RELATE TO THE ADMINISTRATION OF JUSTICE IN URBAN ALASKA AS WELL.

a. There should be a study of the program effectiveness of present correctional and dispositional alternatives in village Alaska. If particular techniques are inefficacious, they should no longer be employed.

b. Dispositional process alternatives prior to invocation of the criminal and juvenile process should be legitimated and encouraged. In the process, there should be guidance on what dispositional alternatives prior to invocation of the criminal process are appropriate.

c. Local alternatives for the control and rehabilitation of juveniles should be developed.

d. Review and changing of the laws concerning alcohol-related offenses should be continued to provide non-criminal alternatives. This conference recommends that detoxification facilities be established as an alternative to incarceration for alcoholic and alcohol-related offenders throughout all areas of the state. This conference further recommends that training be given to all officers of the criminal justice system to recognize alchoholism as an illness and that this be done in conjunction with broad community education.

e. Waivers of rights to counsel, silence, trial by jury, trial by the district court, and other related rights, should be accepted by magistrates only after the most careful scrutiny for voluntariness

and understanding. Advice as to rights should be thorough and discursive and in the language primarily spoken by the defendant. Where an attorney or appropriate paraprofessional is available, his presence on behalf of the defendant should ordinarily be obtained.

f. It shall be a mitigating factor in sentencing, but not in the determination of guilt, that an act, violative of law, was committed pursuant to custom.

g. The courts and legislature should recognize customary adoptions common among Alaska Native people. Recognition of customary adoptions should not involve lengthy court procedures but rather summary procedures.

h. Court arraignment procedures must include the advising of constitutional rights in a language understandable to the defendant. Boards of qualified interpreters should be established and funded and their services made available throughout the state for this purpose.

i. It is recommended that the boundaries and number of judicial districts be examined and changed where necessary to facilitate access to judicial services. The social and transportation patterns of the individuals to be served should be given prime consideration in the establishment of judicial districts. Example: Barrow should be part of the fourth judicial district and Bethel should be either part of the third judicial district or a new special Superior Court District should be created for Bethel.

j. The Alaska Administrative Procedures Act and the Alaska Administrative Code should be amended to:

(1) Require that hearings on administrative licenses, rules, and orders be held in the organized community or communities affected by the issuance of the license, rule or order.

(2) Extend the time allowed for administrative appeals from

30 days to 60 days.

(3) Require the posting of notice at the situs, the publication of notice in the newspaper published nearest the situs and public hearing be held at the situs or community nearest the situs prior to the granting of the application, the license or any interest in tidelands or property, in order to adequately protect rights or interests in these tidelands or property.

k. Civil Rule 53 should be interpreted and implemented to allow for the liberal appointment of special masters to take factual evidence in areas not frequently served by the superior court and where required for the ends of justice.

l. Changes in venue requirements should be as follows:

(1) For criminal actions, venue should be originally set in the election district in which the alleged crime was committed; for civil actions venue shall originally be set in the election district which has the most significant contacts with the transaction which is the subject of the action.

(2) AS 22.10.040 should be amended by deleting subsection (2) and enacting a new statute in the place of subsection (2) which reads:

A motion for change of venue <u>shall</u> be granted when required for the convenience of the witnesses and the ends of justice.

(This amendment will change the existing law which places a venue change for witness convenience and justice in the discretion of the superior court judge to a mandatory change requirement in this one instance.)

BE IT FURTHER RESOLVED THAT:

4. THE STATE SHOULD ENCOURAGE AND PROVIDE PLANNING ASSISTANCE IN THE ESTABLISHMENT OF COMMUNITY MENTAL HEALTH CENTERS IN THE REGIONAL

SERVICE CENTERS OF THE STATE, SUCH AS BETHEL, NOME, KOTZEBUE, BARROW, FORT YUKON AND OTHERS. ALSO, THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE SHOULD CONSULT WITH THE DIRECTOR OF MENTAL HEALTH AND THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO PROVIDE RESIDENT QUARTERS FOR PERSONS REFERRED BY THE COURTS FROM RURAL AREAS FOR EVALUATION AND REFERRAL UNTIL SUCH TIME AS MENTAL HEALTH FACILITIES ARE AVAILABLE.

5. THE STATE DIRECTOR OF COMMUNICATIONS SHOULD COORDINATE PRESENT EXISTING RADIO COMMUNICATIONS NETS AND ESTABLISH OTHERS AS REQUIRED, WHEREBY ALL AREAS NOT HAVING ACCESS TO COMMUNICATIONS MAY BE SERVED. THE CENTER OF EACH NET SHOULD BE LOCATED IN THE AREA OF EACH PRESIDING DISTRICT COURT JUDGE OF EACH JUDICIAL DISTRICT AND BE MADE AVAILABLE TO ALL AGENCIES AND PERSONS ASSOCIATED WITH THE JUSTICE SYSTEM ON A 24 HOUR PER DAY BASIS. IN CONJUNCTION WITH THE ABOVE, THE JUDICIAL COUNCIL OR OTHER APPROPRIATE AGENCIES SHOULD INTERVENE IN THE FCC DOCKET ON DOMESTIC SATELLITES TO URGE THE NEED IN VILLAGE ALASKA FOR IMPROVED COMMUNICATIONS IN THE ADMINISTRATION OF JUSTICE.

6. AS EACH COMMUNITY SHOULD HAVE BETTER CONTROL OF ITS AFFAIRS, LEGISLATION SHOULD BE ENACTED TO AUTHORIZE THE ISSUANCE OF PACKAGE AND BY-THE-DRINK LIQUOR LICENSES TO CORPORATIONS WHOLLY OWNED BY MUNICIPAL CORPORATIONS OR ORGANIZED COMMUNITIES.

7. THIS CONFERENCE RECOMMENDS THAT ANOTHER JUSTICE IN THE BUSH CONFERENCE BE HELD SOMEWHERE IN A RURAL COMMUNITY.

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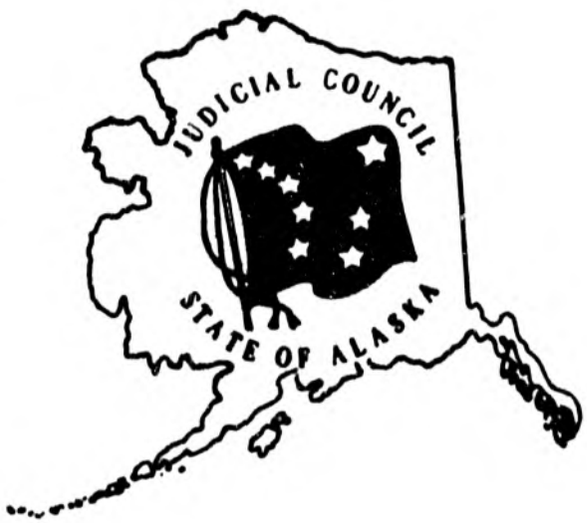
ALASKA JUDICIAL COUNCIL

SIXTH REPORT
1969 - 1970



SECRETARY TO THE JUDICIAL COUNCIL
941 Fourth Avenue Anchorage, Alaska

ALASKA JUDICIAL COUNCIL

SIXTH REPORT

1969-1970

Prepared by Theodore R. Dunn
Secretary to the Judicial Council
941 Fourth Avenue
Anchorage, Alaska

ALASKA JUDICIAL COUNCIL

941 Fourth Avenue
Anchorage, Alaska

February 1971

TO: GOVERNOR WILLIAM EGAN
SUPREME COURT OF ALASKA
PRESIDENT OF THE SENATE
SPEAKER OF THE HOUSE OF REPRESENTATIVES

In accordance with the provisions of Section 9 of Article IV, Constitution of the State of Alaska, there is respectfully submitted herewith the report of the Alaska Judicial Council for the period from January 1, 1969, through December 31, 1970. It is intended to provide a review of the work of the Council during this period and to offer current recommendations for improvement of the administration of justice.

Sincerely,

George F. Boney

George F. Boney, Chairman
Alaska Judicial Council

C O N T E N T S

I.

INTRODUCTION

The Alaska Judicial Council is established by Article IV, Section 9 of the Constitution of the State of Alaska. The Council is composed of seven members including the Chief Justice of the Alaska Supreme Court who serves as Chairman. Three of its members are appointed by the Board of Governors of the Alaska Bar Association. Three members are non-lawyers appointed by the Governor, and confirmed by the legislature. The Council has two functions. First, it makes nominations to the Governor for the appointment of persons to vacant positions in the Judiciary or to the post of Alaska Public Defender. The Council also conducts studies and makes recommendations for improvements in the administration of justice throughout the State. It is required by the Constitution to submit a report and recommendations to the Supreme Court and to the legislature at intervals of not more than two years.

The judicial nomination process engaged in by the Council begins with the solicitation by the Secretary of the Council for applicants for specific judgeships. Notice is given to all active members of the Alaska Bar Association. All applicants are then brought to a meeting of the Judicial Council, at the expense of the Council, for personal interviews. At this time the Council also considers the results of a qualifications poll which has been conducted with respect to each candidate by the Alaska Bar Association. The Council then votes to nominate applicants to the Governor for specific

judgeships. The Governor then appoints from the list of nominees.

To arrive at its recommendations for improvement of the administration of justice in Alaska the Council engages in various activities. First, of course, are the regular Council meetings wherein various problems are brought to the attention of the Council either by its members or by persons who have requested to appear. Also, the Council conducts public hearings throughout the State on the subject of the administration of justice. The Council also sponsors and conducts seminars and studies relating to specific problem areas. Ultimately drawing upon all of these sources, the Council makes its recommendations to the legislature, the Court System or the Governor for action to be taken for the improvement of justice.

This report covers the activities of the Council in carrying out its Constitutional mandate during the years 1969 and 1970 and contains the current recommendations of the Council for improvements in the administration of justice in the State of Alaska. This report is not meant to be repetitive of prior reports and because of this will refer to material contained in those reports without fully reproducing it.

II.

SUMMARY OF MEETINGS

February 20, 1969 - Juneau, Alaska

The first meeting of 1969 was held in Juneau on February 20th. Present were Chief Justice Buell A. Nesbett, Chairman; Mr. Jack Werner, lay member of Seward; Mr. Frank Doogan, law member of Juneau; Mr. Peter Meland, lay member of Sitka; and Mr. V. Paul Gavora, lay member of Fairbanks. Mr. Michael Stepovich, law member of Fairbanks was absent outside the state and Mr. Lester W. Miller, law member of Anchorage, was present for the afternoon session. The Chairman opened the meeting by reviewing the Council's recommendations in its Fifth Report. These were: establishment of a public defender agency, increase of judicial salaries, relieving District Judges of coroner-public administrator duties, and micro-filming of public records. It was agreed that no priorities be given to these items. The Council then generally discussed each of these items in turn. The proposed bill for handling the coroner-public administrator problem was presented and reviewed by the Council and the Council voted to go on record favoring the concept of the transfer of the duties of coroner and public administrator to the Commissioner of Public Safety.

After reviewing the legislature program, the Council considered a report by the Statewide Committee on Sentencing and Appellate Review of Sentences which included a recommendation to amend AS 22.05.010 to give the Supreme

Court jurisdiction to hear appeals from sentences imposed by the Superior Court on the grounds that the sentence was either excessive or too lenient and to modify the sentence accordingly. The report also proposed that for this purpose that the Supreme Court be permitted to sit in divisions. It contained an additional provision providing for appeal from the District Court to Superior Court in some cases. The recommendation included other proposals for reform of the appellate system. The Council voted to approve the committee report, following lengthy discussion, and to recommend to the legislature that it be implemented.

The Chairman also presented the report prepared by the Subcommittee on Probation and Parole which had been approved by the Statewide Committee. The report related to several subjects including: (1) increasing the probation personnel of the Division of Corrections; (2) changing the personnel requirements so as to reduce turnover within the Division of Corrections; (3) the placing of more persons under probation-parole supervision; (4) giving more supervision to offenders; (5) protecting the society at large by virtue of adequate supervision and evaluation of persons placed on probation and (6) salvaging of more criminal offenders as a result of adequate probation. The report also questioned whether the Division of Corrections should be in the Department of Health and Welfare. The Council then voted to go on record urging the legislature to implement the present

probation staff in order that it become more effective; the Council further determined to make a study regarding the desirability of the probation function being moved from the Department of Health and Welfare and placed in the court system.

In the afternoon the Council met with Governor Miller and discussed its recommendations as contained in the Fifth Report. The need for a public defender agency was stated and Council member Lester Miller advised the Governor that the Bar Association wholeheartedly supported such a program. The Chairman then advised the Governor that the need for a salary increase for judges was urgent and that Governor Hickel had previously agreed with the Council's recommendation that state judicial salaries should be equated with those paid the federal judiciary. The Governor assured the Council that a salary bill would be forthcoming. The Council also advised the Governor of its recommendations with respect to appellate review of sentences, probation, micro-filming of public records and the proposed coroner-public administrator legislation. The Governor concluded the meeting by thanking the members of the Council for their attendance and assuring the Council that he would do everything possible on behalf of the salary recommendation.

The Council then met with members of the House and Senate Joint Judiciary and Finance Committees. Legislators present were Senator Vance Phillips, Representatives Ray,

Banfield, Croft and Metcalf. Each of the Council's recommendations which had been discussed with the Governor was discussed with the legislators. Also, at the request of Senator Phillips, the Chairman reviewed with the legislators the manner in which judicial applicants are nominated by the Council.

Following meeting with the legislators the Council reconvened briefly. Mr. Werner advised the Council that as his term was expiring this would probably be his last meeting. He commended the Chief Justice for his contributions as Chairman and stated in the ten years he had been a part of the Council he felt it operated well without political considerations and in a progressive forthright manner. The Chairman responded commending Mr. Werner on his service and contributions to the Council and to the State of Alaska.

June 20, 1969 - Anchorage, Alaska

The primary purpose of the June 20th meeting was to nominate to the Governor candidates for the office of Public Defender for the State of Alaska. All members of the Council were present including newly-appointed member Mr. Ken Brady, lay member from Anchorage, who succeeded to the position previously held by Mr. Jack Werner of Seward. The Chairman reported on the results of the Council's legislative program for the 1969 legislature. The recommendations on appellate review passed the legislature. The coroner's legislation was opposed and did not pass. The Public Defender bill had passed

substantially as hoped for by the Council, but the Chairman believed the appropriation to be inadequate. The Chairman reported that the principal office of the Public Defender would be located in Anchorage with field offices in Fairbanks and Juneau. The Judicial Qualifications Commission had been organized with Associate Justice John Dimond as chairman. However, the finance committee had not passed on the supplementary budget and the Judicial Qualifications Commission was without funds. The chairman stated that the Commission would be treated as an independent budget by the administrative office of the Court System which would process claims and vouchers at the request of the chairman.

The Chairman reported that there were vacancies in the District Court, but in view of the fact the salaries of District Court judges had been raised by only $1,500 he recommended that the Council not solicit applicants for the vacancies until the salary was increased; the judgeships would be held on an interim basis pending that time. In this regard, Chief Justice reported that the resistance to District Court salary increases was intense in the recently concluded legislature. Several of the members indicated they would personally make appeals to legislators to increase the salaries.

The Council then next considered the applicants for Public Defender and nominated three candidates to the Governor. The Council further discussed the urgent need for improve-

ment of judicial salaries and voted to establish a committee for the purpose of presenting a salary plan for the upgrading of judicial salaries. The Chairman also reported on the status of the Anchorage court facility expansion plan. He stated that the legislature had authorized a bond issue sufficient to cover the construction project, but that the interest ceiling on the bond issue would preclude sale of the bonds. Therefore, the legislature might have to take steps to improve the saleability of the bond issue by increasing the interest ceiling during the next session. Mr. Stepovich requested that the matter of additional Superior Court judges for the Alaska Court System be placed on a future agenda and in view of the general feeling that there was a growing need for additional judges the Chairman directed that this be done.

November 6 & 7, 1969 - Anchorage, Alaska

The principal purpose of the November meeting was to consider the Council's 1970 legislative program. Present were Michael Stepovich, law member of Fairbanks; Frank Doogan, law member of Juneau; Lester W. Miller, law member of Anchorage; Kenneth Brady, lay member of Anchorage; and Paul Gavora, lay member of Fairbanks. Chief Justice Nesbett, the Chairman, was undergoing treatment in San Diego for injuries sustained in an aircraft accident and Mr. Meland of Sitka was required to be absent for business reasons. Associate Justice John H. Dimond was also in attendance. In view of

the Chief Justice's absence Vice Chairman Michael A. Stepovich presided. The first agenda item considered was that of judicial salaries. Justice Dimond stated to the Council that there was an urgent need for increase in judicial salaries, noting that increases by the previous session of the legislature were inadequate. He reported that the Alaska Bar Association was completely behind the Court System and the Council with respect to judicial salaries and stated that young, capable lawyers were not interested in judicial positions because they could not afford it. Mr. Peter LaBate, president of the Anchorage Bar Association, appeared to state the Anchorage Bar Association's position with repsect to judicial salaries. He pointed out that existing salaries were inadequate to attract experienced lawyers into the judiciary and stated his opinion that the Superior Court judges should be paid at least $40,000 and the District Court judges at least $25,000. Presiding District Court Judge Paul B. Jones of the Third Judicial District also appeared. He pointed out that for many people their contact with the Court System occurred in the District Court and it was imperative that salaries at that court be attractive to encourage applicants for judgeships. Also appearing was former District Court Judge James Hanson who stated that he had recently resigned from the court because promised salary increases were not forthcoming. It was determined that the Council invite Senator Vance Phillips to discuss the matter of salaries with the Council at the next Council meeting

Mr. James Fisher, an attorney from Kenai, Alaska, appeared before the Council to state the need for a Superior Court judge for Kenai and Kodiak. Mr. Roy Madson of Kodiak also appeared urging that a Superior Court judge be made available for these two communities.

The next agenda item to be considered by the Council was that of additional Superior Court judgeships. Mr. Doogan discussed the need for an additional Superior Court judge in Southeastern Alaska pointing out that the one judge available did not have time to take care of all his business. He did not make a specific recommendation as to where the judge should be located. The Council voted to recommend the creation of an additional Superior Court judgeship in the First Judicial District.

Mr. Stepovich then discussed the need for an additional judge in the Fairbanks area in view of the increase of population and increased activity on the Arctic North Slope. The Council unanimously voted to recommend an additional Superior Court judge for the Fourth Judicial District.

Judge James M. Fitzgerald of the Third Judicial District appeared and concurred with the need for higher salaries, pointing out the judicial salaries in Alaska have consistently dropped behind salaries paid to other officials. For example, he recalled when there was $3,000 difference in the salaries between the federal district judges and Alaska

Superior Court judges and noted that the difference had grown to over $13,000. He recommended establishment of an independent salary commission to recommend salaries to the legislature. Judge Fitzgerald also reported on the need for additional judges in the Third Judicial District. He believed two additional judges were needed. Judge Fitzgerald also urged the creation of a court administrator in the Third Judicial District for the Superior Court to free the presiding judge from many administrative duties. The Council then resolved that it be recommended to the legislature that the Third Judicial District be provided with two additional Superior Court judges and that the Superior Court be permitted to hire a trial court administrator.

Judge Fitzgerald also reported that he felt that judges should be reimbursed for their actual expenses when traveling on court business as is done in the federal system. However, on the recommendation of Justice Dimond the Council moved to recommend to the legislature that Court System personnel traveling on court business be granted $35 per day.

The Council also considered the question of how the peremptory challenge law was operating. Judge Fitzgerald stated that he did not believe most attorneys were abusing the law although peremptory challenges cause some problems in calendaring cases. The Council determined to make no recommendation with respect to the peremptory challenge law.

The Council received a report from Mr. Victor Carlson, Public Defender, who appeared at the meeting. He also presented the Council with his 1970-71 budget. Following his report the Council voted to recommend to the legislature that the Public Defender Agency's budget be adequately funded.

Again the Council considered the question of judicial salaries. Mr. Reynolds, secretary to the Council, reported that the Chief Justice had expressed by telephone his wish that judicial salaries be equated with those paid in the federal court system. Mr. Reynolds reported that in 1969 the Council had recommended that the existing federal scale be applied. However, in the interim there had been a salary increase in the federal judiciary. It was noted by Justice Dimond that although the legislature and other state employees had received salary increases in the past legislature of from 12 to 14 percent the judiciary received an average increase of about 4 percent. The Council voted to recommend to the legislature that the salaries of Supreme Court and Superior Court judges be equated with the Federal Circuit Court of Appeals and U. S. District Courts respectively, and that State District Court judge salaries be raised a commensurate percentage. The Council also discussed the need for a permanent salary commission to make studies and recommendations for salary increases in proportion to the cost of living and other factors. The Council, following the discussion of District Court vacancies in Sitka, Wrangell, Kodiak and Anchorage, voted to circularize

to fill these positions. The Council discussed improvements in the method of polling the Bar Association on judicial applicants.

The question of the need for expansion of the Anchorage Court facility was considered together with the action taken by the legislature in this regard during the 1969 session. Although bonds had been provided, they apparently were not saleable at the six percent interest rate. In view of the seriousness of the situation, Justice Dimond proposed, and the Council passed, a resolution to the Governor to appraise him of the situation and urge him to take all necessary action to expedite the Anchorage expansion. In the resolution the Council pointed out that if the new facility was not available in eighteen months, minimum necessary standards for the administration of justice could not be met.

The Council determined that public hearings should be conducted in Fairbanks, Anchorage and Juneau prior to the 1970 legislative session. The topics stated in the notice of hearing would include, adequacy of court facilities and services, use and selection of judges, delays in the judicial process, and other areas affecting the administration of justice. Hearings were scheduled for Fairbanks January 5, 1970, Anchorage January 6, 1970, and Juneau January 8, 1970.

The Council voted to recommend to the legislature that coroner-public administrator positions in the Court System budget be approved. The Council also voted to endorse

micro-filming program contained in the fiscal 1969-70 budget. The Council then discussed the serious difficulties that the Court System had in obtaining appropriate classification for its personnel by Department of Administration. Justice Dimond reported that there were apparent inequities in the classifications existing in the judicial branch and the Council voted to authorize the administrative director to expend up to $5,000 of the Council's funds to obtain an independent study of Court System personnel classifications and salaries. The Council discussed the fiscal year 1970-71 Alaska Court System budget emphasizing the need for adequate budgeting for the judicial system. It also considered the Judicial Council's budget and voted that the consideration of that budget was a matter within the sole authority of the Council although the mechancis of preparation and accounting procedures would remain within the Court System. The Council then voted to approve its budget in the amount of $8,000 for travel and per diem and $20,000 for studies during the fiscal year 1970-71. A committee was appointed to meet with the Governor prior to the coming legislature to discuss matters pertaining to the recommendations of the Judicial Council.

January 5, 6 & 8, 1970 - Fairbanks, Anchorage & Juneau

The January 5, 6 & 8th meetings were held respectively in Fairbanks, Anchorage and Juneau. These meetings were for the purpose of holding public hearings regarding the

administration of justice in the State of Alaska. In attendance at the Fairbanks meeting as members of the Council were Michael Stepovich, law member of Fairbanks; Frank Doogan, law member of Juneau; Lester W. Miller, law member of Anchorage; V. Paul Gavora, lay member of Fairbanks; and Peter Meland, lay member of Sitka. Testimony was taken regarding a wide range of matters relating to the administration of justice and the testimony was recorded and a transcript subsequently prepared. The Anchorage meeting was held on January 6, 1970 and all members were present except Chief Justice Nesbett who was still recuperating from injuries suffered in an aircraft accident. The Council then met on January 8, 1970 in Juneau with all members in attendance except Chief Justice Nesbett and Lester Miller, law member of Anchorage. The entire proceedings were transcribed.

While in Juneau the Council held a business meeting at which it determined to recommend to the legislature that the office of the Chief Justice of the Supreme Court be rotated among the five justices once every three years.

The Council also discussed the presentation of its legislative program to the legislature and the individual Council members were assigned to present each aspect of the program.

January 29, 1970 - Juneau, Alaska

The January 29th meeting was held in Juneau for

the purpose of presenting the Judicial Council's 1970 legislative program to the Senate and House Finance and Judiciary Committees. All members of the Council were in attendance except Mr. Ken Brady, lay member of Anchorage, who was outside the State and Chief Justice Nesbett who was undergoing medical treatment in California. Justice John H. Dimond of the Alaska Supreme Court also attended. The Council met with the Senate and House Finance and Judiciary Committees. Senators Vance Phillips, Lewis, Blodgett, Rader, Miller, Koslosky, Bradshaw, Haggland and Merdes were present as were House members E. Miller, Metcalf, Fink, Croft, Cornelius, Banfield, Ray and Kay. Members of the Council presented each topic in the legislative program. At this meeting Senator Vance Phillips stated his disapproval of the request for increased judicial salaries. Following the meeting with the legislators the Council held a regular business meeting in which it endorsed in principle raising the monetary jurisdiction of the District Court from $3,000 to $7,500, providing that the jurisdiction should be concurrent with that the Superior Court.

The Secretary to the Council reported that the personnel study had not yet been undertaken as authorized because the Division of Personnel was conducting a study which should be completed first.

April 30, 1970 - Anchorage, Alaska

The principal purpose of the April 30th meeting was

to nominate to the Governor candidates to fill the positions of Chief Justice of the Supreme Court of the State of Alaska. All members of the Council were present. On April 1, 1970 Chief Justice Buell A. Nesbett had retired and the chairmanship of the Council was vacant.

Mr. Robert Erwin, of Anchorage and Chairman of the Alaska Bar Association's legislative liaison committee reported on the progress of the Judicial Council's legislative program. He reported that most of the program had been considered by the legislature with the main problem occurring with respect to the increase in salaries and Salary Commission bill. He reported that the House had passed a bill providing for increased judicial salaries and hoped that it would pass the legislature. He reported that there were two bills for consideration relating to rotation of the office of Chief Justice. The bond bill had passed both Houses raising the ASHA bond interest rate to seven percent which would hopefully assure additional Anchorage court facilities. He reported that the Bar Association was supporting an increase in the District Court salary to $25,000. A general discussion ensued wherein Mr. Erwin answered specific questions regarding the progress of the Council's legislative program.

