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A 360-day year used by many banks to compute interest charged on loans is under legal attack around the nation. Critics assert the short year means an effective interest rate higher than stated and sometimes in violation of

The Banker's Year

365 Days May Have Been Good Enough for Caesar, But Lenders Find That 360 Provide More Profit

By JAMES F. CARBERRY

Staff Reporter of