The Council was advised that there had been favorable comment within the legislature regarding the public hearings held in January. Also, at least one change in the Court System had evolved as a result of the hearings with respect to

the holding of arraignments in District Court in Fairbanks. It was determined that a representative body of the Judicial Council have public hearings in Sitka, Juneau, Kenai and Kodiak prior to recommending locations for new Superior Court judgeships. The Council discussed at length the general subject of public hearings. The Secretary reported that the Council had expended all of its travel and per diem funds. Funds were available, however, from the study funds in the Council budget.

The Council then considered the applicants for the position of Chief Justice. Each of the applicants appeared before the Council and the Council made two nominations to the Governor.

June 18, 1970 - Anchorage, Alaska

The June 18th meeting was attended by all members of the Council and presided over by Chief Justice George F. Boney, the new Chairman. Chief Justice Boney advised the Council that judicial salaries had been raised to $36,000 for Supreme Court Justices, $33,000 for Superior Court Judges and $25,000 for District Court Judges. He also advised that the trial court administrator had been funded. He stated that he would propose a central filing system for public records to be placed on micro-film.

Mr. Harold Toby, District Attorney for Anchorage appeared and commented upon Grand Jury reports recently hand-

ed down which were critical of the administration of criminal justice. He reported that the Grand Jury generally wished to express displeasure regarding sentencing and bail in criminal cases. He responded to questions from the Council regarding these matters. Mr. Tobey stated that the Grand Jury was concerned about cases where persons found guilty of aggravated crimes receive suspended sentences. The Council also heard Judge James M. Fitzgerald, presiding judge, Third Judicial District, with repsect to the Grand Jury reports. He stated that a great number of sentences imposed by the Superior Court were imposed upon the recommendation of the District Attorney's office following a plea negotiation. With respect to bail Judge Fitzgerald pointed out that in 1969 out of 435 cases filed in the Superior Court a bail forfeiture occurred in only eight. He stated that it appeared to him that if the purpose of the bail system was to guarantee appearance at trial, it was working. He said that he felt that the answer to the bail problem was not preventive detention, but rather bringing defendants quickly to trial. He responded to questions from the Council on these matters. The Council discussed at length the questions raised by the Grand Jury report and by the presentations of Judge Fitzgerald and Mr. Tobey. Council then determined to call the foreman in the Grand Jury and permit him to appear to discuss these questions. Mr. Johnson appeared from the Grand Jury. He reported that one matter, among others, that had concerned the Grand Jury was the number

of persons whose names came before the Grand Jury who had prior records. The Council then interviewed applicants for the position of Associate Justice of the Supreme Court, which had been vacated upon the appointment of Justice Boney as Chief Justice, and made nominations to the Governor.

June 19 and 20, 1970 - Kodiak, Kenai, Alaska

On June 19, 1970 the Council held public hearings at Kodiak, Alaska. Present were Chief Justice George Boney, Chairman; Frank Doogan, Juneau law member; Michael Stepovich, Fairbanks law member; Paul Gavora, Fairbanks lay member; Peter Meland, Sitka lay member; and Lester W. Miller, Anchorage law member. On June 20th, the hearings were continued in Kenai. A number of residents and local lawyers appeared to advise the Council of the need for a Superior Court judge in those communities. The residents also pointed out the scarcity in State Troopers for local law enforcement. Following the hearing in Kenai the Council held a brief business meeting at which it voted to solicit candidates for vacant District and Superior Court judgeships. It also determined its itinerary for public hearings to be held in Southeastern Alaska in July.

July 14, 15 & 16, 1970 - Southeastern Alaska

On July 14th, 15th and 16th the Council met in Sitka, Juneau and Ketchikan for the purpose of conducting public

hearings. Present on the Council were Chief Justice George Boney, Chairman; Frank M. Doogan, Juneau law member; Peter Meland, Sitka lay member; Lester W. Miller, Anchorage law member; and Ken Brady, Anchorage lay member. Mr. Gavora of Fairbanks joined the hearings later that day and Mr. Stepovich, law member of Fairbanks, was involved in a trial and unable to attend. The purpose of the hearing was to gather facts helpful to the administration of justice and improvement of the Court System.

September 16 - 19, 1970 - Anchorage, Fairbanks and Nome, Alaska

At the Council meeting in Anchorage on September 16, 1970 the Council interviewed applicants for Superior Court judgeships. All members were present. The Council moved to Fairbanks on September 17, and continued the interviews. On September 19, the Council conducted public hearings in Nome and concluded the interviews of Superior Court applicants. While in Nome, the Council voted to recommend that the new Superior Court judgeships be located as follows: Third Judicial District, one each in Kenai, Kodiak and Anchorage; First Judicial District, Sitka. The Council also elected Theodore R. Dunn as executive secretary to the Council.

October 23, 1970 - Anchorage, Alaska

All members were present at the October 23rd meeting except Mr. Meland, lay member of Sitka. The Council

discussed its proposed budget in a total amount of $55,220 and voted to approve it as to amount. The fiscal year 1971-72 budget contained allowances for an executive secretary and a part-time clerk-stenographer. These additions were necessary in order to insure the independence of the Council and continuity in its activities as well as to give the public a day-to-day point of contact with the Council. The Council also considered the problems that would occur in Valdez relating to the administration of justice when population increased as a result of pipeline work. It then voted to recommend that a District judgeship be created in Valdez when needed.

The Council also made plans for a seminar on bush justice to be held at Alyeska on December 8, 9 and 10, 1970. Several nation-wide organizations were to participate and the Council voted to sponsor the program as a preliminary program on bush justice.

The Council then determined to conduct personal interviews of applicants for District Court appointments. It was also determined that Superior Court candidates who had been interviewed at the last meeting and who were unsuccessful could be considered for a District Court appointment if they so wished. The executive secretary was directed to notify the unsuccessful Superior Court candidates as soon as appointments were made for those positions.

The Council then discussed those conditions which it had observed in Nome for the detention of juvenile offenders. These facilities were deemed woefully inadequate and the Council directed that a letter be written to the Department of Health and Welfare advising that agency of the problem.

November 9, 1970 - Anchorage, Alaska

The November 9th meeting was called principally to interview and nominate candidates for District Court judgeships in Kodiak, Sitka, Wrangell, Anchorage and Barrow. All members of the Council were present. The applicants appeared and were interviewed. Following the discussion of the qualifications of these applicants nominations were made to the Governor.

Judge Thomas Stewart, presiding judge of the Superior Court, First Judicial District, appeared before the Council and advised it of the desperate need for a new court facility in Juneau and the Council discussed this matter with him..

November 28, 1970 - Anchorage, Alaska

All members of the Council were present at the November 28, 1970 meeting except Mr. Stepovich who had been called out of the State on an emergency matter. The Council interviewed candidates for the position of Public Defender which had been vacated following the appointment of Victor Carlson as Superior Court Judge in the First Judicial District.

The Council nominated to the Governor for appointment two of the applicants.

The Council then considered at length the need for a separate courthouse facility in Juneau. The Chief Justice reported that approximately 55,000 square feet of space was needed. The Council then voted to recommend to the legislature that monies be authorized and appropriated for site acquisition and pre-construction planning for a separate court facility in Juneau. The Council also voted to recommend to the legislature that salaries of Alaska judges be equated with those paid the federal judiciary and that a salary commission be established to maintain equality of salaries.

Also, the Council considered the advisability of increasing the jurisdiction of District Judges. The Chief Justice pointed out the need of making the courts available to more people and expanding the quality of judicial services throughout the State. It was also believed that the increased jurisdiction would relieve the Superior Court calendar. The Council then voted to recommend to the legislature that jurisdiction of the District Courts be increased to $10,000 to include equity jurisdiction in lien foreclosure matters involving up to $10,000.

The Council then discussed problems of criminal law enforcement. Some members expressed concern that the relationship between the State Troopers and the Attorney General's office was not as it should be. It was hoped that new per-

sonnel with the incoming administration would help resolve the problem.

The Council then took note that this was the last meeting to be attended by Mr. Meland, lay member of Sitka, and unanimously voted to commend him for outstanding service as a member of the Council since his appointment in 1966.

III.

SELECTION OF JUDGES

I. Supreme Court Justices

On April 1, 1970 Chief Justice Buell A. Nesbett retired following a lengthy convalescence from injuries suffered in an aircraft accident the previous year. Notice of the vacancy was given to members of the Alaska Bar Association and applicants were received by the Council for nominations to fill the vacancy. At its April 30, 1970 meeting the Council interviewed those persons who had applied for Chief Justice of the Alaska Supreme Court. These applicants were: Justices George F. Boney and John H. Dimond of the Supreme Court and Superior Court Judge C. J. Occhipinti. The Council nominated Justices Dimond and Boney for the position of Chief Justice. Governor Keith Miller subsequently appointed Justice George F. Boney as Chief Justice.

Shortly thereafter notice was given that applications would be accepted for the Associate Justice position vacated by Justice Boney. A Bar poll was conducted and on June 18, 1970 the Council interview applicants. Those applicants were: Superior Court Judge William H. Sanders of Nome, Superior Court Judge C. J. Occhipinti of Anchorage, Superior Court Judge Eben H. Lewis of Anchorage, Robert C. Erwin of Anchorage, L. S. Kurtz, Jr. of Anchorage, and Robert A. Parrish of Fairbanks. At the conclusion of its meeting the Council nominated Robert C. Erwin, L. S. Kurtz, Jr., Superior Court Judge Eben

H. Lewis, and Robert A. Parrish for the position of Associate Justice. The Governor subsequently appointed to that position Robert C. Erwin.

II. Superior Court Judges

The 1970 legislature voted to add one Superior Court Judge in the First Judicial District, three Superior Court Judges in the Third Judicial District and one Superior Court Judge in the Fourth Judicial District.

The Judicial Council solicited applications for these new judgeships and the Bar Association conducted a poll of its membership. On September 16, 1970 the Judicial Council interviewed the applicants. Prior to conducting its interviews the Council determined that the new First Judicial District judge would be assigned to Sitka and in the Third Judicial District one judge would be assigned to Anchorage, one to Kodiak and one to Kenai. The new Fourth Judicial District judge would be in Fairbanks. The applicants in the Third Judicial District were asked to state the locations within that District for which they wished to apply. The following applicants were interviewed for the position and the location stated.

S. J. Buckalew, Jr.	Anchorage, Kenai, Fairbanks
Edmond Burke	Sitka, Anchorage, Kenai, Kodiak
Victor Carlson	Sitka, Anchorage, Kenai, Kodiak Fairbanks
Warren Christianson	Sitka
Hugh Connelly	Fairbanks
M. Ashley Dickerson	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Wm. Erwin	Anchorage, Kenai
Marvin Frankel	Anchorage
Dorothy Hawes Haaland	Anchorage

Robert E. Hammond	Anchorage, Kenai
James Hanson	Sitka, Kenai, Anchorage
Peter J. Kalamarides	Anchorage
Henry Keene, Jr.	Sitka
Denis Lazarus	Anchorage, Kenai, Kodiak
Roy Madsen	Kodiak
James Merbs	Anchorage
Mary Alice Miller	Fairbanks
James Nordale	Sitka, Anchorage, Kenai, Kodiak Fairbanks
Robert Opland	Anchorage
David Pree	Anchorage, Kenai, Kodiak
Ernest Rehbock	Anchorage
Wm. Sanders	Anchorage, Kenai, Kodiak, Fairbanks
Thomas Schultz	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Sylvia Short	Anchorage, Kenai, Kodiak
J. H. Shortell	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
James Singleton	Sitka, Anchorage, Kenai, Kodiak, Fairbanks
Gerald Van Hoomissen	Fairbanks
Benjamin Walters	Sitka, Anchorage, Kenai, Kodiak

Following the interviews the Council nominated the following persons:

Sitka	James Hanson, Thomas Schultz James Singleton, Edmond Burke, Victor Carlson
Anchorage	S. J. Buckalew, Edmond Burke, Wm. Erwin, Peter J. Kalamarides, Ropert Opland, James Hanson, Victor Carlson, James Singleton, Thomas Schultz
Kenai	S. J. Buckalew, Edmond Burke, William Erwin, James Singleton, James Hanson, Victor Carlson, William Sanders, Thomas Schultz
Kodiak	Edmond Burke, Roy Madsen, James Singleton, J. H. Shortell, Victor Carlson, Wm. Sanders, Thomas Schultz

Fairbanks — Victor Carlson, Gerald Van Hoomissen, Mary Allice Miller, S. J. Buckalew, James Singleton

Governor Miller made the following appointments: First Judicial District at Sitka, Victor Carlson; Third Judicial District at Anchorage, James Singleton; at Kodiak, Edmond Burke; at Kenai, James Hanson; Fourth Judicial District at Fairbanks, Gerald Van Hoomissen.

III. District Court Judges

During the years 1969 and 1970 several of the positions of District Court judges were being held on an interim basis and others became vacant. As a result, the Judicial Council gave notice of accepting applications for a District Court judgeship in each of the following locations: Kodiak, Sitka, Wrangell, Anchorage and Barrow. At its meeting on November 9, 1970 the Council interviewed applicants for those positions. These applicants were Hal Horton of Fairbanks (Kodiak, Sitka, Wrangell, Anchorage); Roger DuBrock of Sitka (Sitka, Kodiak and Wrangell); Harris Bullerwell of Wrangell (Wrangell, Sitka); Edith Glennon of Kodiak (Kodiak, Wrangell, Sitka, Anchorage and Barrow); Louis Agi of Anchorage, (Anchorage, Kodiak); John Mason of Anchorage, (Anchorage, Kodiak, Sitka, Wrangell); Thomas Payne of Anchorage (Anchorage, Kodiak, Sitka, Wrangell, Barrow); William Tull of Anchorage (Anchorage); Virgil Vochoska of Anchorage (Anchorage); L. Eugene Williams of Anchorage (Anchorage). Following the

interviews and consideration of the Bar poll which had been taken on these applicants the following nominations were made to the Governor:

First Judicial District - Sitka	Harris R. Bullerwell Roger W. DuBrock Hal R. Horton Thomas B. Payne
First Judicial District - Wrangell	Harris R. Bullerwell Roger W. DuBrock Hal R. Horton
Third Judicial District - Kodiak	Roger W. DuBrock Hal R. Horton Thomas B. Payne
Third Judicial District - Anchorage	Hal R. Horton John D. Mason Virgil D. Vochoska L. Eugene Williams

Governor Miller subsequently made the following appointments:

Roger W. DuBrock	First Judicial District - Sitka
Harris R. Bullerwell	First Judicial District - Wrangell
Hal R. Horton	Third Judicial District - Kodiak
John D. Mason	Third Judicial District - Anchorage

It had been determined following the interviews of all candidates by the Council that it would not submit nominations to fill the post at Barrow.

IV. Public Defender

The 1969 legislature established the Public Defender Agency. SLA 1969, Chapter 109. The legislation provided that the Governor appoint the Public Defender from among two or more persons nominated for that position from the Judicial Council. On June 20, 1969 the Council interviewed applicants for the position of Public Defender. The Bar Association had previously conducted a poll of the qualifications of the

applicants which was made available to the Judicial Council. Those applicants were: Victor D. Carlson of Anchorage; Charles K. Cranston of Juneau; Stanley Ditus, formerly of Anchorage; Marvin S. Frankel of Anchorage; Johnston Jeffries of Soldotna; Irvin Raven of Fairbanks; Warren A. Taylor of Fairbanks; Harold W. Tobey of Anchorage; and Benjamin O. Walters, Jr. of Anchorage. Following the interviews the Council nominated to the Governor Victor D. Carlson, Marvin S. Frankel and Harold W. Tobey. Subsequently, the Governor appointed Victor D. Carlson.

In November of 1970, Victor Carlson was appointed Superior Court Judge, First Judicial District. Applications were solicited by the Judicial Council to fill the vacancy in the office of Public Defender and a poll of the applicants' qualifications was conducted by the Bar Association. On November 28th the Judicial Council interviewed the candidates for Public Defender, who were: Herbert Soll of Anchorage, Richard Madsen of Fairbanks, and Stanley Ditus, presently residing outside the State of Alaska. The Council nominated to the Governor for appointment Herbert Soll and Richard Madsen. Governor Egan appointed Herbert Soll as Public Defender following his assumption of the office of Governor in December, 1970.

IV.

STUDIES, HEARINGS AND PROGRAMS

In order to determine what recommendations it should make to the legislature and the Supreme Court the Judicial Council is required to conduct studies for the purpose of determining the problems which exist in the administration of justice and arriving at solutions to these problems. Not all of the studies conducted result in specific proposals to the various branches of government, however, each broadens the knowledge of the Council and its ability to deal with related problems.

A. Public Hearings and Conferences 1969-70

February 19, 1969 - Juneau, Alaska — Alaska Judicial Council Statewide Committee on Sentencing and Appellate Review of Sentences

In December, 1968 at Sitka, a committee appointed by the Chief Justice under the auspices of the Judicial Council met to consider sentencing and appellate review of sentences. The committee was reconvened in February, 1969 at Juneau, The committee was composed of more than fifty persons from various backgrounds and interests, most of whom, of course, were not members of the Council. At the Juneau meeting reports of subcommittees were presented. The Statewide Committee then adopted the subcommittee report on appellate review of sentences and recommended it to the Alaska Judicial Council which in turn recommended that the proposals contained in that

report be adopted by the legislature. As a result, the 1969 legislature enacted SLA 1969, Chapter 117 which provided for appellate review of criminal sentences along the lines recommended.

January 5, 6, 8, 1970 - Fairbanks, Anchorage, Juneau

Public Hearings on Improvement of the Administration of Justice

In early January, 1970 the Council held public meetings in Fairbanks, Anchorage and Juneau wherein testimony was heard from all interested persons relating to recommendations for the improvement in the administration of justice in the State of Alaska. The first in this series of public hearings was held in Fairbanks. The two Superior Court Judges from Fairbanks testified regarding judicial salaries and retirement and the need for an additional Superior Court Judge. Also testifying were persons from the Alaska State Troopers and the general public. The testimony covered a wide range of subjects. The Council then moved to Anchorage where testimony was taken from over twenty-five persons including Superior Court Judges, District Court Judges, attorneys, public officials (including representatives of law enforcement agencies) and other interested individuals. Judge Butcher of the Family Court, Third Judicial District, presented testimony relating to problems in Family Court matters, particularly in the handling of juvenile offenders. Judge Fitzgerald, the Presiding Judge

of the Superior Court, Third Judicial District, presented a report of the case load of the Superior Court in that District. He recommended increasing the jurisdiction of the District Court in order to relieve this case load. He also stated that the Superior Court was encountering a space problem in its existing facility. Testimony was also presented on the case load of the District Court. Attorneys and judges presented testimony regarding the need for increased judicial salaries and more liberal per diem allowances for officers of the judiciary when traveling. The Council then moved on to Juneau. In Juneau the presiding Superior Court and District judges testified in the morning followed by six members of the public in the afternoon. Testimony covered a broad range including judicial salaries and the inadequacy of the Juneau court facilities.

June 19 and 20, 1970 - Kodiak, Kenai — Public Hearings on Improvement of the Administration of Justice

These hearings were held to inquire into specific problems in the administration of justice in Kenai and Kodiak. Much of the testimony in both locations related to the need for a Superior Court Judge to serve these communities. Additionally, in Kodiak there was extensive testimony relating to the need for improved criminal law enforcement both by providing additional State Police officers and improving enforcement facilities. Similar testimony was presented in Kenai. In both

communities local members of the Bar testified as well as public officals and other persons. Persons of both communities expressed concern over the delay in obtaining judicial services and testimony was presented to the effect that a more readily available Superior Court judge would increase the lawyer population and provide better judicial services for the residents.

July 14 - 16, 1970 - Southeastern Alaska — Public Hearings on Improvements of the Administration of Justice

On July 14, 15 and 16, 1970 the Council held hearings in Sitka, Juneau and Ketchikan respectively. In each community testimony was given by members of the general public, public officials and members of the Bar including judges. In Sitka considerable testimony was presented relating to the need for a Superior Court judge. Residents testified with regard to the problems involved in litigating matters within the jurisdiction of the Superior Court when no judge was available in the community. In Juneau testimony was similarly presented on the need for an additional Superior Court judge. Also considerable concern was expressed regarding the inadequacy of Court facilities in Juneau.

The Ketchikan hearings also related to the inadequacy of Court facilities in that community. Superior Court Judge Hubert Gilbert presented a statement expressing his concern

for the need for more adequate facilities for the detention of juvenile offenders and their rehabilitation.

September 19, 1970 - Nome, Alaska — Public Hearings on Improvement of the Administration of Justice

The public hearings in Nome, while of a general nature, focused upon the problems of administration of justice in bush areas. Local Superior Court and District Court judges testified, as well as attorneys and law enforcement officials, on these problems. Also it was pointed out that judicial facilities in Nome were not adequate. While in Nome the Council personally inspected the Beltz School and juvenile detention facilities. The detention facilities were found to be woefully inadequate by the Council.

December 8-11, 1970 - Mt. Alyeska, Alaska — Alaska Bush Justice Conference

On December 8 to December 11, 1970, the Alaska Judicial Council sponsored a Bush Justice Conference which was held at Mt. Alyeska, Girdwood, Alaska. The purpose of this conference was to assemble in one place a number of individuals who possess different talents and experiences in an endeavor to formulate specific problems with recommended solutions. Distinguished members of the bench and bar, members of State agencies, university professors, recognized native leaders, law enforcement officials and a number of individuals in related

fields used both their knowledge and experience to narrowly define the problems that presently exist in the bush areas of Alaska. Having pinpointed the problem areas, specific recommendations were forthcoming for action by the judiciary, the legislature and the executive branch of Government.

The Chief Justice gave the opening conference address. This first day of the conference was construed as a problems day. Emphasis was placed upon pinpointing problem areas in the Alaskan villages rather than making specific recommendations for change. Various speakers presented their views as to what problems existed in the bush areas. These speakers included such persons as Nora Guinn, District Court Judge for Bethel, Alaska; Arthur Hippler, Professor at the University of Alaska; Captain William Nix of the Alaska State Troopers; Sadie Neakok, Magistrate for Barrow, Alaska; Elias Joseph, President of the Village Council for Alakanuk, Alaska; and Professor Douglas Schmeiser from the University of Saskatchewan, Saskatoon.

The second day of the conference focused on formal presentations by selected individuals heading speaker groups. Four groups of keynote speakers and team members presented to four different groups of conferees a one and a half hour presentation on four different general topics. In this manner, all of the conferees were able to hear all of the general topic areas presented to them on the second day. These topics included such areas as the sociological, cultural and political

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video taping of the program included the first day of speakers and a full day of coverage which included four different presentations by the speaker teams. All of the formal presentations by the speaker teams were recorded on the soundscriber. Also, on the last afternoon the general conference meeting which voted on the final resolutions was recorded on video tape. In addition to the formal presentations which were made to all of the conferees, each individual conferee was presented with a booklet which gave the agenda for the conference and also included selected writings which focused upon problems in the bush areas. Such writings included a work by Professor Douglas Schmeiser on "Indians, Eskimos and the Law", which gave a detailed analysis of the legal experience with the natives in Canada, particularly in the Yukon territory. Other articles included, "The Public Offender in Alaska, a Survey of Inmates Incarcerated under Alaskan Statutes", which was prepared by the Statewide Planning Project for Vocational Rehabilitation Services. Other miscellaneous articles which dealt in one way or another with problems in the bush areas and problems with the natives were included with this booklet for the edification of the conferees.

Funding for the Bush Justice Conference came from three sources; members of the State agencies participating in the planning and presentation of the conference provided matching funds by way of their salary costs and transportation costs which were matched by Federal funds from the Law Enforce-

ment Assistance Administration, and Alaska Legal Services contributed $500. A special action grant from the Criminal Planning Agency in Juneau in the amount of some $13,000 was made available to defray the expenses of the conference, including transportation, meals and lodging.

After the final resolutions were voted on by the conferees, they were submitted to the Office of the Administrative Director of the Alaska Court System for final stylistic changes. When the changes were affected, the resolutions were formally presented to the Chief Justice as Chairman of the Alaska Judicial Council. These resolutions are found in Appendix A.

B. Judicial Council Programs - 1971-72

In the next two years the Judicial Council plans to conduct studies with regard to the following subjects. These studies will include public hearings, seminars and studies to be conducted by the staff of the Judicial Council and other agencies.

1. Magistrate Training and Bush Justice in Practical Application

The December, 1970 Seminar on Bush Justice concerned these subjects. This Seminar, however, was preliminary only and served the purpose of defining specific problem areas. Future studies in depth are needed.

2. Correlation of Crime, Punishment, Rehabilitation and Protection of the Public

Throughout its hearings in 1969 and 1970, comment

was received by the Council regarding problems in criminal law enforcement particularly with regard to rehabilitation and punishment following conviction. A Grand Jury report in Anchorage in 1970 was critical of the judiciary in these respects. In view of public concern, and the very real need for improvement in these matters, the Council feels it is urgent that studies be conducted.

3. Law Enforcement Assistance Administration and Ford Foundation Funds through Grants for Alaska

In the summer of 1970 the Chief Justice and Mr. Lester Miller, law member of Anchorage, together with the Administrative Director of the Alaska Court System consulted in Washington, D. C. with various agencies and private foundations which have funds available for improvement in the administration of justice by the State. Two such agencies are the Law Enforcement Assistance Administration and the Ford Foundation. The Council is studying how these funds can be obtained and the uses to which such funds can best be put.

4. Problems Relating to Crime in the Bush

Crime in the bush in Alaska presents unique problems due to the lack of law enforcement officers, the remoteness of courts, and the nature of the crimes which generally occur. These questions were considered at the Alaska Bush Justice Seminar and further study is required. Considerable comment on problems in this regard was received by the Council at its Nome hearings.

5. Management and Custody of Juveniles Prior to Hearing and Custody Designation after Hearing

During its Nome hearings the Council visited juvenile detention facilities in Nome and found them completely inadequate. During its Southeastern hearings in the summer of 1970 the Council heard testimony regarding the need for improved facilities in that area. Because of the need to insure that juvenile offenders are treated fairly and rehabilitated at the earliest possible time the Council believes this to be a particularly urgent study area.

6. Study of Improved Methods of Recording Land Transactions and Care of Land Records

The State of Alaska has no central office for the maintenance of land records. Some of the outlying areas have extremely poor recording facilities. The Council believes that orderly population and industrial growth in Alaska is reliant upon safe and adequate land records. Improvements in this area are needed.

7. Security of Courtrooms, Judicial Officers and Witnesses

Although this problem is not as acute in Alaska as in other states, the Council believes it to be important that adequate measures be taken to insure the safety of Judicial officers and witnesses in order that the Judicial System be free from improper influence or disruption.

8. Improvement in Service of Process

Delay in service of process has been a continuing problem in the Alaska Court System. This is particularly true when process must be served in the outlying area and when an Injunction, Attachment or Writ of Execution is to be served.

9. Improvement in Court Calendaring

Problems in court calendaring result in delay and inefficiency in the judicial process. As the case load of the judges has increased the calendaring problem has become more complex. Improved calendaring is required to reduce delays in litigation.

V.

RECOMMENDATIONS FOR THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE DURING 1969 and 1970

A. Recommendations of the last Judicial Council Fifth Report 1967-68

1. Establishment of a Statewide Public Defender Program

This recommendation was acted upon by the legislature in 1969, which established the Public Defender Agency for the State of Alaska. SLA 1969, Chapter 109.

2. Establishment of a Coroner-Public Administrator

In its last report the Council urged that District judges be relieved of statutory duties as coroners and administrators of the property of deceased persons because these non-judicial duties were interfering with the judge's performance of his judicial duties. In 1970 the legislature enacted a Public Administrator Act authorizing the presiding judge of the District Court in each Judicial District, when authorized by the Supreme Court, to appoint a person to act as Public Administrator and as Coroner. SLA 1970, Chapter 216. This statute was substantially along the lines recommended by the Council.

3. Judicial Salaries

In its Fifth Report the Council recommended that salaries for Justices and Judges of the Supreme and Superior Courts be equated with those paid to judges of the Circuit Court of Appeals and United States District Courts respec-

tively and that Alaska District judges' salaries be set at a rate comparable to that of U. S. Magistrates. This recommendation was not followed by the legislature. However, the 1969 and 1970 legislatures made progressive increases in the salaries to the point that Supreme Court justices are now paid $36,000 annually, Superior Court judges $33,000 and District Court judges $25,000. SLA 1969, Chapter 101 and SLA 1970, Chapter 193. These salaries are still not comparable to those paid in the Federal Court System and the Council believes them inadequate. The Council, in this report, makes additional recommendations regarding judicial salaries.

4. Micro-filming of Public Records

The Alaska Court System budgeted funds in its 1970-71 budget for micro-filming of public records generally along the lines recommended in the Fifth Report of the Judicial Council. This budget was approved and the program is being implemented.

B. Additional Recommendations made during 1969-70

1. Appellate Review of Sentences

The Council recommended that the 1969 legislature adopt the proposals of the Statewide Committee on Sentencing and Appellate Review relating to Appellate Review of Criminal Sentences. In SLA 1969, Chapter 117 these recommendations were substantially enacted by the legislature.

2. Establishment of Judicial Salary Commission

In its 1970 legislative program the Judicial Council recommended in addition to an increase in judicial salaries that a salary commission to activated for continuing review of judicial salaries. This legislation was not enacted, but is contained in the current recommendations.

3. Rotation of the Office of Chief Justice

The Council also recommended to the 1970 legislature that the office of Chief Justice of the Supreme Court be rotated among the five Justices once each three years. The legislature voted that a Constitutional amendment providing for rotation of the office of Chief Justice be placed on the ballot at the next general election. In the August, 1970 elections this matter was voted favorably upon by the electorate and the Constitutional amendment adopted.

4. Increased District Court Jurisdiction

In its January 29, 1970 meeting the Council endorsed in principle pending legislation which would have increased the monetary jurisdiction of the State District Court to $7,500 to run concurrently with that of the Superior Court. This legislation was not enacted and a comparable recommendation is made with the current recommendations of the Council.

VI

CURRENT RECOMMENDATIONS

Pursuant to its constitutional directive, the Council makes the following recommendations for improvements in the administration of justice in the State of Alaska:

1. Increase in Civil Jurisdiction of District Courts.

The Council recommends that the legislature increase the monetary limitation on the jurisdiction of the District Courts of the State of Alaska from $3,000 to $10,000. The Council also recommends that the District Court jurisdiction be expanded to include equity jurisdiction in lien foreclosure matters where the amount in controversy is less than $10,000.

The Council believes that recent salary increases and changes in the qualifications required for a district judge have upgraded the quality of the court to the point where $10,000 jurisdiction is appropriate. It is believed that by so increasing the District Court jurisdiction, the case load of the Superior Court can be relieved. Also, an increase in District Court jurisdiction provides a more complete range of legal services in bush areas where Superior Courts are not readily available. Finally, such an increase in jurisdiction will make the court more attractive for future applicants for judgeship positions.

2. Juneau Court Facility. The Council recommends that monies be appropriated by the legislature for a preconstruction planning and site acquisition of a separate court facility in Juneau totaling not less than 75,000 square feet of office space.

The existing court facilities in Juneau are inadequate. Plans for the new State Office Building do not include space for the court facility. Therefore, the Judicial Council, working with the Juneau Bar Association, the court system and all interested state agencies, has conducted an inquiry to determine the total space requirements for a new court building. These requirements include those of the Supreme Court, Superior Court, District Court and Recording Office, Department of Health and Welfare, Department of Public Safety, Alaska Court System Administrative Offices and the news media.

Based upon the information received, the Council has made the foregoing recommendation. The Council believes that requirements for a new court facility in Juneau are urgent.

3. Judicial Salaries. The Council recommends that the salaries of judges in the Alaska Court System be equated to those paid the Federal Judiciary. The Council also recommends that a permanent salary commission be established to insure that judicial salaries in Alaska remain adequate.

The Judicial Council believes it to be of utmost importance that judicial salaries be such as to be attractive to experienced and well qualified lawyers so that the best available persons can serve as judges. To this end, the Council recommends that salaries of Justices of the Alaska Supreme Court be equated with those paid to the Judges of the

Unites States Court of Appeals, $42,500, and that Superior Court salaries be equated to those paid to United States District Judges, $40,000. Alaska District Judges should receive $30,000, as do Federal Magistrates. Moreover, because of continuing increases in the cost of living, it is important that these salaries be periodically reviewed. Therefore, the Council proposes a permanent salary commission to adjust judicial salaries subject to legislative veto.

4. Anchorage Court Facility. The Judicial Council is opposed to continuation of present plans for expansion of the existing Anchorage Court Building and recommends immediate appointment of a commission to explore the feasibility of constructing a judicial complex in Anchorage based upon a full consideration of long range needs.

The Council recognizes that there are present urgent space requirements for the Court System in Anchorage. However, the Council believes that the current, authorized expenditure of less than four million dollars is inadequate to properly provide for the long range needs of the Court System. These needs will be better and more efficiently served by an adequate appropriation based upon a thorough study of present and future requirements. The Council believes that to proceed with inadequate funds at present is to engage in a piecemeal approach to the immediate needs without fully considering the needs of the future.

APPENDIX A

BE IT RESOLVED THAT:

1. THE LOCUS OF DECISION-MAKING IN THE ADMINISTRATION OF JUSTICE IN VILLAGE ALASKA MUST MOVE CLOSER TO THE VILLAGE. TO ACHIEVE THIS RESULT THERE MUST BE GREATER NATIVE PARTICIPATION AT ALL LEVELS IN THE ADMINISTRATION OF JUSTICE.

a. There should be greater direct participation by Native citizens in the administration of justice at all levels, including their employment in policy-making positions in all agencies involved. Every agency should examine its qualifications requirements in order to revise them wherever they may arbitrarily exclude otherwise qualified Alaskan Natives. Examples include the height requirements for Alaska State Troopers, minor criminal records, formal education, etc.

b. Appointment of an Alaskan Native to membership on the Judicial Council and the Judicial Disqualification Commission is recommended.

c. The selection and removal of magistrates should be made more responsive to the desires of the communities served. Continuing critical evaluation of performance of duties by magistrates should be made. Consideration should be given to assigning principal responsibility for appointment and removal of magistrates to presiding district court judges.

d. The strengthening of village councils is central to the administration of justice in remote Alaska.

e. The Local Affairs Agency must be strengthened and upgraded to department level and its technical assistance functions fostered if there is to be successful administration of justice in the villages. Representatives of the Local Affairs Agency should visit villages to work with local officials. They should help the villages draft and revise ordinances, facilitate participation of villages in revenue-sharing programs, and improve law enforcement techniques.

2. THERE MUST BE A GREATER ACCESS TO LEGAL SERVICES AND THE PROCESS OF JUSTICE IN VILLAGE ALASKA.

a. The ordinary method of travel in the bush is by air. To meet the basic requirements of regular travel and to enable emergency service, State Troopers should be authorized to operate leased or state owned aircraft for their official duties and to aid officers of the court and associated agencies in the performance of their duties.

b. The Alaska Legislature should fund a program creating village constables in village Alaska to be chosen by village governing bodies to serve at their pleasure and to act as village law enforcement officers with the support of the Alaska State Troopers.

c. The travel budgets of the superior and district courts should be increased so that they may hold trials where the parties and witnesses live. When trials are elsewhere, but

witnesses live in the bush, the courts should use special masters to take evidence in the witnesses' villages. When actions are filed in places not accessible to defendants or their witnesses, changes of venue to the defendants' homes should be liberally allowed. These changes would facilitate more accurate factual determinations, avoid unfair default judgments, and provide education in judicial processes and substantive law in the bush.

d. The Supreme Court is encouraged to order at least an annual circuit court session of the superior court in the major community in each House election district.

e. The State Legislature should fund staff offices in Bethel and Nome for Alaska Legal Services Corporation and a Public Defender Agency office in Bethel as a step toward creation and support of rural principal judicial centers.

f. Techniques should be explored to encourage the private bar associations to provide better services in Alaska villages. As an example, group legal services experiments in other states should be studied. Public interest law firm efforts might also be encouraged.

g. Every village should have a detention facility and a juvenile detention facility separate from the detention facility and standards should be established for such facilities. These are needed to protect villages from dangerous persons without delay and without unduly long incar-

ceration because of transportation time.

h. Special emphasis must be given to the development of manpower capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public.

(1) The colleges and universities within the state should establish programs for the training and continuing education of magistrates, constables, paralegal and other associated personnel. Such programs should be developed and operated in cooperation with the Judicial Council, the Department of Public Safety, the Alaska Federation of Natives, and other appropriate agencies and organizations. Major emphasis should be placed on on-the-job training.

(2) The University of Alaska should establish an institute to train legal personnel in both rural and urban areas in Native culture and languages. Incentives should be provided for attendance at this institute.

(3) The Department of Education should develop curriculum concerning legal concepts, processes, rights and remedies for junior high school students throughout Alaska.

(4) The colleges and universities within the state should establish adult education programs concerning legal concepts, processes, rights and remedies for Alaskan villages. This program should include dissemination of printed materials in attractive format which explain the rights of individuals under the statutes and decisions.

(5) A program should be established for recruiting bi-lingual lawyers fluent in English and another recognized language common to a region of Alaska to serve in Alaskan public programs which relate to the administration of justice. Such a program would work through law school scholarships and financial grants equivalent to what bi-lingual college graduates might otherwise earn if they chose to work in other Alaskan community leadership or service positions.

(6) The colleges and universities within the state should be encouraged to establish a training and continuing education program for the development of paralegal personnel. Persons participating in and successfully completing such a program should be considered for certification to counsel persons within the limits of their training and expertise.

i. Greater understanding of and more information about all direct and related aspects of judicial administration are needed to provide a basis for policy making, for establishing appropriate administrative arrangements for training and education, and for improving other aspects of providing justice in rural areas. In particular, the cultural context and impact of judicial administration must be thoroughly understood by all involved in the system of bush justice. Toward these ends, the Judicial Council, the State Administration, the University of Alaska, and other appropriate organizations should initiate, sponsor and undertake programs of research concerning such areas as the character and processes of village law-making, judicial

administration, and law enforcement.

3. SOME MODIFICATIONS IN SUBSTANTIVE LAW ARE NECESSARY TO CORRECT INEQUITIES IN VILLAGE ALASKA. SUCH MODIFICATIONS RELATE TO THE ADMINISTRATION OF JUSTICE IN URBAN ALASKA AS WELL.

a. There should be a study of the program effectiveness of present correctional and dispositional alternatives in village Alaska. If particular techniques are inefficacious, they should no longer be employed.

b. Dispositional process alternatives prior to invocation of the criminal and juvenile process should be legitimated and encouraged. In the process, there should be guidance on what dispositional alternatives prior to invocation of the criminal process are appropriate.

c. Local alternatives for the control and rehabilitation of juveniles should be developed.

d. Review and changing of the laws concerning alcohol-related offenders throughout all areas of the state. This conference further recommends that training be given to all officers of the criminal justice system to recognize alcoholism as an illness and that this be done in conjunction with broad community education.

e. Waivers of rights to counsel, silence, trial by jury, trial by the district court, and other related rights, should be accepted by magistrates only after the most careful scrutiny

for voluntariness and understanding. Advice as to rights should be thorough and discursive and in the language primarily spoken by the defendant. Where an attorney or appropriate paraprofessional is available, his presence on behalf of the defendant should ordinarily be obtained.

f. It shall be a mitigating factor in sentencing, but not in the determination of guilt, that an act, violative of law, was committed pursuant to custom.

g. The courts and legislature should recognize customary adoptions should not involve lengthy court procedures but rather summary procedures.

h. Court arraignment procedures must include the advising of constitutional rights in a language understandable to the defendant. Boards of qualified interpretors should be established and funded and their services made available throughout the state for this purpose.

i. It is recommended that the boundaries and number of judicial districts be examined and changed where necessary to facilitate access to judicial services. The social and transportation patterns of the individuals to be served should be given prime consideration in the establishment of judicial districts. Example: Barrow should be part of the fourth judicial district and Bethel should be either part of the third judicial district or a new special Superior Court District should be created for Bethel.

j. The Alaska Administrative Procedures Act and the Alaska Administrative Code should be amended to:

(1) Require that hearings on administrative licenses, rules, and orders be held in the organized community or communities affected by the issuance of the license, rule or order.

(2) Extend the time allowed for administrative appeals from 30 days to 60 days.

(3) Require the posting of notice at the situs, the publication of notice in the newspaper published nearest the situs and public hearing be held at the situs or community nearest the situs prior to the granting of the application, the license or any interest in tidelands or property, in order to adequately protect rights or interests in these tidelands or property.

k. Civil Rule 53 should be interpreted and implemented to allow for the liberal appointment of special masters to take factual evidence in areas not frequently served by the superior court and where required for the ends of justice.

l. Changes in venue requirements should be as follows:

(1) For criminal actions, venue should be originally set in the election district in which the alleged crime was committed; for civil actions venue shall originally be set in the election district which has the most significant contacts with the transaction which is the subject of the action.

(2) AS 22.10.040 should be amended by deleting subsection (2) and enacting a new statute in the place of subsection (2) which reads:

A motion for change of venue shall be granted when required for the convenience of the witnesses and the ends of justice.

(This amendment will change the existing law which places a venue change for witness convenience and justice in the discretion of the superior court judge to a mandatory change requirement in this one instance.)

BE IT FURTHER RESOLVED THAT:

4. THE STATE SHOULD ENCOURAGE AND PROVIDE PLANNING ASSISTANCE IN THE ESTABLISHMENT OF COMMUNITY MENTAL HEALTH CENTERS IN THE REGIONAL SERVICE CENTERS OF THE STATE, SUCH AS BETHEL, NOME, KOTZEBUE, BARROW, FORT YUKON AND OTHERS. ALSO, THE COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE SHOULD CONSULT WITH THE DIRECTOR OF MENTAL HEALTH AND THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO PROVIDE RESIDENT QUARTERS FOR PERSONS REFERRED BY THE COURTS FROM RURAL AREAS FOR EVALUATION AND REFERRAL UNTIL SUCH TIME AS MENTAL HEALTH FACILITIES ARE AVAILABLE.

5. THE STATE DIRECTOR OF COMMUNICATIONS SHOULD COORDINATE PRESENT EXISTING RADIO COMMUNICATIONS NETS AND ESTABLISH OTHERS AS REQUIRED, WHEREBY ALL AREAS NOT HAVING ACCESS TO COMMUNICA-

TIONS MAY BE SERVED. THE CENTER OF EACH NET SHOULD BE LOCATED IN THE AREA OF EACH PRESIDING DISTRICT COURT JUDGE OF EACH JUDICIAL DISTRICT AND BE MADE AVAILABLE TO ALL AGENCIES AND PERSONS ASSOCIATED WITH THE JUSTICE SYSTEM ON A 24 HOUR PER DAY BASIS. IN CONJUNCTION WITH THE ABOVE, THE JUDICIAL COUNCIL OR OTHER APPROPRIATE AGENCIES SHOULD INTERVENE IN THE FCC DOCKET ON DOMESTIC SATELLITES TO URGE THE NEED IN VILLAGE ALASKA FOR IMPROVED COMMUNICATIONS IN THE ADMINISTRATION OF JUSTICE.

6. AS EACH COMMUNITY SHOULD HAVE BETTER CONTROL OF ITS AFFAIRS, LEGISLATION SHOULD BE ENACTED TO AUTHORIZE THE ISSUANCE OF PACKAGE AND BY-THE-DRINK LIQUOR LICENSES TO CORPORATIONS WHOLLY OWNED BY MUNICIPAL CORPORATIONS OR ORGANIZED COMMUNITIES.

7. THIS CONFERENCE RECOMMENDS THAT ANOTHER JUSTICE IN THE BUSH CONFERENCE BE HELD SOMEWHERE IN A RURAL COMMUNITY.

APPENDIX B

ALASKA JUDICIAL COUNCIL CURRENT MEMBERS

		Term of Office Expiration Date
V. Paul Gavora	Fairbanks	5/18/73
Michael A. Stepovich (attorney)	Fairbanks	2/4/76
Kenneth Brady	Anchorage	5/18/75
Lester W. Miller (attorney)	Anchorage	2/4/72
Frank M. Doogan (attorney)	Juneau	2/4/74
Chief Justice George F. Boney	Anchorage	5/8/73

FORMER MEMBERS:

William M. Whitehead, M.D.
Roy Walker
Raymond E. Plummer
Robert A. Parrish
Harold Butcher
Charles W. Kidd
H. Douglas Gray
William V. Boggess
John Cross
Ernest E. Bailey
Al Phelps
Thomas K. Downes
Jack Werner
Pete D. Meland
Former Chief Justice Buell A. Nesbett

ALASKA JUDICIAL COUNCIL
SIXTH REPORT
SUPPLEMENT

In response to inquiries and suggestions received from the Joint Senate and House Judiciary and Finance Committees, and to other matters which have come to the Council's attention during its Juneau session held on March 2 and 3, 1971, the Council submits the following supplementary report to be incorporated as a part of its Sixth Report.

1. Increase in Civil Jurisdiction of District Courts. In addition to the recommendations contained on page 47 of the Sixth Report relating to increased District Court jurisdiction, the Council recommends that such jurisdiction be concurrent with that of the Superior Court. Appeal from the District Court shall be to the Superior Court which may in its discretion augment the record on appeal, in whole or in part, or hold a hearing de novo.

2. Limitation on Penalties for Petty Offenses. As a result of the Supreme Court decision in Baker v. City of Fairbanks, 471 P. 2d 386 (Alaska 1970), persons accused of crimes which carry as a penalty the possibility of incarceration are entitled to a trial by jury. The result has been a tremendous increase in the number of jury trials in prosecutions for minor or petty violations, with a corresponding increase in cost both in jury fees and court time. Therefore, the Council recommends that the legisla-

ture act to limit the penalty imposed for all petty offenses, such as, but not restricted to, minor traffic violations, in all State statutes and municipal ordinances so that the element of criminality and the possibility of incarceration is deleted.

3. Jury Service. In a further effort to reduce the costs of jury trials, while at the same time limiting the burden of jury service on participating citizens, the Council reommends to the Supreme Court and the Legislature that, unless otherwise directed by the Supreme Court, citizens selected for jury service should not be required to serve for a period longer than 30 consecutive days; except that jurors who commence sitting in a trial within the 30 day period shall continue to sit in that matter until discharged by the trial court. The Council further recommends that fees for jury service be reduced to $15 per day for service of more than one-half day, or $7.50 per day for one-half day or less, such fees to be paid only upon receipt of an affidavit from the juror stating that he is not being compensated for his time by a source other than the Alaska Court System.

4. Alaska Court System Autonomy. The Council recommends to the legislature that it act to make the Alaska Court System autonomous in all fiscal planning and personnel classification matters.

5. Six-man Juries. In line with the interest

expressed by the Senate and House Joint Committees, the Council is undertaking a study to determine the desirability of recommending a constitutional amendment reducing the size of juries from twelve to six persons.

THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

Judges' Salaries

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

April 23, 1971

Representative William J. Moran
Alaska State House
Pouch V
Juneau, Alaska 99801

Dear Representative Moran:

As you know, the Alaska Judicial Council this year recommended increases in judicial salaries. The Council also recommended the establishment of a Judicial Salary Commission to provide periodic review of judicial salaries. A bill was introduced this session providing for such a commission to include review of legislative and executive salaries. Although it appears that salary increases will not be voted this session, the Council again urges that a salary commission be established at this time. This is particularly important because recent and anticipated pay increases to classified employees will create a situation where judges in some cases are compensated less than some classified employees of the state. Appropriate balance in compensations between classified employees and executive, legislative and judicial officials can only be maintained by periodic review of all salaries.

Very truly yours,

Theodore Russ Dunn
Executive Secretary to the Council

TRD:lb

Mental Competency

THE SUPREME COURT OF THE STATE OF ALASKA

ARLIE ROY POPE,

Appellant,

v.

STATE OF ALASKA,

Appellee.

File No. 1127

O P I N I O N

[No. 660 - December 21, 1970]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Ralph E. Moody, Judge.

Appearances: James R. Clouse, Jr., Anchorage, for Appellant. G. Kent Edwards, Attorney General, Juneau, Harold W. Tobey, District Attorney, and Richard R. Felton, Assistant District Attorney, Anchorage, for Appellee.

Before: Boney, Chief Justice, Dimond, Rabinowitz, Connor and Erwin, Justices.

ERWIN, Justice.
CONNOR, Justice, concurring in part and dissenting in part.

Appellant, Pope, was convicted of second degree murder in connection with the death of one David Silva on July 9, 1968. According to his own testimony, he arose on that date at his usual hou· and prepared himself for work. While driving to work he began to feel sick and decided to have only coffee in place of his usual breakfast. As appellant continued towards his job, the sickness became more severe and he

decided to turn around and drive back to his motel He testified that this condition of nervousness and sickness at his stomach had occurred with frequency in the period of time shortly before the shooting occurred.

After returning to his motel room, appellant consumed a little less than one-half of a pint of alcoholic beverage, remaining in his room and watching television. He made several attempts to reach his former wife, Irma Pope, and was at last successful. However, Mrs. Pope refused to speak with him, slamming down the telephone. Appellant stated that the reason that he had attempted to call his former wife was that he felt really sick and was looking for help from someone.

After being rejected over the telephone, appellant described a strange feeling, "like something was spinning around the top of my head, from right to left, right underneath the skin against the skull and when you closed your eyes you could see -- could see a streak of light coming around and around. . . ." He described the light as not being mean or anything, but the light said "kill him, kill him, kill him" -- just kept repeating it; and finally he said it to himself and as soon as he did he felt very good and was not sick any more. Appellant further stated that after the lights had stopped in his head, he felt very sorry for David Silva because of what was going to happen; he did not think there was anything that he could do to prevent the killing of David Silva, and he knew he was going to do it, but he didn't yet know just how. When

appellant finally agreed with the light in his head which told him to kill Silva, the nervousness disappeared, as did his upset stomach.

Appellant's recollection of the events that occurred after he left the motel was hazy and vague. He recalled only being near the parking lot at Anchorage Bedding and Furniture and next seeing the gun in his hand on the door ledge of his automobile. Appellant did not recall shooting the decedent, but only remembered watching the decedent sitting down and then lying backwards on the ground.

Officer Pavlovich was the first law enforcement officer to arrive on the scene. Upon arriving he observed the deceased, a woman at the head of the decedent, and another man, later identified as the appellant, alongside the decedent in either a squatting or kneeling position. Officer Pavlovich went over to the decedent, checked his pulse, and pronounced him dead. He next asked the woman what had happened. The woman, Mrs. Silva, indicated that appellant had shot Mr. Silva. In response to this, Pavlovich stood the appellant up and started to search him for weapons.

At this point in the sequence of events there is a dispute as to the actual occurrences. A Mr. McConnell testified that he observed Officer Pavlovich going over to appellant and questioning him for a minute or two before finally searching him for a weapon. The officer, on the other hand, testified that after he had examined Silva he immediately started to search

appellant. Appellant's version of the story is that as he was being frisked by Officer Pavlovich, he was asked if he had a gun, to which he responded yes, that it was in the car. Officer Pavlovich claims that the information about the gun was volunteered by Pope and that no such question had been asked.

Mr. McConnell stated that after eliciting this information, Officer Pavlovich proceeded to appellant's car, with his arm on appellant's arm, to retrieve the weapon, which was located in the middle of the front seat. Officer Pavlovich stated that after Pope had volunteered the information as to the whereabouts of the gun, Pope proceeded to the automobile and Pavlovich hurried to beat him to the car in an effort to retrieve the weapon.

On cross-examination Officer Pavlovich described the appellant's appearance as being dazed and testified that his feeling at the time was that appellant was not drunk, but either dazed or at least under the influence of alcohol -- but he could not tell which. Officer Pavlovich further testified that although he detected nothing radically wrong with appellant, that is, appellant walked normally and spoke clearly and distinctly, albeit very slowly, he nevertheless seemed to be preoccupied. At another point in his testimony Pavlovich stated that he thought appellant was either under the influence of alcohol or in a state of shock. Furthermore, he was not sure whether appellant was in possession of his faculties at this time.

On August 5, 1968, Pope was indicted by the grand jury for first degree murder and arraigned immediately thereafter.

Appellant entered a plea of not guilty, and the trial date was set for December 12, 1968, before the Honorable Edward V. Davis, Superior Court Judge. Prior to trial, on November 29, 1968, at the request of the prosecutor, a competency hearing was held. On January 16, 1969, the Superior Court entered an order to the effect that the appellant was competent to stand trial.

Because of continuances, trial did not begin until February 10, 1969. At that time the defendant appeared before the Honorable Ralph E. Moody, Judge of the Superior Court, rather than Edward V. Davis, to whom the case had been assigned originally. Timely objection was made by appellant to the unannounced change. On February 18, 1969, the jury returned a verdict of guilty of murder in the second degree. Notice of appeal was duly filed.

Appellant raises four specifications of error in the trial below. His first specification is that the court committed prejudicial error in reassigning appellant's case from Judge Davis to Judge Moody without giving appellant five days from the date of reassignment to consider and possibly file a peremptory challenge affidavit as provided in AS 22.20.022; his second, that the trial court erred in overruling the appellant's motion to suppress the evidence seized by Officer Pavlovich from the appellant's car prior to a lawful arrest; and his third, that the trial court incorrectly admitted the statements of appellant made prior to his being given the proper Miranda warnings and after he had become a suspect in the crime and had been substantially deprived of his freedom of action.

Finally, he contends that the trial court should have ruled as a matter of law that the burden of proving sanity is on the state rather than the burden of proving insanity being upon the defendant, when there was some evidence in the record to indicate that sanity was at issue.

I

In his first claim of error, appellant contends that because of the assignment procedure used herein,[1] he did not have sufficient opportunity to determine and if necessary file an affidavit alleging he believed that he could not obtain a fair and impartial trial.

Trial proceeded on February 10, 1969, appellant making timely motion,[2] which motion was denied.

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[1] There was no advance notice to counsel of the reassignment of this case from Judge Davis to Judge Moody on the day of trial. It should be noted that subsequent to the trial herein this court in the case of Roberts v. State, 458 P.2d 340, 346 (Alaska 1969) pointed out the potential problems of such a practice in suggesting that this method of reassignment of a case should be avoided in the future:

> A method should be devised and utilized to make assignment of cases to judges sufficiently in advance of trial or hearing, with notice of the assignment being given to the parties, so that the parties can be afforded their rights under AS 22.20.022 without interfering with the scheduled hearing or trial dates.

[2] The motion was as follows:

> Mr. Clouse: Your Honor, for the record, at this time, I would like to state an objection to the Court's requiring us to go to trial at this time and not before the -- Judge Davis who was previously assigned this case. This deprives the defendant of the opportunity to investigate and exercise any challenge that he may have within the five day period as provided by rule and statute.

Appellant correctly points out that the granting of the five-day period is to allow a party or his attorney an opportunity to investigate the judge to whom the case is assigned and if necessary file the requisite affidavit for disqualification, thus avoiding the waste of judicial time which would result if an affidavit or disqualification were not filed until the date of trial because this would mean that the case would have to be continued until another judge could be assigned and the disqualified judge would not be ready at that time to start the trial of another action.[3] Appellant

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2 [Contd.]

> The Court: Motion's denied since this is merely a procedural matter and it delays the -- delays the carrying on of Court business if we give effect to that for the five days rule. Other than the objection, is defense ready to proceed?
>
> Mr. Clouse: Yes, your Honor.

AS 22.20.022 states in relevant part:

> "Peremptory disqualification of a superior court judge. (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district, or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay."
>
> * * *
>
> "(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge, whichever event occurs later, unless good cause is shown for the failure to file it within that time."

3 Roberts v. State, 458 P.2d 340, 346 (Alaska 1969).

further correctly argues that the provisions of this statute have been interpreted by this court to mean that once the affidavit is filed, the judge involved is without power or jurisdiction to take any further action in the proceeding. Channel Flying Inc. v. Bernhardt, 451 P.2d 570 (Alaska 1969).

But appellant has not shown that any harm resulted to him from the denia. of his motion. Instead, he invites us to speculate that he suffered some possible prejudice, even though he did not challenge the trial judge because he felt that any challenge he made might have a prejudicial effect on the jury. The gist of appellant's argument appears to be that since any challenge might affect the jury he never seriously considered whether or not he should exercise the challenge because the reassignment made the choice more difficult. Since appellant could have exercised the challenge at any time within five days of reassignment, even during trial, we hold that his failure to do so was a waiver of his right to a peremptory challenge to the trial judge, and it was not error for the court to refuse to grant a continuance of five days to permit appellant to ponder this matter at length.

II

Appellant claims that the trial court committed error in refusing to suppress as evidence (1) appellant's oral statement about the gun, and (2) the gun itself, which the officer seized in appellant's car. The argument is that this evidence is tainted because the required warnings under Miranda v.

Arizona, 384 U.S. 436, 16 L.Ed.2d 694 (1966) were not given by the officer until after the seizure of the gun, that appellant had already become a suspect in the crime, and that he had been substantially deprived of his freedom in a significant way. The test of when warnings must be given under Miranda is whether the accused has been "taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning." 384 U.S. at 478, 16 L.Ed.2d at 726.

We need not explore such problems as whether the "in custody" test of Miranda displaces the "focus" test of Escobedo v. Illinois, 378 U.S. 478, 12 L.Ed.2d 977 (1964), or whether the two tests can be regarded as alternatives to some extent.[4] For it is plain to us that this case falls within an important exception stated by the court in its opinion in Miranda. After pointing out that it did not intend to hamper the traditional function of police officers in investigating crime, the court said:

> General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling

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[4] United States v. Hall, 421 F.2d 540 (2nd Cir. 1969); Graham, What is Custodial Interrogation?: California's Anticipatory Application of Miranda v. Arizona, 14 U.C.L.A. L.Rev. 59, 114-15.

> atmosphere inherent in the process of in-custody interrogation is not necessarily present. 384 U.S. at 477-78, 16 L.Ed.2d at 725-26.

In interpreting Miranda various courts have had to draw lines between what are permissible investigative interviews and custodial interrogations. The United States Supreme Court itself has made it plain that custodial interrogation could take place outside the station-house where one was "not free to go where he pleased but was 'under arrest.'" Orozco v. Texas, 394 U.S. 324, 325, 22 L.Ed.2d 311, 314 (1969). The courts must determine, therefore, in each case whether the atmosphere and setting of an interrogation are of such coercive effect or indicate such significant restraint as to trigger the need for a Miranda warning. There is not always agreement about the criteria for such a determination.

But the case at bar is a strong one for applying the "on-the-scene questioning" exception to the Miranda warning requirement. The officer here was presented with a situation of great emergency. A crime of violence had occurred, the victim was lying on the ground dead. There was more than one person present. Both to protect his own safety and that of others, the officer had to elicit information about what had happened, and about the gun which had obviously been used in the killing. For the same reason the officer also had the right to conduct a strictly limited search ("frisk") of Pope's person for weapons under the rule of Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889 (1968),

which he did.[5] To hold that, while a policeman faced with an emergency such as the one which confronted Officer Pavlovich may "frisk" a suspect for weapons he may not simultaneously ask him whether he is armed, would be an unrealistic and unreasonable extension of the Miranda rule.

Appellant also contends that, because the revolver was seized from Pope's automobile prior to the time he was placed under arrest, it was inadmissible because it was not the product of a search incident to arrest. The difficulty with this line of argument is that the gun was not the product of a "search" at all; it was lying on the front seat of the car in plain view. As soon as he saw it, Officer Pavlovich seized it and unloaded it, both to preserve it and its cartridges as evidence and to prevent appellant, who was standing beside him, from getting hold of it. His conduct was entirely justified.

> It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence.[6]

III

The final point raised by appellant is a challenge to the burden of proof in insanity cases as set forth in the

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[5] See Maze v. State, 425 P.2d 235, 238 (Alaska 1967).

[6] Harris v. United States, 390 U.S. 234, 236, 19 L.Ed.2d 1067, 1069 (1968); Creighton v. United States, 406 F.2d 651 (D.C. Cir. 1968); Klockenbrink v. State, 472 P.2d 958, 961 (Alaska 1970). See Stevens v. State, 443 P.2d 600, 602 (Alaska 1968).

opinion of this court in Chase v. State.[7] A review of the record reveals that the only testimony before this court in reviewing this point is the testimony of Officer Pavlovich, the appellant, Pope, Bill McConnell, and the cross-examination of appellant's ex-wife. Testimony given by Dr. J. Ray Langdon, a psychiatrist, and Marie Doyle, a psychologist, at the trial, as well as the testimony of additional police officers and others at the scene of the crime, was not made a part of the record on appeal.

While proper objections were made at the trial concerning burden of proof in insanity cases, no objection was made to instructions on the test for insanity as given by the trial court, nor was any testimony presented nor instructions requested concerning such an issue.

Since in our opinion the burden of proof as to the defense of insanity and the actual test for insanity are inseparably intertwined,[8] we are placed in the position of attempting to review the entire basis for the present rule on the defense of insanity in Alaska on an inadequate record without complete presentation of these issues to the trial court. This we decline to do.[9]

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[7] 369 P.2d 997, 1003 (Alaska 1962).

[8] Approximately one-half of the states put the burden on the defendant while the other half and the federal courts put the basic burden on the prosecution. See annot. 17 A.L.R.3rd 146 (1968).

[9] For a similar action by a federal court, see Ramer v. United States, 390 F.2d 564 (9th Cir. 1968).

The importance of the defense of insanity has been underscored recently by a series of excellent opinions in federal courts which have considered, and in many cases adopted, the A.L.I. test for insanity,[10] and a series of equally searching state court opinions which have noted more than one position, but have tended to retain the M'Naghten rule.[11] These opinions note that there are presently four separate tests for insanity[12] which have received varying degrees of judicial acceptance. They serve to underscore the difficulty of choosing a proper test for insanity and the corresponding burden of proof without

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[10] Wade v. United States, 426 F.2d 64 (9th Cir. 1970); Blake v. United States, 407 F.2d 908 (5th Cir. 1969); United States v. Chandler, 393 F.2d 920 (4th Cir. 1968); United States v. Shapiro, 383 F.2d 680 (7th Cir. 1967); Pope v. United States, 372 F.2d 710 (8th Cir. 1967), vacated on other grounds, 392 U.S. 651, 20 L.Ed.2d 1317 (1968); United States v. Freeman, 357 F.2d 606 (2nd Cir. 1966); Wion v. United States, 325 F.2d 420 (10th Cir. 1963), cert. denied 377 U.S. 946, 12 L.Ed.2d 309 (1964); United States v. Smith, 404 F.2d 720 (6th Cir. 1968).

[11] FOR A.L.I.: State v. White, 456 P.2d 797 (Idaho 1969).
FOR M'NAGHTEN: State v. Malumphy, 461 P.2d 677 (Ariz. 1969); State v. Moeller, 433 P.2d 136 (Hawaii 1967); State v. Harkness, 160 N.W.2d 324 (Iowa 1968); Williams v. State, 451 P.2d 848, 851 (Nev. 1969); State v. Gilmore, 410 P.2d 240 (Ore. 1966); Commonwealth v. Rightnour, 253 A.2d 644 (Pa. 1969) (Aff'd by equally divided court).

[12] (1) The M'Naghten Test, Daniel M'Naghten case, 8 Eng. Rep. 718 (H.L. 1843).
(2) Durham Test, Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).
(3) American Law Institute Test, American Law Institute, Model Penal Code, Section 4.01(1) (Final Draft 1962).
(4) English Test, British Royal Commission on Capital Punishment, 1949-1953, 1953 Report at page 116, quoted in United States v. Currens, 290 F.2d 751, 774, n. 32 (3rd Cir. 1961).

complete presentation on the issue in the trial court and ultimately in this court.[13]

The judgment of the Superior Court is hereby affirmed.

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[13] Once before this court has refused to review the test for insanity for Alaska based on an inadequate record. See Dimmick v. State, 449 P.2d 774, 776 (Alaska 1969).

CONNOR, J., concurring in part and dissenting in part.

I concur with the majority opinion except the portion dealing with the burden of proof in insanity cases, and allied questions. As to that portion of the majority opinion I must respectfully dissent.

This case went to the jury on instructions concerning the defense of insanity which were patterned on those approved by this court in Chase v. State, 369 P.2d 997 (Alaska 1962). Counsel for appellant objected to those instructions as improperly placing the burden on the accused to establish his insanity by a preponderance of the evidence. He thus raised and preserved for appeal the questions of what is the burden of proof and where it should be placed in these cases. He is properly entitled to a decision on those questions.

The majority of my colleagues feel that the burden of proof question and the substantive test of insanity are interrelated. I agree. But for that very reason I believe that both topics logically can, and properly should, be determined by the court.[1/]

The lack of an adversary presentation of the legal arguments bearing upon the proper test of insanity in criminal cases should not be an impediment to decision in this particular instance. Ultimately one must read a large body of legal and

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1/ For a case in which a distinguished court took a relaxed view of the manner in which counsel raised the question of the proper test of insanity in the trial court, see United States v. Freeman, 357 F.2d 606 (2d Cir. 1966). The failure of trial counsel in that case to object to the insanity test itself was not deemed critical.

psychiatric material even to become conversant with these subjects. Appellate briefs are of much less value here than in the resolution of more usual questions.[2] Surely this would not be the first time that this court decided a case on grounds or under a doctrine not fully presented in the briefs.[3]

There is another reason why we should decide these questio.. now, not later. In my opinion the test currently obtaining under Chase v. State, supra, is so inherently unfair as to dissuade either defendants or their counsel from raising the defense of insanity, or adducing evidence in support of it. Thus it is difficult to get the insanity question before us on appeal.

The insanity defense is much like a confession and avoidance. One virtually admits all factual elements of the crime but claims insanity as a special ground of exoneration. One claiming that he did not commit the offense, but who alternatively claims that he was insane when he did commit it, has little hope of success. While such an approach is procedurally permissible, as a practical matter it is a foolhardy strategy.

2/ The question of the test of insanity as a criminal defense has already been briefed in Chase v. State, 369 P.2d 997 (Alaska 1962). There the state urged that if the M'Naghten test was not employed, the American Law Institute test (discussed later herein) would be the most suitable.

3/ One such case was Grossman v. State, 457 P.2d 226 (Alaska 1969), adopting an objective standard of entrapment, though neither party directly briefed that doctrine. Surely others could be found by searching the briefs and comparing them with the opinions rendered by this court during the last ten years.

A person invoking the Alaska rule on insanity, even in a strong case, has almost precluded himself from an acquittal. The current test thus exerts a chilling effect upon one who might seek a change in the law through the appellate process. This is true even though he may have suffered from serious mental illness, of a psychotic type, at the time he committed the act with which he is charged. Because of the in terrorem effect of the current Alaska test, I see no reason to postpone corrective measures, especially if we believe that the test can be improved.

I

All discussion of the tests of criminal responsibility inevitably must refer to M'Naghten's Case, 10 Cl. & Fin. 200, 8 Eng. Rep. 718 (1843), which is regarded as the English source of the rule followed in most American jurisdictions for over a century. In that case Daniel M'Naghten attempted to assassinate Robert Peel, the Prime Minister. Because Peel, on the fatal day, happened to ride in Queen Victoria's carriage instead of his own, M'Naghten shot into the wrong carriage and killed Drummond, Peel's secretary. From all of the available information it seems quite plain that M'Naghten was suffering from psychotic delusions of persecution. At his trial Lord Chief Justice Tindal virtually directed a verdict in his favor.[4/] At the trial the medical witnesses and the court had been influenced by the writings and

4/ Guttmacher & Weihofen, Psychiatry and the Law, 403 (1952); Roche, "Criminality and Mental Illness - Two Faces on the Same Coin," 22 U. Chi. L. Rev. 320, 324 (1955); Biggs, The Guilty Mind, 95-97, 102 (1955).

theories of such advanced thinkers as Dr. Isaac Ray, the first great forensic psychiatrist in America. It was Dr. Ray's thesis that insanity must be measured by evaluating the entire personality structure of an individual, and not by tests such as merely the ability to know right from wrong.[5/] At any rate, M'Naghten was acquitted. Unfortunately for the development of law, the case did not end there.

Despite commitment of the hapless M'Naghten to an insane asylum, Queen Victoria was outraged by the acquittal, probably because there had already been three attempts on her life and one on that of the Prince Consort. In a letter to Sir Robert Peel, the Queen deplored the action of the judges in allowing verdicts of not guilty by reason of insanity in cases of this kind because she was convinced that such malefactors "were perfectly conscious and aware of what they did." She pressed for legislation to require judges "to interpret the law in this and no other sense in their charges to the Juries."[6/] The House of Lords was convened, and the fifteen judges of the common law courts were called upon, in an atmosphere of political pressure, to answer five rather vacuous questions about criminal responsibility in English law. Interestingly enough, it was Lord Chief Justice Tindal who

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5/ Dr. Ray's views have a modern ring. "[T]he insane mind is not entirely deprived of ... power of moral discernment, but on many subjects is perfectly rational and displays the exercise of a sound and well balanced mind." Ray, Medical Jurisprudence of Insanity 13 (3d ed. 1853).

6/ Biggs, supra n. 4, 103.

responded with a test more rigid than that which he had used when M'Naghten was tried before him. The M'Naghten rule in essence is:

> "[T]o establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing: or, if he did know it, that he did not know he was doing what was wrong." 10 Cl. & Fin., at 210, 8 Eng. Rep., at 722.

Thus, in a case which was no longer a case, in response to hypothetical questions based on notions of phrenology and monomania which were then in vogue, the judges, in a dramatic departure from common law decisional technique, acting more as a governmental committee than a court, pronounced a rule which has been followed unthinkingly by many courts ever since. Of little avail was the restrained observation of Sir James Stephen that "every judgment delivered since the year 1843 has been founded upon an authority which deserves to be described as in many ways doubtful."[7/] The test could at least have been limited to cases of paranoia like that suffered by M'Naghten, but instead it was applied by many courts as a rule of universal and implacable validity, appropriate for all types of mental and emotional derangement.

The M'Naghten test has been supplemented in many jurisdictions by the "irresistible impulse" test, under which one suffering from a mental disease, of such severity that the

7/ II Stephen, History of the Criminal Law of England 153 (1883).

freedom of will is destroyed, may be excused from culpability.[8]

In Alaska, before statehood, the right-and-wrong test, supplemented by the irresistible impulse test, was considered the applicable rule.[9] In Chase v. State, 369 P.2d 997 (Alaska 1962), however, this court adopted a particular version of what it regarded as the M'Naghten rule. The test laid down there was that in order to exculpate the defendant he must be laboring under such mental disease or derangement at the time of the act "as to render him incapable of knowing the nature and quality of his act and of distinguishing between right and wrong in relation to the act with which he is charged." 369 P.2d, at 998. (Emphasis supplied.) This results in a formulation more rigid than the M'Naghten test, and without the irresistible impulse supplement which had previously obtained in Alaska.[10] In that sense the Chase case is a retrograde decision in a time of

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8/ As of 1955, about 14 states, and the federal judiciary, had adopted the irresistible impulse addition to the test.

Mod. Penal Code, Tent. Dr. No. 4,161 (1955).

9/ Matheson v. United States, 227 U.S. 540 (1913); Davis v. United States, 165 U.S. 373 (1897); Sauer v. United States, 241 F.2d 640 (1957), cert. denied 354 U.S. 940: Rivers v. United States, 270 F.2d 435 (1959).

10/ That the Alaska test is more restrictive than M'Naghten is apparent from the following example. One laboring under a psychotic delusion, such as that he is being persecuted or that God has ordained that he must kill, may well know the nature of the act committed, yet not be able to appreciate its wrongfulness. Under M'Naghten he would not be culpable, but under Chase he could not be acquitted. Cf. People v. Schmidt, 110 N.E. 945 (N.Y. 1915), per Cardozo, J.

generally forward legal progress.[11/]

The court in Chase relied on three cases: Jessner v. State, 202 Wis. 184, 231 N.W. 634, 71 A.L.R. 1005 (1930); Maas v. Territory, 10 Okla. 714, 63 P. 960 (1901); and Montgomery v. State, 68 Tex. Crim. 78, 151 S.W. 813 (1912). As the Note, "Criminal Insanity," UCLA-Alaska L. Rev., 8 Alaska L.J. 152, 153-54 (Aug. 1970), points out, these cases were decided before many of the modern advances in psychiatry had been widely disseminated. Moreover, the instructions given in these cases lacked clarity and therefore were extremely confusing. Jessner and Montgomery indeed held that the phrases "the nature and quality of the act" and "the difference between right and wrong" were synonymous; if the defendant could not understand the one, he could not distinguish the other. However, as the Note, supra, indicates, these phrases are not at all synonymous in ordinary speech.

To torture English into performing such a linguistic cakewalk requires unusual skill. Since juries are composed of but ordinary reasonable laymen, additional complicated instructions would have to be given to insure that the jury does not consider the terms according to their usage in common everyday

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11/ Speculation persists in Alaska legal circles that the use of the conjunctive "and" in the instructions which were validated in Chase possibly came about through a typographical error by the secretary to the trial court judge. If this is so, then Chase is no less an historical accident than M'Naghten's Case.

speech and thereby misapply the law. Such verbal gymnastics should not be employed in jury instructions. The purpose of jury instructions is to instruct and enlighten the jury on the law, not to confuse them.[12/]

It also appears that the instructions in Jessner focused solely on the defendant's ability to distinguish between right and wrong, ignoring completely his ability to understand the nature and quality of his act.[13/] In Maas, the actual instruction did follow the disjunctive form of the M'Naghten test.[14/] If anything, this case stands for an adoption of the true M'Naghten rule, not the rule of Chase. In sum, I do not find any of these cases of sufficient precedential value to warrant an adherence by this court to what is little more than a modified "wild beast" test.[15/]

Since the M'Naghten case, and even in the eight years since Chase v. State was decided, a great deal of critical

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12/ "But 'glory' doesn't mean 'a nice knockdown argument,'" Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean--neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master--that's all."

L. CARROLL, Through the Looking Glass, in THE ANNOTATED ALICE 269 (1960).

This nonsensical repartee brings sharply into focus a problem which has plagued logicians since at least the time of William of Occam. A lack of awareness of this problem has led to much mischief in legal interpretation.

13/ 202 Wis. at 196, 231 N.W. at 639.
14/ 10 Okla. at 717, 63 P. at 961.
15/ Rex v. Arnold, 16 How. St. Tr. 695, 764 (1724).

evaluation and development has occurred, in an effort to achieve more advanced and just techniques for handling this serious problem.

The torrent of legal writing is so vast that it is nearly impossible for all but a few to read or comprehend everything which has been said on this basic issue of criminal responsibility. Still, certain broad outlines can be stated. There is nearly universal dissatisfaction with the M'Naghten rule on the part of scholars, jurists, and psychiatrists who have seriously inquired into the subject. The main difficulty with the M'Naghten rule is that it focuses exclusively on the cognitive element in mental life, that is, the knowledge of right and wrong or of the nature of one's act. One of its underlying assumptions is that mental illness is a failure of intellectual function. This reflects an artificial dualism of mind and emotions which ignores the affective aspects of the human personality. While there are many schools of psychiatric thought, there is broad agreement that mental illness can be understood only by looking at man as an integrated, psychobiological whole.[16/] Because the M'Naghten

16/ "Psychiatry may be defined as that branch of medicine which deals with the genesis, dynamics, manifestations and treatment of such disordered and undesirable functionings of the personality as disturb either the subjective life of the individual or his relations with other persons or with society.... Viewed a little differently, psychiatry may be regarded as the science which deals with the psychopathological aspect of human biology. The latter considers man not only as a living organism but also as a thinking, feeling and striving one." Noyes & Kolb, Modern Clinical Psychiatry (5th Ed. 1958), 1.

rule views man within the artificial strictures of cognition, courts and juries are deprived of much of the benefit to be gained from the modern science of psychiatry.[17/]

Other criticisms of the M'Naghten rule would probably be applicable to any verbal formulation.[18/] The difficulty stems from the different functions and purposes of law and psyciatry. The aim of psychiatry is to examine human behavior and mental disease in a scientific manner and to develop therapeutic methods of dealing with the emotional problems of mankind. On the other hand, it is the task of the law to develop normative rules to control human behavior. It has always been recognized that certain persons must be regarded as not the proper subjects of criminal conviction, and that because of their mental aberrations it would be unjust to hold them responsible for their conduct.[19/] Ultimately this is an ethical and social judgment and not a medical determination.

Scholars and jurists have expended great effort over the years to achieve a standard reflecting both society's need for criminal accountability and the converse demand for a rule flexible enough to cover the varieties and combinations of serious emotional and mental illness which destroy the capacity to commit a crime, in any just conception of the term.

17/ P. Roche, The Criminal Mind (1957), 168-195, 244-274.

18/ F. Allen, The Borderland of Criminal Justice (1964), 111.

19/ A. Platt & B. Diamond, "The Origins of the 'Right and Wrong' Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey," 54 Calif. L. Rev. 1227 (1966). In early law the "insane" were considered homologous to children.

One great developmental breakthrough occurred with the famous decision in Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954). There Judge Bazelon laid down a test under which a defendant was to be held not responsible "if his unlawful act was the product of mental disease or mental defect." 214 F.2d at 874. This was an adaptation of a rule which had previously existed solely in New Hampshire, and which had developed under the influential work of Dr. Ray. State v. Pike, 49 N.H. 399 (1870). While Durham represents a courageous attempt to state a modern standard of responsibility, certain deficiencies were encountered in its administration. For example, the use of the term "product" created difficult problems of causation.[20/] And as Judge (now Chief Justice) Burger complained, concurring in Blocker v. United States, 288 F.2d 853, 860 (D.C. Cir. 1960), the test in many cases put the legal determination in the hands of psychiatric witnesses rather than judge and jury. Finally, in Washington v. United States, 390 F.2d 444 (D.C. Cir. 1967), Judge Bazelon noted certain shortcomings of the Durham test, in that it allowed the psychiatrist to make too many legal and moral judgments which should be within the province of the jury. In substance, he appears to have acceded at least partially to the view of Judge Burger that psychiatrists should no longer be permitted to render an opinion on whether the act was a "product" of mental disease. A lengthy form of instruction was adopted to clarify the respective functions of expert

20/ Weihofen, "The Flowering of New Hampshire," 22 U. of Chi. L. Rev. 356, 360 (1955).

witness and jury.

Shortly after the Durham rule was announced, the American Law Institute promulgated a draft rule on this subject. This rule represents the collective efforts of some of the leading thinkers in this field. After nine years of research and consideration, the proposed rule was stated as follows:

> "(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.
>
> "(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."
>
> A.L.I. Mod. P. Code §4.01 (final draft) (1962).

Since then this test, or some variant of it, has met with increasing judicial acceptance, particularly in the federal courts. In a luminous opinion by Judge Kaufman, the Second Circuit adopted the test in United States v. Freeman, 357 F.2d 606 (2nd Cir. 1966). Chief Judge Haynsworth adopted it for the Fourth Circuit in United States v. Chandler, 393 F.2d 920 (4th Cir. 1968) (en banc), and the Ninth Circuit has now embraced it in Wade v. United States, 426 F.2d 64 (9th Cir. March, 1970)(en banc). The M'Naghten test has now been overthrown in all but the First Circuit.[21/] These

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21/ In addition to the above cited cases, see United States v. Currens, 290 F.2d 751 (3rd Cir. 1961); Blake v. United States, 407 F.2d 908 (5th Cir. 1969) (en banc); United States v. Smith, 404 F.2d 720 (6th Cir. 1968); United States v. Shapiro, 393 F.2d 680 (7th Cir. 1967) (en banc); Pope v. United States, 372 F.2d 710 (8th Cir. 1967) (en banc), vacated on other grounds, 392 U.S. 651 (1968); Wion v. United States, 325 F.2d 420 (10th Cir. 1963) (en banc), cert. denied, 377 U.S. 946 (1964). While not all of these cases embrace the A.L.I. test totally, they reject the

cases contain excellent disquisitions on the M'Naghten rule, its deficiencies, and the legal and psychiatric framework underlying the A.L.I. test. As Chief Judge Haynsworth said of the A.L.I. test:

> "With appropriate balance between cognition and volition, it demands an unrestricted inquiry into the whole personality of a defendant who surmounts the threshold question of doubt of his responsibility. Its verbiage is understandable by psychiatrists; it imposes no limitation upon their testimony, and yet, to a substantial extent, it avoids a diagnostic approach and leaves the jury free to make its findings in terms of a standard which society prescribes and juries may apply. [Footnotes omitted.]" United States v. Chandler, supra, at 926.

This wide acceptance of the American Law Institute test is significant. I believe that this formulation affords a workable standard, permitting realistic expert testimony about the personality and characteristics of the defendant as a whole man, but leaving to the court and jury the ultimate legal pronouncement. It avoids many of the problems encountered under the Durham rule.

No verbal formulation of this standard can achieve perfection, as there may always be doubt about the application of general terms to marginal situations. Yet the American Law Institute standard, in the view of many, does represent the best in current thinking on this subject. It is the standard

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21/ [cont'd] M'Naghten rule and include a test whereby the effect of mental illness on one's capacity to conform his conduct to law is stressed. Judge (now Chief Justice) Burger, in his separate concurring opinion in Blocker v. United States, 288 F.2d 853 (D.C. Cir. 1960), laid great emphasis on a test which would focus on the relationship between mental illness and one's capacity to refrain from wrongdoing.

which should be employed in Alaska.[22] I regard it unfortunate that we are not taking this step today.

II

Appellant has raised the question of where the burden of proof should be placed in these cases. In Chase v. State, supra, this court adopted the rule that the burden was on the defendant to establish his insanity by a preponderance of the evidence. Approximately one-half of the states follow this rule.[23] But in the rest of the states, and in the federal

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22/ The standard need not be frozen entirely within only one rigid form of words. In appropriate cases the testimony might require some amplification of the test in the instructions to the jury. Nor is this an occasion to consider the undue resort to diagnostic labels and conclusionary medical terms which plagued the court under the Durham rule and which the court sought to limit in Washington v. United States, 390 F.2d 444 (D.C. Cir. 1967). Hopefully, care would be taken to see that experts explain such labels and terms in language understandable to the jury.

23/ Alabama, Knight v. State, 142 So.2d 899 (Ala. 1962); Alaska, Chase v. State, 369 P.2d 997 (Alas. 1962); Arkansas, Kelley v. State, 242 S.W. 572 (Ark. 1922); California, People v. Monk, 363 P.2d 865 (Calif. 1961); Delaware, Longoria v. State, 168 A.2d 695 (Del. 1961); Georgia, Ross v. State, 124 S.E.2d 280 (Ga. 1962); Iowa, State v. Drosos, 114 N.W. 2d 526 (Iowa 1962); Kentucky, Tungent v. Commonwealth, 198 S.W.2d 785 (Ky. 1947); Maine, State v. Park, 193 A.2d 1 (Me. 1963); Minnesota, State v. Finn, 100 N.W.2d 508 (Minn. 1960); Missouri, State v. King, 375 S.W.2d 34 (Mo. 1964); Montana, State v. DeHann, 292 P. 1109 (Mont. 1930); Nevada, State v. Behiter, 29 P.2d 1000 (Nev. 1934); New Jersey, State v. Kudzinowski, 147 A. 453 (N.J. 1929); North Carolina, State v. Swink, 47 S.E.2d 852 (N.C. 1948); Ohio, State v. Stewart, 198 N.E.2d 439 (Ohio 1964); Oregon, 14 Ore. Rev. Stat. 136.390 (1960); Pennsylvania, Commonwealth v. Updegrove, 198 A.2d 534 (Pa. 1964); Rhode Island, State v. Gunnites, 161 A.2d 818 (R.I. 1960); South Carolina, State v. Tidwell, 84 S.E. 778 (S.C. 1915); Texas, Carrell v. State, 283 S.W.2d 793 (Tex. 1951); Virginia, Christian v. Commonwealth, 117 S.E.2d 72 (Va. 1960); Washington, State v. Mays, 395 P.2d 758 (Wash. 1965); West Virginia, State v. McCauley, 43 S.E.2d 454 (W. Va. 1947). See 17 A.L.R.3d 146 (1968).

courts, the accused need only show some evidence of insanity. The prosecution must then prove his sanity beyond a reasonable doubt.[24/]

Those who place the burden of establishing sanity on the defendant usually argue that this accords with the presumption of sanity. Because there is a presumption, it is said that the prosecution should not be put to proving that which normally is not imposed upon it. But under the federal rule, the presumption of sanity is still employed. It is operative until some evidence is produced which adequately brings into issue the sanity of the defendant. The presumption then disappears and the mental capacity of the defendant to commit the crime becomes an essential element, to be proved beyond a reasonable

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24/ Those states following the federal rule are: Arizona, State v. Schantz, 403 P.2d 521 (Ariz. 1965); Colorado, Castro v. People, 346 P.2d 1020 (Colo. 1959); Connecticut, State v. Joseph, 115 A. 85 (Conn. 1921); Florida, Farrell v. State, 101 So.2d 130 (Fla. 1958); Hawaii, State v. Moeller, 433 P.2d 1[illegible] (Hawaii 1967); Idaho, State v. Clokey, 364 P.2d 159 (Idaho 1961); Illinois, People v. Robinson, 174 N.E.2d 820 (Ill. 1961); Indiana, Whitaker v. State, 168 N.E.2d 212 (Ind. 1960); Kansas, State v. Penry, 368 P.2d 60 (Kan. 1962); Maryland, Jenkins v. State, 209 P.2d 616 (Md. 1965); Massachusetts, Commonwealth v. McHoul, 226 N.E.2d 556 (Mass. 1967); Michigan, People v. Eggleston, 152 N.W. 944 (Mich. 1915); Mississippi, McGarrh v. State, 148 So.2d 494 (Miss. 1963); Nebraska, Thompson v. State, 68 N.W.2d 267 (Nebr. 1955); North Dakota, State v. Barry, 92 N.W. 809 (N.D. 1902); New Hampshire, State v. Bartlett, 43 N.H. 224 (N.H. 1861); New Mexico, State v. Roy, 60 P.2d 646 (N.M. 1936); New York, People v. Kelley, 99 N.E. 2d 552 (N.Y. 1951); Oklahoma, Whisenhunt v. State, 279 P.2d 366 (Okla. 1954); South Dakota, State v. Waugh, 127 N.W.2d 429 (S.D. 1964); Tennessee, Jordan v. State, 135 S.W. 327 (Tenn. 1911); Utah, State v. Green, 40 P.2d 961 (Utah 1935); Wisconsin, State v. Esser, 115 N.W.2d 505 (Wis. 1962); Wyoming, State v. Pressler, 92 P. 806 (Wyo. 1907). The District of Columbia also follows this rule: Jones v. United States, 284 F.2d 245 (D.C. Cir. 1960). See 17 A.L.R.3d 146 (1968).

doubt, like any other.[25/]

It has been said that the burden of establishing insanity should be placed on the accused because sanity is not an element of the offense but a quality of the one who commits it. Chase v. State, supra, at 1003. But this overlooks the important consideration that once sanity is in issue it is a fact to be established like any other ultimate fact essential to culpability. The United States Supreme Court made this plain in Davis v. United States, 160 U.S. 469 (1895), when it said:

> "No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show beyond a reasonable doubt the existence of every fact necessary to constitute the crime charged." (Emphasis supplied.) 160 U.S. at 493.

Realistically speaking, when sanity is an issue, it is not only a major element of the criminal proof, it may be the central factual issue in the case. For that matter, it may be the only issue. Logically, sanity is an essential element of a crime because mens rea is a necessary primary factor. If insanity exists at the time of the criminal act, mens rea fails, there is

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25/ Fitts v. United States, 284 F.2d 108 (10th Cir. 1960). There the court said:

> "When, however, evidence of insanity is produced, from whatever source, the presumption of sanity disappears, and the mental capacity of the accused to commit the crime becomes an essential element to be proved by competent evidence beyond a reasonable doubt." 284 F.2d at 112.

This is the general rule which is followed in approximately one-half or more of the jurisdictions of the United States.

no jointure of act and intent, and under the traditional analysis no crime has been committed. As Mr. Justice Frankfurter noted, dissenting in Leland v. Oregon, 343 U.S. 790, 803 (1952):

> "Even though a person be the immediate occasion of another's death, he is not a deodand to be forfeited like a thing in the medieval law. Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder."

Placing the burden on the prosecution has substantial advantages. First, it accords with the presumption of innocence and the thesis that the accused need not undertake to prove anything in a criminal case.[26/]

An additional advantage is that the jury is not given the confusing task of juggling two different burdens, each of which carries a different standard. This anomaly is pointed out by Professor McCormick:

> "Thus it seems inconsistent to demand as to some elements of guilt, such as an act of killing, that the jury be convinced beyond a reasonable doubt, and as to others, such as duress or capacity to know right from wrong, the jury may convict though they have such doubt. Accordingly, the recent trend both in English and American decisions is to treat these so-called matters of defense as situations wherein the accused will usually have the first burden of producing evidence in order that the issue be raised and submitted to the jury, but at the close of the evidence the jury must be told that if they have a reasonable doubt of the fact on which the justification is based they must acquit." McCormick, Evidence § 321, p. 684 (1954). (Footnote omitted.)

26/ As a practical matter the accused often must undertake to adduce proof of insanity if he is to prevail in creating a reasonable doubt on the whole evidence.

There are also important aspects of constitutional policy to be weighed in the balance. It has been held unconstitutional to shift the burden of persuasion on the defense of alibi to the accused. Stump v. Bennett, 398 F.2d 111 (8th Cir. 1968) (en banc), and cases cited therein. This may or may not represent some future trend. But when it comes to shifting burdens, there is not much difference between proof that a defendant was physically present, and not elsewhere, at the commission of a crime, and that he was "mentally present," in the sense that he was sane.

Lastly, the experience of the federal courts, in their treatment of the burden of persuasion, is of value. The federal courts have worked under the rule of Davis v. United States, supra, since 1895, and have not found it a handicap in effecting criminal justice. In my view, when sanity is in issue, the burden of persuasion should be upon the prosecution to establish the sanity of the accused beyond a reasonable doubt.

III

In fairness, to avoid surprise, the prosecution should be entitled to notice that it must adduce evidence of the defendant's sanity. Because the mental status of an accused, in terms of sanity, is usually not in issue in a criminal prosecution, it would be an unfair burden to require the state invariably to guess at whether this issue might be raised at trial, and possibly to prepare on this issue, only to have it not raised at all. Nor is it fair for defendants to wait in

ambush until trial to inject the sanity issue as a surprise tactic.

Therefore, if we were to alter our insanity rules, we should also change our procedural rules to require that at the time of plea, or within a certain number of days thereafter, one intending to raise the issue of insanity at his trial must specially plead that he was insane at the time he committed the act charged.

For the reasons given I would reverse and remand for a new trial.

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Pipeline

STATEMENT OF COMMISSIONER FREDERICK McGINNIS
DEPARTMENT OF HEALTH AND WELFARE, STATE OF ALASKA

DEPARTMENT OF INTERIOR HEARING, 2/24/71
ON THE
TRANS-ALASKA PIPELINE

MY NAME IS FREDERICK McGINNIS. I AM THE COMMISSIONER OF THE ALASKA DEPARTMENT OF HEALTH AND WELFARE, AN ALASKAN DEPARTMENT WITH BROAD POWERS, DUTIES AND RESPONSIBILITIES FOR THE PROTECTION OF ALASKA'S ENVIRONMENT. AT THE SAME TIME, OUR DEPARTMENT IS MOST DEEPLY INVOLVED IN RESPONSIBILITIES IN HEALTH AND WELFARE NEEDS OF OUR PEOPLE.

THIS DEPARTMENT HAS REVIEWED IN CONSIDERABLE DEPTH THE ENVIRONMENTAL IMPACT STATEMENT AND CONSIDERS IT TO BE A REASONABLE EVALUATION OF PROBABLE EFFECTS OF THE PIPELINE ON THE RELATED ENVIRONMENT. THE STIPULATIONS WHICH ACCOMPANY THE IMPACT STATEMENT HAVE BEEN DEVELOPED WITH THE ACTIVE PARTICIPATION OF MEMBERS OF OUR STAFF.

I BELIEVE THAT THEY PROVIDE ADEQUATELY FOR MAXIMUM CONTROL OF POSSIBLE ENVIRONMENTAL INSULTS, BOTH DURING CONSTRUCTION AND IN OPERATION OF THE PIPELINE. THE ALASKA STATUTES AND THE ALASKA ADMINISTRATIVE CODE SPELL OUT THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND WELFARE IN ENVIRONMENTAL MATTERS. COMPLIANCE WITH ALL STATE LAWS AND REGULATIONS IS REQUIRED BY GENERAL STIPULATION #9 ON PAGE 15 OF THE STIPULATIONS DOCUMENT. IT SHOULD BE UNDERSTOOD THAT THE DEPARTMENT WILL ENFORCE OUR LAWS AND REGULATIONS, NOT ONLY ON THE 120 MILES OF THE PIPELINE WHICH CROSS STATE CONTROLLED LAND BUT, THROUGHOUT THE LENGTH OF THE PROJECT.

THE RESPONSIBILITY AND RIGHT OF THE STATE OF ALASKA TO ABATE AND TO PREVENT WATER POLLUTION IS SET FORTH IN THE FEDERAL WATER POLLUTION CONTROL ACT OF 1956. ALTHOUGH THIS STATUTE HAS BEEN AMENDED MANY TIMES

SINCE ITS ORIGINAL PASSAGE, THE LEGISLATION DEFINES IN CLEAR TERMS CONGRESSIONAL INTENT TO MAKE THIS ACTIVITY A STATE RESPONSIBILITY.

OUR SERIOUS CONCERN FOR PROTECTING THE VALUABLE FISHERY IN THE VALDEZ ARM HAS RESULTED IN ONE OF THE MOST STRINGENT OIL REMOVAL REQUIREMENTS IN THE WORLD. ALTHOUGH OUR WATER QUALITY STANDARDS IMPLY A MAXIMUM OF ABOUT 15 PARTS PER MILLION OF OIL (A VISIBLE SHEEN OCCURS AT ABOUT THIS LEVEL) OUR ENGINEERS HAVE REQUIRED THE ALYESKA PIPELINE SYSTEM STAFF TO DEVELOP EQUIPMENT TO REDUCE OIL IN THE EFFLUENT FROM THE BALLAST WATER TREATMENT PLANT TO A MAXIMUM OF 10 PARTS PER MILLION. SINCE THE 1970 LEGISLATURE HAS ENACTED A LAW TO PROVIDE THAT TANKERS BRING ALL BALLAST ASHORE FOR TREATMENT, THE ALYESKA VALDEZ TERMINAL TREATMENT PLANT WILL ACTUALLY BE PROTECTING NOT ONLY THE VALDEZ ARM, BUT AREAS OFF

PRINCE WILLIAM SOUND WHERE TANKERS MIGHT HAVE BEEN EXPECTED TO DISCHARGE SURPLUS BALLAST PRIOR TO COMING INTO PORT.

THE STATE OF ALASKA IS PREPARED BY PRESENT AND PROPOSED ARRANGEMENTS TO MONITOR A PROJECT OF THIS MAGNITUDE. BOTH FROM THE STANDPOINT OF ADEQUATE LAWS AND REGULATIONS AND FROM THE STANDPOINT OF COOPERATIVE EFFORT WITH OTHER STATE AND FEDERAL AGENCIES WE HAVE DEVELOPED A STRONG PROGRAM WHICH EXHIBITS OUR COMMON CONCERN FOR ENVIRONMENTAL PROTECTION.

THROUGH A PROGRAM OF PLAN REVIEW AND PERMIT ISSUANCE, THE DEPARTMENT EXERCISES JURISDICTION OVER ALL NEW INDUSTRIAL AND MUNICIPAL SOURCES OF POLLUTION. PRELIMINARY PLANS USUALLY ARE DISCUSSED WITH OUR STAFF ENGINEERS, FINAL PLANS AND SPECIFICATIONS ARE REVIEWED FOR COMPLIANCE WITH OUR STATUTE AND CODES, AND THE COMPLETED

PROJECT IS MONITORED FOR ADHERENCE TO REQUIREMENTS SET FORTH IN A WASTE DISCHARGE PERMIT.

PRIOR TO THE GREATLY ENHANCED FEDERAL OIL POLLUTION LEGISLATION OF 1970, THE ALASKA OIL POLLUTION TASK FORCE, CONSISTING OF REPRESENTATIVES OF STATE AND FEDERAL GOVERNMENTS AS WELL AS OF INDUSTRY, PROVIDED A MECHANISM FOR DEVELOPMENT OF A CONTINGENCY PLAN, A COMMUNICATIONS NETWORK, AND FOR EVALUATION OF PLANS FOR PREVENTING AND CONTROLLING OIL POLLUTION. PARTICULAR STRESS WAS PLACED ON THE NEED FOR ALL EMPLOYEES ON DRILL RIGS AND PIPELINES TO UNDERSTAND THE ABSOLUTE NECESSITY FOR PREVENTING THE LOSS OF OIL FROM ANY SYSTEM.

AS SPILLS ARE REPORTED ANYWHERE IN ALASKA TODAY, STATE AND FEDERAL ENGINEERS AND BIOLOGISTS INVESTIGATE PROMPTLY TO ASSURE ABSOLUTE MINIMUM RESIDUAL EFFECT ON THE ENVIRONMENT. THE INDUSTRY OR AGENCY RESPONSIBLE IS

ADVISED REGARDING CLEAN-UP, AND THE INVESTIGATING OFFICER MAY ASSIST IN LOCATING ADSORBENTS AND EQUIPMENT FOR CLEAN-UP. THE ALYESKA PIPELINE CORPORATION WILL BE REQUIRED TO SHOW IN ITS PLAN SUBMITTED FOR DEPARTMENT APPROVAL THAT ADEQUATE STOCKPILES OF CLEAN-UP MATERIALS WILL BE PROVIDED ALONG THE PIPELINE AND THAT ITS EMPLOYEES HAVE BEEN TRAINED TO MAKE USE OF THESE MATERIALS AS NEEDED.

AN IMPORTANT PART OF THE DEPARTMENT EDUCATIONAL AND CONTROL PROGRAM HAS BEEN DIRECTED BY A SENIOR STAFF ENGINEER LOCATED IN FAIRBANKS. HERE, A PROGRAM IS DIRECTED TO ACQUAINT ALL OPERATORS ON THE NORTH SLOPE WITH STATUTORY AND REGULATORY REQUIREMENTS DEALING WITH WATER SUPPLY, SEWAGE DISPOSAL, FOOD SERVICE, HOUSING HYGIENE, OCCUPATIONAL HEALTH, SOLID WASTE MANAGEMENT, PEST CONTROL, AND AIR POLLUTION CONTROL. SUCCINCT PORTIONS OF

THE ADMINISTRATIVE CODE HAVE BEEN CONDENSED TO A BROCHURE OF REQUIREMENTS ENTITLED "COLD REGION ENVIRONMENTAL HEALTH PRACTICES" WHICH HAS BEEN DISTRIBUTED WIDELY. A COPY OF THIS DOCUMENT HAS BEEN SUBMITTED PREVIOUSLY FOR YOUR HEARING RECORD.

CONSIDERABLE DISCUSSION HAS ARISEN FROM OUR REQUIREMENT PROHIBITING THE BURIAL OF ORGANIC REFUSE IN PERMAFROST AREAS IN SUCH A WAY AS TO ASSURE PRESERVATION RATHER THAN BIO-DEGRADATION. SAFE DISPOSAL OF SOLID WASTES MEANS SAFETY FOR OUR CITIZENS OF 1995 WHO MIGHT BE AFFECTED BY DISEASE ORGANISMS BURIED IN 1970, AS WELL AS SAFETY FOR OUR CITIZENS OF TODAY.

THE ALASKA DEPARTMENT OF HEALTH AND WELFARE HAS LONG HAD A PROGRAM FOR CONTROLLING ENVIRONMENTAL IMPACT OF ALL ACTIVITIES, OF WHICH THE TRANS-ALASKA PIPELINE IS SIMPLY ONE EXAMPLE. THE TABLE OF CONTENTS PAGE OF

THE SANITATION AND ENGINEERING CHAPTER OF THE ALASKA ADMINISTRATIVE CODE CLOSELY RESEMBLES THE TABLE OF CONTENTS PAGE OF THE STIPULATIONS FOR THE PROPOSED TRANS-ALASKA PIPELINE. OUR ENVIRONMENTAL ENGINEERING PERSONNEL, HAVING BEEN FULLY INVOLVED IN THE DEVELOPMENT OF THE STIPULATIONS FROM THE START, ARE PREPARED TO PROVIDE THE KIND OF ENFORCEMENT OF FEDERAL AND STATE STATUTES AND REGULATIONS WHICH ALASKANS AND THE CITIZENS OF THE OTHER STATES WANT IN THIS DEVELOPMENT IN OUR STATE.

FURTHER EMPHASIS OF THE COMPREHENSIVE ENVIRONMENTAL PROGRAM I HAVE CITED HERE IS EXPECTED TO BE PROVIDED BY GOVERNOR WILLIAM EGAN'S PROPOSAL FOR A NEW DEPARTMENT OF ENVIRONMENTAL CONSERVATION. THIS NEW AND EVEN STRONGER ENFORCEMENT AGENCY WILL DEAL WITH ANY PROBLEMS RELATED TO ALASKA'S CLEAN AIR, WATER AND LAND ENVIRONMENT AT THE CABINET LEVEL WHERE FULL VISIBILITY AND

RESPONSIBILITY FOR ENVIRONMENTAL MONITORING WILL BE FIRMLY ESTABLISHED. WE IN ALASKA HAVE EVERY EXPECTATION OF CONTINUING THE TEAM APPROACH AS WE WORK TO BUILD A SELF SUFFICIENT ECONOMY WHERE INDUSTRY AND CONSERVATION ARE COMPATIBLE AND FULLY COMPLEMENTARY.

STATEMENTS BY SEVERAL SPEAKERS IN WASHINGTON, D.C. LAST WEEK INDICATED THAT A NEED FOR THE PIPELINE PROJECT HAD NOT BEEN DEMONSTRATED.

WITHOUT ATTEMPTING TO CONSIDER THE ACTUAL UNITED STATES AND WORLD NEED FOR OIL, I SHOULD LIKE TO POINT OUT SOME OF THE PUBLIC HEALTH AND SOCIO-ECONOMIC NEEDS OF THE PEOPLE OF ALASKA. WHILE THE STATE WILL NEED PIPELINE REVENUES TO HELP MEET THESE HUMAN NEEDS, I HASTEN TO REMIND YOU THAT ADEQUATE PRECAUTIONS HAVE BEEN, AND ARE BEING, TAKEN TO REVIEW PLANS FOR ENVIRONMENTAL PROTECTION AND TO MONITOR PIPELINE CONSTRUCTION AND

OPERATION. THE IMPLICATION BY SOME INDIVIDUALS THAT ALASKA IS RUSHING PELL-MELL INTO ENVIRONMENTAL DESTRUCTION IN ENCOURAGING THE PIPELINE IS NOT CONSISTENT WITH THE VAST AMOUNT OF ENVIRONMENTAL ENGINEERING PRESENTLY BEING CARRIED OUT BY THE DEPARTMENT OF HEALTH AND WELFARE WITH THE ASSISTANCE OF ENGINEERS AND SCIENTISTS OF OTHER STATE AND FEDERAL AGENCIES. OUR OWN STAFF IN THE DEPARTMENT PROBABLY HAS MORE MAN-YEARS OF ARCTIC AND SUB-ARCTIC EXPERIENCE IN THE ENVIRONMENTAL FIELD THAN ANY COMPARABLE GROUP IN THE WORLD.

THE EFFECTS OF THE PIPELINE DEVELOPMENT ON THE HEALTH NEEDS OF THE PEOPLE OF ALASKA ARE TREMENDOUS. MANY ARE DISPOSSESSED ECONOMICALLY, SOCIALLY AND HEALTHWISE. LARGE SEGMENTS OF ALASKANS REQUIRE PROTECTIVE HEALTH SERVICES AND TREATMENT SERVICES WITHOUT PRACTICAL POSSIBILITIES OF SECURING SUCH HEALTH CARE DUE TO TREMENDOUS

GAPS THAT EXIST BETWEEN HEALTH NEEDS AND HEALTH RESOURCES. HISTORICALLY, THE STATES HAVE MET HUMAN NEEDS LARGELY THROUGH RESOURCE DEVELOPMENT. ALASKA HAS NO VIABLE ALTERNATIVE TO UTILIZATION OF ITS RESOURCES TO COPE WITH ITS GREAT HUMAN NEEDS.

THE FEDERAL BUDGET FOR THE ALASKA AREA NATIVE HEALTH SERVICE, WHICH HAS INCHED AHEAD NUMERICALLY IN RECENT YEARS, HAS ACTUALLY DROPPED BEHIND DUE TO THE INCREASED COSTS OF HEALTH CARE. THIS HEALTH BUDGET HAS NOT BEEN ABLE TO KEEP PACE WITH THESE RISING COSTS. THE RESULT IS OUR PEOPLE, NATIVES AND NON-NATIVES ALIKE, ARE SUFFERING FROM DEPRIVATION INCLUDING INSUFFICIENT HOSPITAL CARE, MEDICAL CARE, DENTAL CARE, CONTROL OF COMMUNICABLE DISEASES AND PRENATAL CARE. OUR INFANTS DIE AT FAR AND AWAY A HIGHER RATE THAN COMPARABLE POPULATION GROUPS IN THE LOWER 48. THESE SHORTAGES IN CARE REPRESENT HUMAN NEEDS

AND HUMAN SUFFERING.

AT PRESENT FUNDING LEVELS, PUBLIC HEALTH AND MENTAL HEALTH PROGRAMS CANNOT CATCH UP WITH THE DEMAND FOR MORE MEDICAL CARE THAT ENABLES FAMILIES TO REMAIN TOGETHER, CHILDREN TO GROW AND LEARN NORMALLY, HEARING LOSS TO BE DISCOVERED EARLY AND DEAFNESS IN CHILDREN TO BE PREVENTED. AT PRESENT, ALASKA SUFFERS THE HIGHEST INCIDENCE OF HEARING LOSS OF ANY STATE IN THE NATION. ESTIMATED HEALTH FACILITY NEEDS ALONE, AS REPRESENTED BY HOSPITALS, NURSING HOMES AND THE LIKE, ARE RUNNING $66,000,000 SHORT. OUR PLANS TO CATCH UP WITH NEEDED HEALTH FACILITIES, PUBLIC HEALTH NURSES, HEALTH CENTERS, MENTAL HEALTH CENTERS, CONTROL OF CONTAGIOUS DISEASES AND OTHER EQUALLY SERIOUS HEALTH PROBLEMS ARE AWAITING THE AVAILABILITY OF FURTHER INCOME AND REVENUES. WITHOUT THE AVAILABILITY OF THE FINANCIAL RESOURCES MADE POSSIBLE

BY THE CONSTRUCTION OF THE PIPELINE, THE PEOPLE OF THIS STATE WILL CONTINUE TO SUFFER ILL HEALTH AND SHOW THE HIGHEST INCIDENCE OF DISEASES LONG SINCE CONTROLLED IN OTHER STATES.

THE AIM OF OUR PUBLIC WELFARE DIVISION IS TO STRENGTHEN AND MAINTAIN FAMILY LIFE. IF BY THE END OF 1975 MONEY IS NOT AVAILABLE TO FUND ADEQUATELY THE WELFARE PROGRAMS, A WHOLE VARIETY OF NEW PROBLEMS WILL DEVELOP OR THE DEGREE OF EXISTING PROBLEMS WILL BE MAGNIFIED. THE IMMEDIATE RESULT WOULD BE A SEVERE DECREASE IN THE ABILITY OF THE RECIPIENT TO OBTAIN SHELTER AND FOOD. ACCOMPANYING THESE VARIOUS NEEDS WOULD BE A DETERIORATION IN HEALTH. COUPLED WITH THE LACK OF ADEQUATE FUNDS AND THE DECREASED HEALTH, THE WHOLE PROBLEM OF DEVELOPING ANOTHER GENERATION OF DEPRIVED CHILDREN FACES THE STATE.

THE PROGRAMS AS CURRENTLY FUNDED ARE BARELY MORE .

ADEQUATE THAN THEY WERE BY 1969-1970 STANDARDS. HOWEVER, IF FUNDS NEEDED ARE NOT RECEIVED THIS YEAR IT WILL BE DISASTROUS FOR 25,000 OF OUR POPULATION WHO ARE BASICALLY UNEMPLOYED, UNEMPLOYABLE BECAUSE OF AGE, BLINDNESS, MENTAL INCAPACITIES, OR AS CHILDREN DEPRIVED OF PRENATAL SUPPORT.

THE DEPARTMENT IS NOW MEETING ONLY A PORTION OF THE POVERTY PICTURE. IN VAST AREAS POVERTY IS CONSIDERABLY GREATER THAN THAT OF OTHER STATES. IF FUNDS ARE CURTAILED, THE POVERTY PICTURE IN ALASKA WILL BE EVEN MORE DISMAL. THERE IS SUCH A DOWN-TURN IN THE ECONOMICS OF THE STATE ALREADY THAT WE HAVE BEEN FORCED TO ASK FOR AN INCREASE IN RELIEF PROGRAMS FOR THE CURRENT YEAR (FROM $14,000,000 TO $20,000,000). FOR NEXT YEAR THE INCREASE IN NEED IS FROM $20,000,000 TO $31,900,000. THE COST OF LIVING CONTINUES TO RISE, AND THE REDUCED AVAILABLE DOLLARS TO CLIENTS WOULD

PERMIT THEM TO PURCHASE EVEN LESS THAN THE SAME DOLLAR WOULD PURCHASE FOR 69-70. POVERTY IS A PRINCIPAL CAUSE OF FAMILY BREAK-DOWN. AS THE ECONOMIC SITUATION BECOMES WORSE, THE NUMBER OF RECIPIENTS IN ALL OUR PROGRAMS INCREASES MORE RAPIDLY THAN NORMAL. IF THE MONEY IS NOT FORTHCOMING, EVEN TO KEEP THE PROGRAMS AT CURRENT LEVELS, WE CAN ANTICIPATE SERIOUS ADDITIONAL SOCIAL PROBLEMS THROUGHOUT THE ENTIRE STATE.

ALASKA FINDS ITSELF IN THE UNTENABLE POSITION OF BEING CAUGHT BETWEEN FEDERAL MANDATES TO INCREASE WELFARE WITH NO EQUIVALENT INCREASE IN FEDERAL PARTICIPATION IN FUNDING. THE CONSTRUCTION OF THE PIPELINE AND THE REVENUE THEREFROM WOULD PRODUCE THE REVENUE NECESSARY TO CONTINUE PROGRAMS OF HUMAN RESOURCE DEVELOPMENT. IF THE FEDERAL GOVERNMENT DOES NOT APPROVE THE PIPELINE CONSTRUCTION ON A TIMELY BASIS WITH APPROPRIATE SAFEGUARDS,

IT WILL CONTRIBUTE DIRECTLY TO THE HUMAN SUFFERING WHICH WILL RESULT.

IT IS PARADOXICAL TO NOTE THAT IN 1969-70 WHEN OUR TOTAL WELFARE BUDGET WAS $14,710,000, 41% OF THE BUDGET WAS FEDERALLY REIMBURSED WHEREAS IN THIS TIME OF DIRECT FEDERAL CONTROL OF THE PIPELINE DECISION, THE 1971-72 BUDGET NEEDS OF $31,904,900 WILL BE ONLY 26% FEDERALLY REIMBURSED. THE FEDERAL RESPONSIBILITIES IN THE ENVIRONMENTAL CONCERNS AND DECISIONS COMES AT A TIME OF CONTINUING DECREASE IN FEDERAL PARTICIPATION TO MEET THE SOCIAL CONCERNS.

IF COSTS AND CASE LOADS CONTINUE TO INCREASE AT THE PRESENT RATE TO 1976, THE WELFARE BUDGET WILL TOTAL 75 MILLION DOLLARS. IF, BECAUSE OF LACK OF STATE INCOME, WE HOLD AT THE 1969-70 BASE, OUR ASSISTANCE GRANTS WOULD HAVE TO BE REDUCED BY 5/6. FOR EXAMPLE, A PRESENT FAMILY

OF FOUR ON THE AID TO FAMILIES WITH DEPENDENT CHILDREN CATEGORY WOULD BE REDUCED FROM $350 PER MONTH TO APPROXIMATELY $60 PER MONTH. OUR OLD AGE ASSISTANCE CASES WOULD HAVE TO BE REDUCED FROM THE PRESENT MAXIMUM OF $250 PER MONTH TO APPROXIMATELY $41 PER MONTH. OUR GENERAL RELIEF AND GENERAL RELIEF MEDICAL PROGRAMS HAVE GONE UP AT EVEN A HIGHER RATE THAN GRANTS AND CASE LOADS. IT WOULD BE IMPOSSIBLE IN 1976 TO PAY 1/10 OF THE COSTS OF MEDICAL AND HOSPITAL CARE THAT ARE CURRENTLY PAID.

AS COMMISSIONER OF THE DEPARTMENT OF HEALTH AND WELFARE I AM DEDICATED TO AND CHARGED WITH THE PROTECTION OF ALASKA'S ENVIRONMENT THROUGH THE DEVELOPMENT AND ENFORCEMENT OF SOUND CONSTRUCTION PROCEDURES. AT THE SAME TIME, IT IS MY EQUAL DUTY TO BRING TO YOUR ATTENTION THE EXAMPLES OF HUMAN PROBLEMS OUTLINED ABOVE AND THE

EFFECT OF ANY UNREASONABLE DELAY IN ALASKA'S ABILITY TO DEVELOP ITS RESOURCES BOTH NATURAL AND HUMAN.

2606 SEWARD HIGHWAY
ANCHORAGE, ALASKA 99503
March 26, 1973

Pipeline

REP. HELEN FISCHER
HOUSE OF REPRESENTATIVES
STATE OF ALASKA

SUBJECT: TRANS-ALASKA PIPELINE

DEAR HELEN:

WHILE I'VE BEEN FOLLOWING THE PIPE LINE TESTIMONY HEARINGS AS MUCH AS POSSIBLE AND HAVE READ AS MUCH AS HAS COME TO HAND, THERE REMAINS ANOTHER THOUGHT THAT I HAVE NOT HEARD EXPRESSED TO DATE, THAT I FEEL SHOULD BE PRESENTED TO OUR BIOLOGISTS, ENGINEERS, ET AL FOR FEASABILITY AND CONSIDERATION.

MY THEORY IS AS FOLLOWS: CONSTRUCT A BUILDING/S OVER THE PIPELINE, USING THE PIPE AS A CENTER LINE. THE BUILDING/S TO BE 100 FEET OR SO WIDE AND AS LONG AS REQUIRED. BUILDINGS OF THIS TYPE WOULD BE HEATED BY THE 180 DEGREE OIL AND WOULD BE USED AS GREEN HOUSES, DAIRY FARMS, POULTRY FARMS AND PERHAPS HAY COULD BE RAISED IN THIS MANNER. DWELLINGS FOR HUNDREDS OF PEOPLE AND RAISING SOME OF THEIR FOOD COULD BE ACCOMPLISHED IN THIS MANNER. COULD NOT A NATURAL GAS LINE PARALLEL THE OIL LINE FOR FUEL AND CONVERSION TO ELECTRIC POWER WHERE NEEDED?

I FEEL THE GROWTH OF WILLOWS AND OTHER LEAFY PLANTS, EITHER NATURAL OR PLANTED, WOULD GROW ALONG THE ROUTE IN RECORD TIME, ENHANCED BY THE HEAT FROM THE LINE. ONE ONLY NEED TO LOOK TO THE HILLS BEHIND FT. RICHARDSON TO SEE THE BELTS OF HEAVY GROWTH WHICH APPEARS TO BE 15 TO 20 FEET HIGH MEANDERING OVER THE HILL-SIDES. THESE BELTS OF HEAVY UNDERGROWTH WERE CAUSED BY BULLDOZERS CLEARING FIRE BREAKS AROUND A MUSKEG FIRE IN THE EARLY AND MID 50's WHEN WE HAD SEVERAL FIRES TO FIGHT. NO CONSIDERATION WAS GIVEN AT THAT TIME FOR PROPER DRAINAGE, EROSION CONTROL OR ANY OTHER CONSIDERATION FOR THAT MATTER, EXCEPT TO SURROUND THE FIRE. IT WAS CULTIVATION IN A VERY CRUDE FORM. BUT IT STANDS AS AN EXAMPLE TO POINT OUT THE NEED FOR THE CULTIVATION OF OUR ENVIRONMENT IN SOME AREAS TO PROMOTE THE GROWTH OF PLANT LIFE WHICH IS A NECESSARY REQUIREMENT FOR THE SUSTENANCE AND INCREASE IN NUMBERS OF MANY SPECIES OF ANIMAL LIFE. WHAT IS WRONG WITH AN 800 MILE GREEN-BELT, -GAME REFUGE & ROADSIDE PARKS?

[illegible] VIRGIN [illegible] BIG LIES. [illegible]

WITH PROPER HANDLING OF THE [illegible], MOOSE [illegible] SHEEP AND BEAR BEGAN TO MULTIPLY AND NOW WE'RE IN BIG DIFFICULTIES.

IT THEREFORE SEEMS [illegible] THE SAME THING COULD occur ALONG THE PIPE LINE, CREATING A GAME BELT AS A HAVEN FOR WILDLIFE AND WOULD THEY NOT STAY CLOSE TO THE LINE [illegible] FOR [illegible]?

WE NEED ANSWERS FROM OUR BIOLOGISTS AND ENGINEERS TO THESE IDEAS AND QUESTIONS.

[illegible] A SECURITY STATION IS BEING THAT PLACE EVERY ALONG THE LINE AT INTERVALS [illegible] A SMALL TOWN.

I CALL UPON THE [illegible], AND OUR LEGISLATURE, TO REVIEW THIS NEGATIVE THINKING TRIED BY THE "EXPERTS" FROM OUTSIDE. LET US ALASKA HAS ALWAYS BEEN "DOING THE BEST YOU CAN WITH WHAT IS AVAILABLE AND TURNING ADVERSITY INTO SUCCESS BY WORK WELL AND THE [illegible] WAS TO BE SO THROUGH POSITIVE THINKING AND ACTION"! WE AS ALASKANS, HAVE HAD IT UP TO HERE, WITH HIGH BLOWN EXPERTS FROM OUTSIDE. THEY HAVE THIS THING BACKWARDS. SO FAR, EVERYONE IS TELLING US HOW MANY REASONS THERE ARE THAT IT WON'T WORK. ALL WE WANT ARE IDEAS HOW IT WILL WORK. IT IS UP TO THE GOVERNOR AND YOU AS OUR LEGISLATORS AND WE THE PEOPLE BACKING YOU TO THE HILT TO LET IT BE KNOWN TO ALL, THAT WE WILL DO THE TELLING AND THE ONLY THING WE WANT OUT OF THE EXPERTS, IS TO FIGURE OUT HOW BEST TO DO IT. IF THEY CAN'T DO IT, WE WILL GET SOMEONE WHO CAN.

WITH JUST REGARDS TO YOU ALL,

Omer Wade

OMER WADE

P.S. A RESOLUTION OF APPRECIATION MIGHT BE IN ORDER TO " MOTHER NATURE" FOR GETTING THE YUKON RIVER IN, BEFORE THE "EXPERTS FROM OUTSIDE" GOT WIND OF IT. CAN'T YOU JUST HEAR THE HOWL THEY WOULD SET UP AND POINT WITH OUTRAGE, AT THE GREAT SPRAWLING SCAR ACROSS THE FACE OF THE LAND, THE

UNTOLD NUMBERS OF BIRDS AND DELICATE MARINE MAMMALS THAT WILL ALL DIE NOW, BECAUSE THE OCEAN WILL BECOME MUCKY WATER, AND SO ALL THE FISH WILL DIE, AND WHEN ALL THE FISH DIE, ETC. ETC. AD INFINITUM!! HOSH.

HELEN, TELL THE LEGISLATORS THAT FROM ALL THOSE WHOM I HAVE TALKED TO, REGARDLESS OF PUBLICITY, I HAVE YET TO FIND AN ALASKAN THAT DOES NOT AGREE WITH THESE VIEWS. WE MUST BE IN THE MAJORITY. WE BACK YOU AND YOUR FELLOW LEGISLATORS 100% REGARDLESS OF PARTY IN THIS MATTER. GIVE 'EM HELL!!!!!!

Bert Cole

Pipeline

TRANS ALASKA PIPELINE HEARINGS

Anchorage, Alaska

LIST OF WITNESSES

in relative order of appearance

Witnesses should be seated in the witness reserved section. Witnesses are registered for 10 minutes testimony unless otherwise noted.

Name	Organization
Hon. William A. Egan (et al)	Governor of State of Alaska (Two hours)
Hon. Ted Stevens	United States Senate (15 minutes)
(Hon. Walter Hickel)	Former Secretary of the Interior (testify on Thursday a.m.)
Hon. Keith H. Miller	Former Governor of State of Alaska
(Hon. Marty Farrell)	Alaska State House Chairman, House Resources Committee. (testify on Thursday a.m.)
Hon. Ed Merdes	Alaska State Senate
Hon. Lowell Thomas	Alaska State Senate
Hon. C. R. Lewis	Alaska State Senate (testify Wed p.m.)
Hon. Andy Warwick	Alaska State House
Hon. Bob Dittman	Alaska State House
Hon. Jess Harris	Alaska State House
Hon. John Hubert	Alaska State House
Hon. Leslie Swanson	Alaska State House
Hon. Helen Fischer	Alaska State House
Hon. Tom Fink	Alaska State House
Hon. Dick Randolf	Alaska State House

	Name	Organization
1.	Mr. E. J. Patton	Alyeska Pipeline Service Company
2.	Representative	Anchorage Chamber of Commerce (20 min)
3.	Mr. John Kelsey	Alaska State Chamber of Commerce (40 min)
4.	Mr. Jack Werner	Seward Chamber of Commerce
5.	Mr. Byron T. "Bud" Brown	Bud Brown Enterprises
6.	Sam Johnson	Individual
7.	Representative	Citizens Committee
8.	Miss Celia M. Hunter	Individual
9.	Steve Talbot	Individual
10.	Representative	Alaska Native Student Organization
11.	Harold E. Pomeroy	Individual
12.	George Scrima	Publisher "Alaska Construction & Oil Rpt"
13.	Dr. Edward Wayburn	Sierra Club
14.	David Hickok	Individual
15.	Dr. Earl H. Beistline	Individual
16.	Representative	Fairbanks Chamber of Commerce
17.	Calvin Fair	Individual
18.	Representative	Alaska Chapter, Associated General Contractors of America, Inc.
19.	Jack Hesson	Individual
20.	Ivan Brudie	Individual
21.	H. Vern Flett	Individual
22.	Representative	Captain Cook Jaycees
23.	Marvin Parker	Anchorage Jaycees
24.	Joe Seale	Individual
25.	Steward Rothman	Arctic Oil Journal

Name	Organization
Bill Babcock	Individual
Earl Barnard	Individual
Sandra Bauenhauer	Individual
Frank X. Chapadax	H & S Warehouse, Inc.
Gene G. Dye	Muklux Freight Line, Inc.
Gerald I. Garland	Individual
John F. Grasse	Anchorage Refuge Inn
Neil G. Harper	Al Renk & Sons
Sharon Harris	Individual
William H. Jacobs	Individual
Robert C. McDonald	Consolidated Freightways
Jerry McKutcheon	Individual
Steve McKutcheon	Individual
William Mehon, Jr.	Weaver Bros, Inc.
Michael O'Meara	Individual
Edward R. Sanders	Alaska Carriers, Ass.
Les A. Schlatfeldt	Denali Transportation of Sourdough Express, Inc
Otto V. Sieber	Individual
C. W. Sneedem	Individual & North Committee
Ed Suddock	Individual
Carl Sullivan	Individual
Bill R. Vernon	Publisher magazine Alaska Construction & Oil Report
David Schimberg	Individual
James E. Fisher	Individual

	Name	Organization
47.	Howard Long	Individual
48.	Robert B. Weeden	Individual
49.	Ernie Wolf	Alaska Miners (Fairbanks)
50.	Dr. James Lethcoe	Individual
51.	Mrs. Larue Troyer	Individual
52.	John A. Carlson	Fairbanks North Star Borough
53.	Bob Halcro	Individual
54.	Harry Porter	Individual
55.	Frank Price	Individual
56.	Dr. Max Brewer	Arctic Naval Research Laboratory
57.	William Willoya	Individual
58.	Bernie J. Corcoran	Individual
59.	Edgar M. Walker	Individual
60.	Julian R. Maule	Individual
61.	Martin Palmer	Individual
62.	Professor Charles Konigsberg	Individual
63.	Tony Smith	Individual
64.	Myron Brisco	Anchorage Chapter, Izaak Walton League
65.	C. C. Hawley	Individual
66.	Ward James	Individual
67.	Iner J. Mining	Individual
68.	Ira J. Bailey	Individual
69.	Samuel Johnson	Individual

	Name	Organization
70.	David Wolf	Native Villages of Allakaket, Bettles, Minto, Rampart & Stevens (20 minutes)
71.	C. Ross Mullins	Fisheries Union
72.	Charles Simpler	Individual
73.	Ken Roenheldt	Pt. Challis Packers
74.	Russell Rossman	SAFE (Ecological Organization)
75.	Michael O'Meara	Individual
76.	Charles Behkle	Individual
77.	Douglas Sy Neely	Group of business people from Cooper River Basin
78.	Charles Lucier	Individual
79.	Jack Goddard	People of the Copper River Basin
80.	Daniel Earle	Individual
81.	Mrs. Darlene Brown	Cadwallader Trucking, Inc.
82.	George C. Silides	Individual
83.	Edward G. Burton	Individual
84.	Elmer Davis	Individual
85.	Bill Pinnell	Individual
86.	Drew Foss	Foss Tug and Barge
87.	Al White	Individual
88.	Nancy L. Simmerman	Individual
89.	Laura McCarly	Individual
90.	Paul Heller	Audobon Society
91.	Uhl Treat	Individual
92.	Dwayne Carlson	Alaska Federation of Labor

	Name	Organization
93.	Joseph Gerenough	Individual
94.	Mrs. Jackie Landinzhon	Individual
95.	Tom Hohnson	Individual
96.	Captain Bill Horned (Ret. Coast Guard)	Individual
97.	Ward Gay	Individual
98.	Slim Blood	Individual
99.	Stanley G. Cook	Individual
100.	Maxine Reed	Individual
101.	George Dickson	Individual
102.	Len Robinson	Individual
103.	Primula Babcock	Individual
104.	Aelenka Brice	Individual
105.	Selwyn Carol	Individual
106.	Mike Kelley	Individual
107.	Ernie Caston	Individual
108.	Sam Tito	Individual
109.	Laura Bergt	Individual
110.	Dick Roehl	Individual
111.	Bill English	Individual
112.	Mrs. Laura Wright	Individual
113.	William E. Bittner	Individual
114.	Vivian Mendenhall	Individual
115.	Harry R. Lee	Individual
116.	Helen Nienhueser	Individual

	Name	Organization
117.	Molly McVeigh	Individual
118.	Rusty Herleen	Individual
119.	Nancy Fenton	Individual
120.	Virginia Hill Wood	Individual
121.	Bob Scott or Norman E. Summer	Frontier Rock & Sand Inc.
122.	Harold H. Galliett, Jr., Reg.CE	Individual
123.	Bob Logan	Individual
124.	Lynn Schraeder	Individual
125.	Pete K. Martin	Independent ecologist (15 min)
126.	Steven Counsell	Individual
127.	Casey Bohne	Individual - student
128.	Robert McVeigh	Individual
129.	Robert Schraeder	Individual
130.	G. Curtis Mattson	Individual
131.	Jack Fowler	Individual
132.	John Watts	Individual
133.	David Sanders	Individual
134.	James Wellman	Individual
135.	Dr. Peter Morrison	Institute of Arctic Biology, U of A.
136.	Lee Atherton	Chamber of Commerce, Seattle
137.	Robert Willard,	Executive Director, Alaska State Commission for Human Rights and Chairman of the Alaska Plan Comm.
138.	Stan David	Individual
139.	James Lundgren	Individual

	Name	Organization
140.	Dr. Van Cleave	Tundra Studies, U of A
141.	Richard Montague	Alaska Conservation Society (Anch) (30 minutes)
142.	Doreen Huffer	Individual
144.	Mr. Howard Bayliss	Bayliss & Robe s, Inc.
145.	Charles LaPage	Individual
146.	Hugh Tatio	Individual
147.	Glenn Heatherly	Heatherly & Sons, Inc.
148.	Monte Kimball	Individual
149.	Robert Garland	Individual
150.	Robert Butt	Individual
151.	John Simmons	Plumbers, Steamfitter & Pipeliners
152.	Mike Kelley	Golden Valley Electric
153.	Matthew Dick	Individual
154.	Patrick Webb	Individual
155.	Ray Peterson	esident, Wein Consolidated Airways
156.	Frank Irick	Individual
157.	Robert Harrison	Individual
158.	Clinton E. Woodard	Individual
159.	James Lane	Individual
160.	Phil Flemming	Individual
161.	David Williams	Individual
162.	Gordon Tyree	Individual

	Name	Organization
163.	Mark Hoffman	Individual
164.	Peter McRoy	Individual
165.	Professor Thomas Schaefer	Individual
166.	Don Bruce	Individual (Alaska National Bank)
167.	Jim O. Sullivan	Taku
168.	Richard Webb	Taku
169.	Mrs. Paul E. Puckett	Individual
170.	Representative	Alaska Alpine Canoeing Club
171.	James G. Dye	Individual
172.	William T. James	Smythe Overseas Van
173.	Leo Collor	Puget Sound Tug and Barge
174.	Dr. Edward Brag	Individual
175.	Dale Bondurant	Individual
176.	Bob Parson	Individual
177.	James Bruce	Fairbanks North Star Borough
178.	Warren Mathews	Individual
179.	Don Gilmer	Individual
180.	Harold Dinkens	Individual
181.	John Helenthal	Individual
182.	Janis Rodes	Individual
183.	Rondal Latimore	Alaska Visitor's Association
184.	Bill Sheffield	Individual
185.	Robert B. Atwood	President and Editor of Anchorage Times
186.	James E. Hemming	Individual
187.	Ron Hinn	Individual

	Name	Organization
188.	Jim Hendershot	Individual
189.	James Pippin	Individual
190.	Charles D Olmstedd and David J. Otness	CARE-Concerned Alaskans for the Replenishment of the Earth (15 min)
191.	Sid Swerman	Material Technology Department, Community College
192.	J. Siddle	Anchorage Borough Assembly
193.	Henry S. Pratt	Individual
194.	Jerry Willets	Individual
195.	Jeff Richardson	Individual
196.	Ed Bellringer	Alaska Sportsman Council
197.	Walter S. Keith	Individual
198.	Lewis Dickinson	Professional Engineers
199.	Philip Rahoi	Individual
200.	Ken Carson	Individual
201.	Elmer Davis	Individual
202.	Ray Bowman	Individual
203.	Erwin Rayho	Individual
204.	Jim Messer	Individual
205.	Jim Dalton	Individual
206.	M. Spencer	Individual
207.	C. Geraghty	Individual
208.	A. Geraghty	Individual
209.	G. Rodes	Individual
210.	S. Mosher	Individual
211.	C. Rees	Individual

	Name	Organization
212.	K. Rees	Individual
213.	D. Gilbert	Individual
214.	A. Lomen	Individual
215.	N. Richardson	Individual
216.	R. Wein	Individual
217.	W. Burnett	Individual
218.	A. Scondozitch	Individual
219.	J. Wright	Individual
220.	J. Clark	Individual
221.	H. Kerslake	Individual
222.	C. Coal	Individual
223.	C. Erickson	Individual
224.	B. Carlo	Individual
225.	Mr. Sexauer	Individual
226.	P. Aiken	Individual
227.	J. Courtney	Individual
228.	K. Virgin	Individual
229.	K. Dalton	Individual
230.	J. Wilson	Individual
231.	E. Martin	Individual
232.	C. E. Schockey	Individual
233.	C. Hughes	Individual
234.	W. Kathcort	Individual
235.	J. Allbright	Individual
236.	Dr. Daggland	Individual

	Name	Organization
237.	E. Patton	Individual
238.	R. Migliaccio	Individual
239.	J. Watts	Individual
240.	L. Schroder	Individual
241.	J. Fowler	Individual
242.	J. Wellman	Individual
243.	D. Sandes	Individual
244.	K. Madson	Individual
245.	DiGange	Individual
246.	C. Swanson	Individual
247.	T. Dunkin	Individual
248.	N. Bergh	Individual
249.	L. Bergh	Individual
250.	Earl Beistine	Individual
251.	Stan Oslund	Individual
252.	Ken Hinchey	Individual
253.	Ward James	Individual

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

AtlanticRichfieldCompany
Public Relations Division
Post Office Box 360
Anchorage, Alaska 99501
Telephone 907 277 5637

Joseph H. FitzGerald
Manager of Community Affairs
Alaska Area

March 10, 1971

The Honorable William J. Moran
Alaska State House of Representatives
Pouch "V" State Capitol Bldg.
Juneau, AK 99801

Dear Bill:

During the past two years Angus Gavin, who has spent nearly 45 years in the Arctic as an ecologist, has been studying the various forms of wildlife and their habitat in the Prudhoe Bay area of northern Alaska. His report, part of a series of environmental studies undertaken by Atlantic Richfield Company and covering work performed during the past two years, has recently been published by the company for public distribution.

Mr. Gavin writes about his subject with great insight, and we hope that you will find the enclosed copy of his report both interesting reading and informative on many of the wildlife questions of northern Alaska.

If you would like to have additional copies of Mr. Gavin's report, please let me know.

Sincerely,

J. H. FitzGerald

Enclosure

Ecological Survey of Alaska's North Slope
Summer 1969 and 1970

AtlanticRichfieldCompany

The author, Angus Gavin is ecologist for the Alaskan operations of the Atlantic Richfield Company. Since 1969, he has been studying the effects of oil development on Alaska's North Slope and making recommendations to insure maximum protection of the wildlife and the Arctic environment.

Emigrating to Canada from Scotland, Mr. Gavin has spent over 40 years studying the wildlife and its environment in the northernmost reaches of the western hemisphere. Formerly senior vice-president of Ducks Unlimited (Canada), he is regarded as one of the foremost ecological naturalists with particular expertise in the arctic and subarctic areas of North America.

This report contains the results of ecological studies conducted by Mr. Gavin for Atlantic Richfield Company during 1969 and 1970.

Ecological Survey of Alaska's North Slope
Summer 1969 and 1970

Over the past two years we have had the opportunity to study and evaluate the effects of petroleum development and other related activities on the North Slope on the wildlife of the area and its environment.

Our sphere of operations has included that part of the North Slope lying between the Canning and Colville Rivers and between the Brooks Range and the Beaufort Sea. Within this area oil development activity is taking place, although most activity is confined to a relatively small zone between the Kuparuk and the Sagavanirktok Rivers and covers an area of approximately 30 square miles of coastal plain. While our studies have been primarily slanted toward collecting data on caribou, waterfowl and fish, all other animals and birds observed were recorded and as much information as possible collected. A constant check has also been kept on oil field activities and their relation to the total environment.

Our headquarters has been the Atlantic Richfield operations center at Prudhoe Bay and we have used a Bell Jet Ranger helicopter as transportation.

Description of the Study Area

The portion of the Alaskan North Slope under study consists of approximately 16,000 square miles of Coastal Plain. The major part of this is comparatively smooth, rising imperceptibly from the Arctic Ocean to a maximum altitude of 500 to 600 feet. Pingos break the flat monotony and produce an undulating skyline. Generally, the shore is quite flat—broken only by sand dunes near some of the river deltas—and much of it is only a few feet above the ocean level.

The whole area is very poorly drained and consequently quite marshy. Much of this part of the coastal plain is covered by elongated thaw lakes ranging in size from only a few yards to over a mile in length. All are quite shallow, varying from a foot to a maximum of ten feet in depth. The entire area is underlain by permafrost which reaches a depth of over 1000 feet. Ice wedge polygons cover the entire plains. Several rivers and streams intersect our study area, the major ones being the Colville, Canning and Sagavanirktok. All are heavily braided and contain large quantities of gravel.

Surface vegetation throughout the coastal plains is typical tundra type, with mosses, lichens, grasses and sedges being the most dominant. Throughout the numerous valleys and river courses intensive stands of willow and dwarf birch prevail. Since the entire area is poorly drained, sedge grass marshes are numerous. Vegetative components of these marshes vary greatly, but the dominant plants are various species of carex and grass interspersed with sedge-spagnum moss and bog type plants.

Weather throughout the summer of 1970 was quite good. Temperatures ranged from a low of +20°F on May 20 to a high of +65°F on August 27, dropping to freezing temperatures again by September when +20°F was recorded. Many of the smaller lakes and ponds froze over at this time, and some snow flurries were encountered. Thawing temperatures hit the area again on September 9 when a high of +45°F was reached. Most of the lakes and ponds thawed out, and there was a feeling of Indian Summer in the air. This, however, did not last too long as freeze-up took over the week of September 20.

General Outline of Wildlife in Study Area

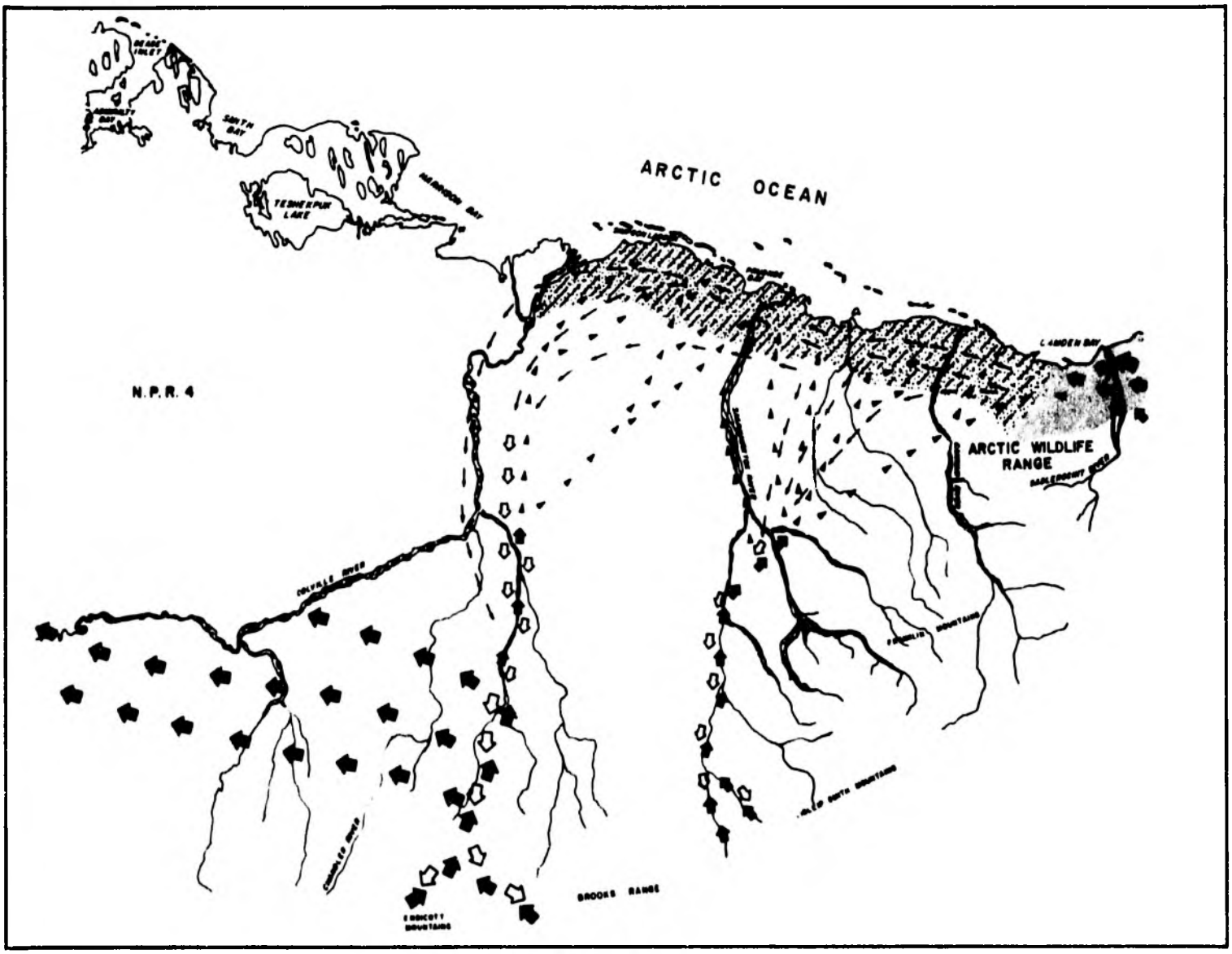
Within our study area there are many species of wildlife, all of which play an important part in the overall make-up of the ecological and biological systems. Mammals include barren ground grizzly bears, moose, caribou, wolves, wolverines, foxes, ground squirrels, lemming and Arctic shrew. Bird life is plentiful with several different varieties of geese, many species of ducks, numerous different shorebirds, whistling swan, loons, gulls, terns, jaegers, hawks, eagles, snowy owls, plovers, ptarmigan and a variety of tundra-nesting small birds.

As noted, streams within the area are heavily braided and generally quite swift, with rocky gravel or silt bottoms and relatively few really deep pools. These streams can become quite turbid in a short period from rains or melting snow in the Brooks Range where all the major ones have their headwaters. Most rivers carry char, grayling and whitefish on spawning runs, and some of the deeper ones may serve as a wintering area for Arctic char. Headwater lakes and tributaries are the major spawning areas.

Caribou—Rangifer Arcticus Arcticus

The area north of the Brooks Range commonly called the North Slope is inhabited by what is generally accepted as two distinct herds of caribou, the Westerly or Arctic, and the Easterly or Porcupine, herd. Estimates on the populations of these herds vary; however, the most recent figures, according to data and maps issued by the State Department of Fish and Game, place the population of the Arctic herd at 300,000 animals and of the Porcupine herd at around 140,000.

Figure 1



Caribou Migration Patterns

Major spring migration routes
Minor spring migration routes
Major fall migration routes
Minor fall migration routes
Major calving grounds
Minor calving grounds
Summer range

The summer ranges of these animals extend over a wide area of the North Slope and, from survey data collected over the past two years, there are indications of some overlapping, particularly during the calving season. Generally, the summer range of the Arctic herd extends from Cape Lisbourne on the west to the Colville River on the east, with some animals occasionally reaching as far north as Point Barrow. Calving grounds for the main part of the Arctic herd lie along the upper reaches of the Colville and Utukok Rivers. The summer range of the Porcupine herd extends from the upper Porcupine River north to the Arctic Ocean and west to the Canning River. Their main calving grounds extend from Camden Bay southeastward to the foothills of the Romanzof and British Mountains. Although geographically there is a wide gap between the summer ranges of these two herds, our observations indicate that, while the major portions of the herds are widely separated, offshoots of both intermingle in that portion of the range lying east of the Sagavanirktok River and west of the Canning River. During the spring of 1970, a herd of approximately 20,000 animals used the Atigun and Sagavanirktok Valleys in migration, breaking to the northeast south of Sagwon and spreading out over the plains near the coast on both sides of the Canning River. Whether this herd came from the Porcupine herd or the Arctic herd is problematical—more than likely the Arctic herd. From this migration it is evident that in some years the Sagavanirktok Valley plays host to a fairly large movement of animals.

Although patterns and migrations may vary with the weather during the fall, spring movements to the calving grounds are on a fairly tight schedule. Generally, the movement of animals from the Brooks Range and the Porcupine Valley to the North Slope begins around the first of May and reaches a peak during the latter part of May and first few days of June. Peak of the calving period is reached by about June 6. Bulls are considerably later in reaching the Slope in any numbers. They stay in the foothills area until after calving season, then gradually move north until they join up with the cows a few weeks before the start of their slow migration back to the wintering grounds. General summer movements within the slope area under study are from east to west, although there are offshoots from this pattern (see Figure 1). For the first three or four weeks after the calving period there is no particular pattern evident, but by the first week of July there is a gradual slow movement to the west and south, with a gathering of cows and calves together into small scattered bunches. By the beginning of August, small herds have developed, and a scattering of bulls begin to appear with them.

Of the two herds which use the North Slope as their summer range, a maximum of 30,000 animals frequent the area between the Colville and Canning Rivers. These are the animals which form the base for our study, since their movements and habits are tied in very closely with the oil field development. This area of the slope had not been studied before the commencement of oil exploration and development work, so we have no way of knowing the pattern and movement of these animals within the study zone in earlier times.

Our 1969 studies began just after the calving season and continued on through the fall migration period. Studies in 1970 started on April 30 with the first movement of caribou out of the Brooks Range onto the Slope. On this date, in company with Brian Sage, biologist for British Petroleum, we intercepted a herd of several thousand animals at the five thousand foot level heading north on a pass just east of Anaktuvuk. These were part of the Arctic herd moving toward their calving grounds along the upper reaches of the Colville River. From May 1 until the fall our base of operations was Prudhoe Bay. From this point close observation of caribou movements within the study area have been kept, with particular emphasis on patterns and behavior within the oil activity zone.

While few caribou drop their calves within the major oil field area, their movements during the summer bring them well within the field and, during much of the summer and fall caribou can usually be seen from the ARCO-Humble operations base. On August 19,1969 a fall movement of some 6,000 animals, including cows, calves, yearlings and bulls, passed through the field in close proximity to the main base and for several days grazed within normal camera range of many of the rigs. On July 13 of this year a herd of 1,500-2,000 animals passed through the middle of the base camps and had to be herded off the main runway in order to allow planes to land.

Although air traffic in and around the field is comparatively heavy at times, this does not seem to interfere with the normal day-to-day movement of these animals. In fact, they seem rather blasé about the whole proceedings. Much of the time, they pay little attention to aircraft movements and only become disturbed if an attempt is made to harass them.

The composition of caribou populations within the study zone has not varied greatly during the past two years. Total populations have been slightly higher in 1970, partly due to a greater movement of animals up the Sagavanirktok Valley. Calving success has been quite high, roughly 60 percent during 1969 and 70 percent during 1970. Wolf predation has been extremely light, few kills having been noted. Since only an occasional wolf has been seen during the entire summer and fall after few sightings in early spring, the wolf population seems to be at a very low level.

While there are few ground obstructions such as pipelines or fences within the oil development area at present, there are sufficient obstacles to give us some indication of caribou behavior in response to foreign materials. In some areas fairly large waterlines have been laid on top of gravel pads and some temporary feeder lines installed above ground. Observations show that caribou encountering such obstacles in their path have no hesitation in stepping over them.

Fall migrations during 1970 have been slow and leisurely with no heavy movement at any one time. Small herds moved steadily west and south throughout August, leaving few animals along the coastal zone by the beginning of September. Routes followed were identical to those of 1969—the major population using the coastal route west toward the Colville River, with a minor movement south along the Sagavanirktok River (see Figure 1).

A survey flight east toward the Canning River on September 6 located a few small groups of about 200 animals moving southwest toward the Sag Valley. On September 7 a survey of the area west of Prudhoe Bay to the Colville River showed the majority of those animals left had migrated to the vicinity of Ugnu and were moving steadily southwest toward the foothills and eventually through the Brooks Range to their wintering grounds.

Waterfowl

The part of the North Slope comprising our study area has four distinct types of habitat. In the delta areas are wide alluvial flats and many gravel and silt islands covered with a sparse growth of stunted willow; a sedge grass, marsh type habitat is dominant along the coastal plains; the Tundra-Lacustrine water edge habitat exists in the low lying coastal areas; and the Tussock-Heath type of habitat is found in areas with better drained soils.

Observations of waterfowl and other birds began on May 10 when Canada geese were the first spring arrivals. From that date on through the nesting, brood season, and fall migration period close observations were made and records kept.

Counts of the waterfowl population within the study area were made from a helicopter, using total coverage for counts of the deltas and coast for approximately ten miles inland. For the remainder of the survey area, the strip method was used. Coverage began on June 9 and was completed on June 14.

Although the average of 2.8 pairs per square mile for the total area is not exceptionally high, there are pockets of comparatively high density on some of the deltas and Tundra-Lacustrine types of habitat in the low lying coastal regions. Areas such as the region from the Colville River to Ugnu, just south of Oliktok Point, averaged 5.8 pairs per square mile, and the area in the vicinity of the Kuparuk River averaged 5.6 pairs per square mile. Further to the east, populations around the Sag River delta, although lighter than those in the former two areas, still averaged 4.9 pairs per square mile (see Figure 2).

Composition of the species comprising these counts in the various survey areas are shown in Table 1.

Weather during the first two days of the survey was good, with temperatures during the day reaching 40°F. On June 8, however, conditions changed considerably, as temperatures dropped to 24°F with snow flurries. During the remainder of the survey, temperatures stayed quite low, with the maximum being reached on June 12, when the thermometer managed to climb to 32°F.

Considerable nesting activity was underway before our surveys started. The first nest was found on May 28— a whitefronted goose with 5 eggs. On May 29, a whistling swan was sighted sitting on a nest in the Mikkelson Bay area. While some birds started nesting activity soon after arriving, there were others that apparently held off until better weather arrived, as indicated by the considerable number of late broods seen during our fall caribou survey which commenced on August 17.

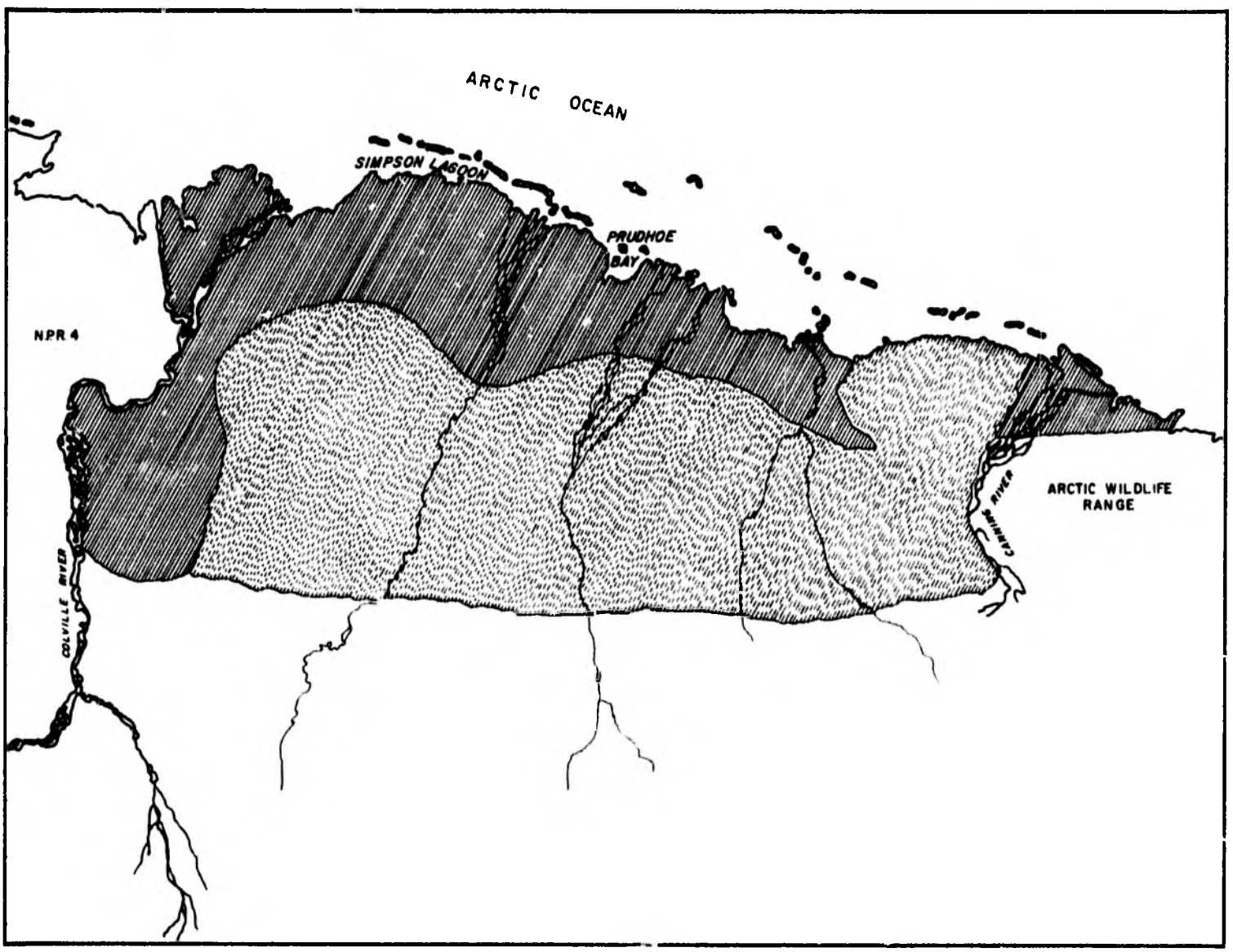
Brood count surveys were started on July 23 and were completed by August 1. Initially, these surveys showed a rather poor hatch, particularly among the whistling swans, loons, scaup and black brant. From a total of 37 pairs of swan within the survey area, only 18 were successful, and many of these had only one cygnet. Greater scaup were completely unsuccessful, as no broods were seen during the survey period. Loons, both Arctic and red throated, showed very poor results, although some late hatches were seen during the middle of August. Black brant, which showed a good overall percentage of breeding pairs during the spring count, had only a 22 percent successful hatch. Whitefronted geese, eiders, oldsquaw and pintails did considerably better and brought the overall hatching success figure up to 34 percent. Late broods which were evident during our fall caribou counts would add a percentage or two to this figure, but not enough to make significant difference. The reason for the poor hatching success of some of these birds is not known. However, it seems logical that since many, particularly the swans and some of the geese, were nesting during the latter part of May when temperatures went as low as 20°F., the eggs may have been touched by frost, unless the birds were incubating at the time. This is by no means an uncommon occurrence in the Arctic.

Since we were using a helicopter on skis for our survey work, we were unable to visit many of the offshore islands which are favorite nesting areas for eiders and oldsquaws. On August 6, however, an opportunity to visit one of the main islands arose when we accompanied Jim King and Jim Bartonek of the U. S. Fish and Wildlife Service and Dr. William Sladen of Johns Hopkins University in their float-equipped Beaver to Cross Island. This island is one of the chain lying approximately fifteen miles north of Prudhoe Bay. Its total length is about four miles, the width varying up to three-quarters of a mile. Situated on the highest point of this island, which is only about 15 feet above sea level, is an old broken-down cabin measuring about 8 foot square. In all probability, it was used during the time when the DEW line was being constructed, since there is a broken metal tower lying nearby. A survey of this island produced 97 eider nests, all of which appeared to have hatched successfully. One of the most interesting aspects of this survey was that inside the old cabin seven eiders had nested, and immediately around it some 25 others had built their nests. The majority of the remaining nests which we found were in the shelter of old drift logs or among very sparse vegetation. Terns and sabines gulls were also using this island as nesting sites. Several young sabines were seen in the water along the shore edge. Flocks of oldsquaws were in the shelter of the island, and it is assumed that they were using it as a moulting area.

TABLE 1

	Colville River/ Ugnu Area %	Kuparuk River Transect %	Sag River Delta %	Remainder of Survey Area %
Old Squaw	30	26	28	38
Whitefronted Geese	24	12	16	9
Eiders	17	23	22	31
Pintails	12	19	22	15
Lesser Canadas	8	9	11	1
Black Brant	6	11	6	2
Greater Scaup	2	–	–	1
Widgeon	1	–	–	1
Mallards	–	–	1	Trace
Greenwinged Teal	–	–	Trace	Trace
Scoters	–	–	–	2

Figure 2



Water Fowl Use Map

Breeding pair per square mile 2.5 to 5.8

Breeding pair per square mile 0 to 2.0

Area average 2.8 pairs per sq. mi.

First noticeable fall movement of birds into the study area was on August 21, when several large flocks of white-fronted geese and brant geese and some small flocks of snow geese were seen moving on to the delta flats at the mouth of the Sagavanirktok River. The build-up of birds during the next week to ten days was quite heavy. Large flocks of geese could be seen grazing on the river deltas and other marshy flat areas. While many birds were moving into the Prudhoe Bay area, there was also a fairly steady outward movement, and by the first few days of September a large part of the population had gone. Some pintails, oldsquaws, eiders and geese were still in the area on September 6, although temperatures had dropped to 22°F and many of the small ponds were frozen over. A survey of the area by helicopter on September 7 showed most of the small lakes frozen and many of the larger ones ringed with ice. Some Arctic and red throated loons with young were trying to keep holes open, but without a good long spell of warm weather, the majority of these young birds would undoubtedly perish. Three pairs of swans with a total of six young were also seen, but they were in larger waters which might stay open long enough for the young to get on the wing. Some scattered flocks of brant, whitefronted geese, oldsquaws and eiders were still in the area, but essentially the waterfowl season on the Slope was over for 1970.

(See Appendix A for an annotated list of birds.)

Fish

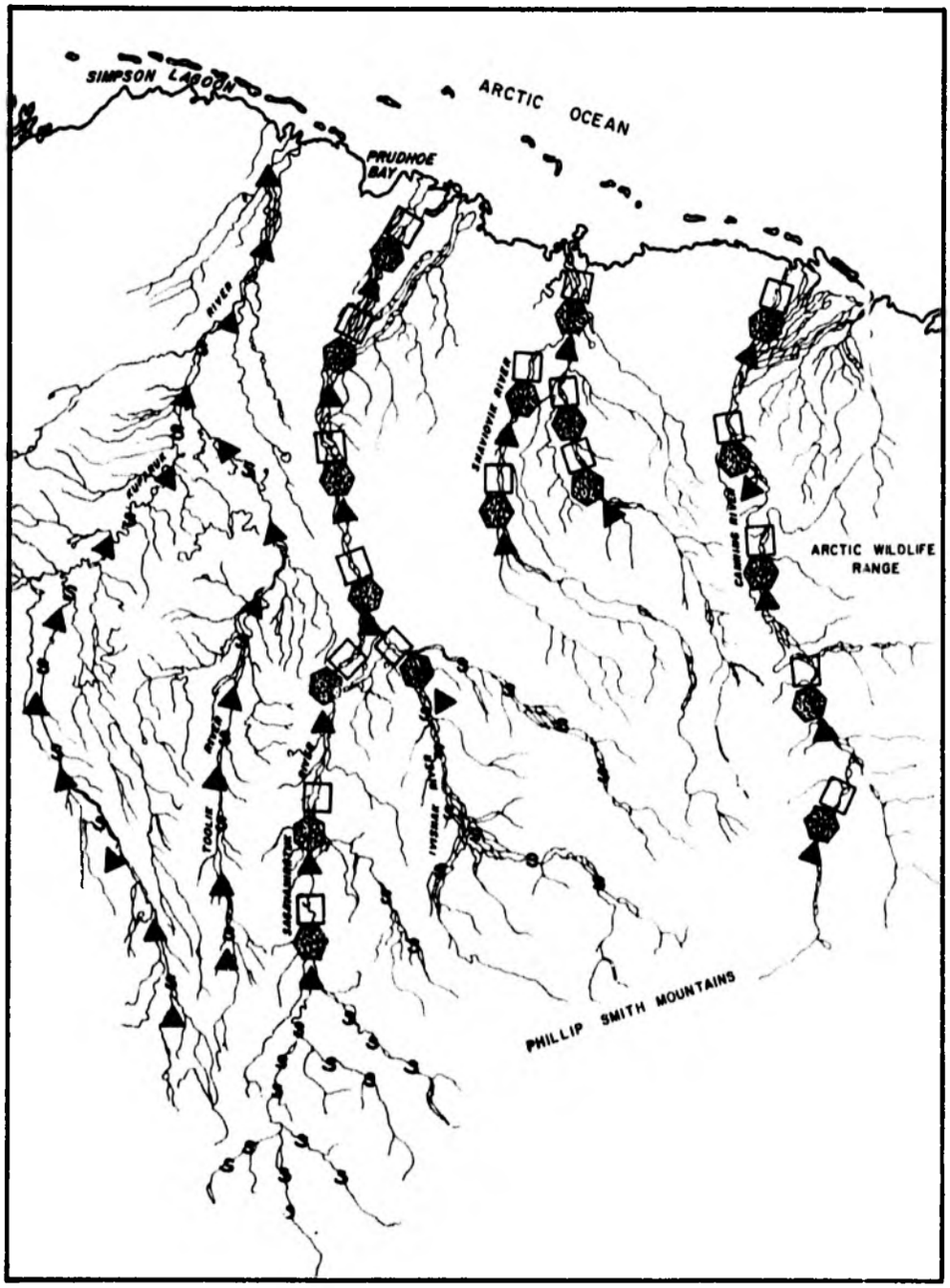
During the summer of 1970 test netting was carried out on the Sagavanirktok River in an effort to determine the status and type of fish using this stream and to evaluate the ecological impact oil development may have on its fish use. Large quantities of gravel from the alluvial flats on this river are being used for the building of roads, ramps and runways, and an assessment of the effects of this gravel removal on fish runs in the river was necessary. While complete data on age, growth and sexual maturity of fish caught this summer will not be available until laboratory test results are completed, we do have some information on time and potential volume of fish runs in the river.

The spring breakup occurred on May 28 this year. Immediately after breakup, there is a run of small Arctic char, averaging about three pounds in size. This is not a particularly heavy run, but it lasts until around the middle of June when it tapers off. Starting about the second week of July, potential spawning fish start moving up the river, and these continue well into August. These fish are of good size, reaching ten pounds and over although no exceptionally large ones were caught in our nets. After about August 15 there is a comparative lull for a short period, following which a heavy run of small two-to-three pound fish enter the river. This latter run of fish are on what is known as a cleaning run and will only stay in the river for a short period before going back out to sea. While all the data on fish caught this summer are not yet available, there is some very useful information on hand, which was gathered by the Alaska Fish and Game Department during the summer of 1969. This is contained in a report on testing done on the Sagavanirktok River and some of its tributaries. Figure 3 shows the types of fish found in the rivers on the North Slope.

The Sagavanirktok River is an important one from a fisheries standpoint and many of the tributaries and headwater lakes which feed this river are vital spawning areas that should not be disturbed by the extraction of gravel, should oil activities come within this vicinity.

While large amounts of gravel are still being removed from river beds near the coast where fish do not spawn—and more will be used during the next year or so—this has not affected the capabilities of these streams to handle fish runs.

Figure 3



Types of Fish Using Rivers

Arctic Char □
Whitefish ⬡
Grayling ▲
Potential spawning rivers S

Barren Ground Grizzly

Although no concerted effort was made to inventory and catalogue all grizzly bear on this area of the North Slope, a record was kept of all those seen during our various other surveys. These were plotted on our maps, giving numbers seen, location and date observed (see Figure 4). Since these animals hibernate in the Brooks Range during the winter, the Slope area is primarily their summer range, with few being seen at this latitude before the end of May. Generally, the first ones seen in the spring are in the valleys along the foothills, with a gradual movement northward along the river and valley bottoms with the peak number being reached on the Slope during July and August.

During 1969, a total of ten bears, including four cubs, were seen in this area. In 1970, thirty-one bears, including three cubs, were recorded. While there is no doubt that some of the bears seen were recorded on more than one occasion, it is quite evident that the grizzly bear population on this part of the Slope is in a good healthy condition. The oil development activities are probably attracting some of these bears. Having a tremendous sense of smell, they can be attracted from a long way off. Once they discover the availability of food, they are difficult to discourage and can be extremely dangerous if disturbed while eating; however, there is no indication that the oil activity is in any way endangering their livelihood or normal movements.

Wolves

The population of wolves in this area of the Slope is extremely low. Whether it is a natural condition for this part of the country or whether the population has been reduced through over-harvest is difficult to determine. While caribou populations are not as abundant as in some other parts of the Arctic Plains, there are sufficient animals to support several packs of wolves, each keeping within its own hunting territory. In all our surveys during 1969 only two wolves were sighted. In 1970 only two small packs were seen—one pack on May 5 in the Beechy Point area composed of two blacks and four grays, and the other pack on May 9 in the Kavik area consisting of three animals, one black and two grays. A female at a den site on a pingo northwest of Home-Bush and one at Franklin Bluffs were the only other wolves seen. The one at Franklin Bluffs was spotted on several different occasions and, although no den was located, presumably one was nearby.

Lemming

During 1969, these little mouse-like animals were extremely plentiful during the summer and early fall. When these small rodents reach the peak of their cycle, however, and food becomes scarce, they take off on what has often been referred to as a suicide march. While this is more fantasy than fact, they do migrate out of an area en masse, often moving long distances before they find another suitable location on the Arctic tundra and scatter out to begin the cycle once more. Many undoubtedly die during their forced marches, and thousands of others are eaten by foxes and wolves, but we doubt that they purposely commit suicide in order to reduce their population.

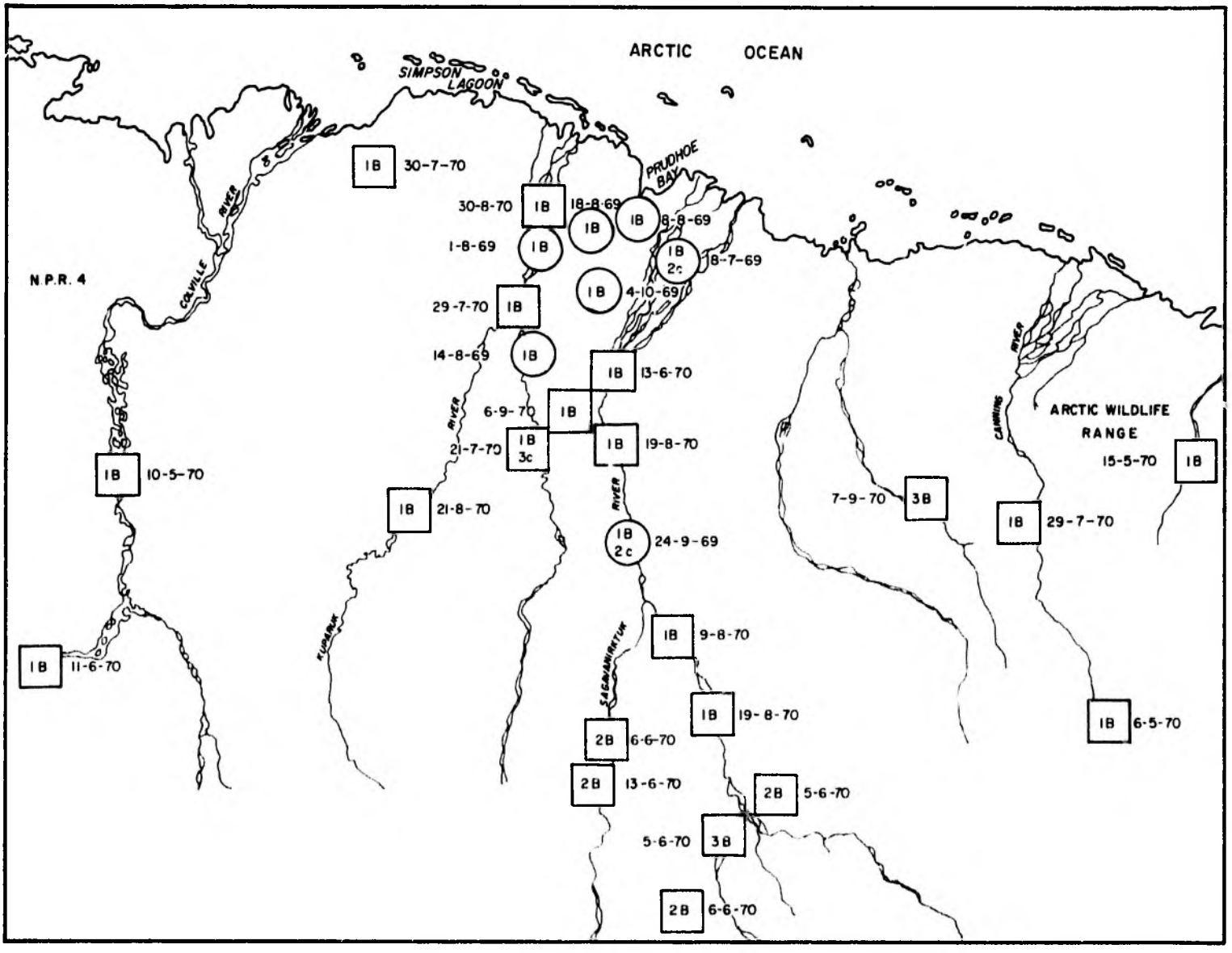
Foxes

From a very high population in 1969, the number of foxes in this area has dropped off to practically nothing. This, of course, is entirely due to the absence of lemming. During 1969, dens of the Arctic white fox could be seen on practically every pingo and suitable river bank. Few have been seen during our 1970 surveys and it is very unlikely that any large numbers will be seen around the camps as they were in 1969. More than likely, it will be several years before the population again reaches a high peak.

Moose

Although the coastal area of this part of the Slope is not inhabited by moose, the rivers and valleys leading toward the coastal plain hold quite a large population. These areas have a heavy growth of woody plants, primarily willow and stunted birch, which provides good food and cover. During the summer, they are frequently seen some distance away from these areas feeding on carex and other grass bordering the lakes. While these animals appear to be in excellent condition and reach the normal size for the moose family, we have yet to see any large sized spreads on any of the bulls, the largest being in the neighborhood of 50 inches, and the majority not much over forty inches.

Figure 4



Casual Sighting Barren Ground Grizzly

1970 sighting □

1969 sighting ○

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Appendix A

Annotated List of Birds

The following is a list of birds observed and recorded during our surveys over a two year period (1969-1970). Nests or broods of all species were not found, therefore some of those listed may be migrants through the Prudhoe Bay area. The majority, however, are known to nest within the district.

Olor Columbianus. (Whistling Swan)

Distribution: Widely scattered over much of the area. Generally frequenting the larger inland lakes. Thirty-seven pairs within the study area in 1970.

Migration: Among the first to arrive in the spring and waste little time in getting down to the business of nesting. The first nest in 1970 was recorded May 28 near Mikkelson Bay. Generally, among the last to leave in the fall. Often the young birds are barely able to fly when freeze-up occurs.

Branta Canadensis Taverneri. (Lesser Canada Goose)

Distribution: General over much of the area and, although the population appears quite high, the actual breeding population is limited. Many non-breeders summer on the Slope area. Nests were found and broods seen on the coastal plain and also inland near the foothills.

Migration: The first geese to arrive in the spring in the Prudhoe Bay area. They are also the first to leave in the fall.

Anser Albifrons. (Whitefronted Goose)

Distribution: Widely scattered from the foothills to the coastal plains. Many nests found and broods seen during surveys in both 1969 and 1970. Moulting flocks plentiful in the Ugnu area and along the Colville River.

Migration: Arrives in the Prudhoe Bay area early, often in company with Lesser Canada Geese. Starts nesting on arrival even though snow is still on the ground. Stays late in the fall and can be found in large flocks grazing on the river bottom flats and out on the tundra.

Branta Nigricans. (Black Brant)

Distribution: Widely scattered along the coast. Deltas and wide flats are their favorite nesting areas. Moulting flocks along with their young can be found on river deltas during the latter part of July.

Migration: While considerable numbers of Brant nest in the Prudhoe Bay area, there is also a migration of considerable magnitude which passes through along the coast during spring, heading east. Fall migrations into the Prudhoe Bay area are light, although fairly large numbers pass through without stopping.

Chen Hyperborea. (Snow Goose)

Distribution: Migrates through the area in good numbers in the spring and fall. Few nesting within the area.

Gavia Arctica. (Arctic Loon)

Distribution: Abundant nester in the Prudhoe Bay area. Carex and grass edged ponds and sloughs are their favorite nesting areas.

Migration: Arrives in the area in late May and first week of June. Migrates late in the fall, often being caught with their young unable to fly at freeze-up.

Gavia Stellata. (Red Throated Loon)

Distribution: Fairly abundant nester throughout the area. Prefers the same type of habitat as the Arctic Loon.

Migration: Arrives in late May and early June. Migrates late in fall often after small lakes and ponds are frozen over.

Gavia Adamsh. (Yellow-Billed Loon)

Distribution: Only a few pairs seen in the area during 1969 and 1970. Most were in the Ugnu area near the Colville River. No nests or broods seen.

Migration: Arrives early June. Fall migration unknown.

Anas Acuta. (Pintail)

Distribution: Fairly abundant nesting species along the coastal plain and around river deltas. The most prominent of the game ducks in this area.

Migration: One of the first to arrive in the spring and among the first to migrate in the fall.

Anas Platyrhynchos. (Mallard)

Distribution: A scarce bird in the Prudhoe Bay area. Only a few pairs having been recorded both in 1969 and 1970. One brood seen in 1970 near the company base camp.

Migration: Arrives first week of June and moves out early in the fall.

Anas Carolinensis. (Green Winged Teal)

Distribution: A few pairs seen in the area in both 1969 and 1970 but no nests or broods seen.

Aythya Marila (Greater Scaup)

Distribution: Widely scattered on both coastal and inland ponds, but not particularly heavy anywhere.

Migration: Fairly late arrival in spring and early migrant in the fall.

Mareca Americana. (American Widgeon)

Distribution: Very widely scattered light population. Most birds seen were in the Colville River vicinity.

Migration: Arrives around first week of June and moves out early in fall.

Somateria Mollisaima. (Common Eidor)

Distribution: One of the most common ducks in the area. Nests along coast and on islands lying off shore.

Migration: Arrives early in spring and stays quite late in fall.

Somateria Spectabilis. (King Elder)

Distribution: Fairly common along coastal areas. Not as plentiful as the common elder.

Migration: Arrives early in spring and stays fairly late in fall.

Lampronetta Fischeri. (Spectacled Elder)

Distribution: Found in fair numbers on coastal plain area.

Migration: Arrives quite early and leaves well before freeze-up in fall.

Polysticta Stelleri. (Stellers Elder)

Distribution: Widely scattered along coastal plain area but nowhere is the population heavy.

Migration: Arrives early in spring. Migrates quite early in fall.

Melanitta Deglandi. (White Winged Scoter)

Distribution: Widely scattered along coastal plain but nowhere is the population very heavy.

Migration. Late arrival in spring and fairly late migrant in fall.

Melanitta Perspicillata. (Surf Scoter)

Distribution: Very light population and widely scattered along coast.

Migration: Habits unknown.

Histrionicus Histrionicus (Harlequin Duck)

Distribution: One pair and a single male were seen on several different occasions on Sagavanirktok River.

Migration: Unknown.

Clangula Hyemalis. (Old Squaw)

Distribution: The most abundant duck in the Prudhoe Bay area. Nests on coastal ponds and on islands lying offshore.

Migration: Arrives early in the spring and is one of the last birds to leave in the fall.

Falco Peregrinus. (Peregrine Falcon)

Distribution: Widely scattered throughout the study area. Several pairs seen along the Colville River and south along the Sagavanirktok River. One nest located on Franklin Bluffs.

Buteo Lac Opus. (Rough-Legged Hawk)

Distribution: Fairly common and widely scattered throughout our study area.

Falco Rusticolus. (Gyrfalcon)

Distribution: Only pair seen was on the Colville River on July 27, 1970.

Aquila Chrysaetos. (Golden Eagle)

Distribution: Several seen in the upper reaches of the Sagavanirktok River. An immature one on the Colville River July 27, 1970 and one near Mikkelson Bay July 30, 1970, also an immature.

Lacopus Lacopus Alascensis. (Willow Ptarmigan)

Distribution: Widely distributed and very plentiful at times. Some flocks seen in the spring of 1970 were literally in the thousands.

Lacopus Mutus Nelsoni. (Rock Ptarmigan)

Distribution: Few Rock Ptarmigan were noted in the Prudhoe Bay area, but some flocks were seen farther south in the foothills.

Grus Canadensis. (Sandhill Crane)

Distribution: Several pairs seen along the Colville River. One on a nest about 30 miles north of Umiat.

Pluvialis Dominica. (American Golden Plover)

Distribution: Observed at widely scattered points throughout the study area. Nowhere very plentiful.

Squatarola Squatarola. (Black Bellied Plover)

Distribution: Observed at widely scattered points throughout the study area, but not plentiful.

Charadrius Semipalmatus. (Semipalmated Plover)

Distribution: Very common in area. The most abundant of the Plover family.

Arenaria Interpres. (Ruddy Turnstone)

Distribution: Widely scattered, but not plentiful in area.

Erolia Melantos. (Pectoral Sandpiper)

Distribution: Widely scattered and quite common throughout the area.

Erolia Bairdii. (Bairds Sandpiper)

Distribution: Very few seen on coastal area. More plentiful on upper reaches of Sagavanirktok River.

Erolia Minutilla. (Least Sandpiper)

Distribution: Only one seen in the Prudhoe Bay area during 1969 and 1970.

Ereunetes Pusillus. (Semipalmated Sandpiper)

Distribution: Seen on one or two occasions during spring migration. Not recorded during summer nesting season.

Numenius Phaeopus. (Whimbrel)
Distribution: Seen on migrations only along the Sagavanirktok River.

Erolia Alpina. (Dunlin)
Distribution: Widely distributed but nowhere very plentiful. One nest with three eggs found near Kuparuk River.

Phalaropus Fulicarius. (Red Phalarope)
Distribution: One of the most plentiful of the shorebirds seen in the area. Every little pond seems to contain a pair in the spring.

Lobipes Lobatus. (Northern Phalarope)
Distribution: Plentiful in the Prudhoe Bay area but not as abundant as the Red Phalarope.

Stercorarius Longicaudus. (Long Tailed Jaeger)
Distribution: Widely scattered and quite plentiful. Can be seen any day flying over tundra or sitting on small mounds on the tundra.

Stercorarius Pomarinus. (Pomarine Jaeger)
Distribution: Widely scattered but not as plentiful as the Long Tailed or Parasitic. Can be seen in flight and sitting on small mounds on the tundra.

Stercorarius Parasiticus. (Parasitic Jaeger)
Distribution: Fairly widely scattered throughout the study area. Seen in same areas as the Long Tailed and Pomarine.

Larus Hyperboreus Barrovianus. (Glaucous Gull)
Distribution: Widely scattered and quite plentiful in the area. Nests on islands and sandbars of braided streams.

Xema Sabini. (Sabines Gull)
Distribution: Widely scattered but not plentiful. Nests mostly on the offshore islands.

Sterna Paradisaea. (Arctic Tern)
Distribution: Fairly common along the coastal areas and on the offshore islands.

Nyctea Scandiaca (Snowy Owl)
Distribution: Very plentiful during 1969. Very scarce in 1970. Fluctuates with the lemming population which was high in 1969.

Asio Flammeus. (Short Eared Owl)
Distribution: Two recorded in 1970. These were seen flying over the tundra south of Franklin Bluffs.

Corvus Corax (Common Raven)
Distribution: Seen at widely scattered points. Mostly along rivers and on wolf or grizzly bear kills. Not particularly abundant.

Lanius Excubitor (Northern Shrike)
Distribution: One recorded on the Ivishak River on June 5, 1970.

Acanthis Hornemanni. (Redpoll)
Distribution: Recorded on several different occasions on the Colville River and on the upper reaches of the Sagavanirktok River. Not seen on the coastal areas.

Passerculus Sandwichensis Anthinus. (Savannah Sparrow)
Distribution: Recorded at several different points during 1969 and 1970 but nowhere did we find them in any numbers.

Calcarius Lapponicus. (Lapland Longspur)
Distribution: Very common throughout the region. Can be found practically everywhere on the tundra.

Plectrophenax Nivalis. (Snow Bunting)
Distribution: Common throughout the region. One of the first birds to arrive in the spring and lingers on in the fall well after freeze-up.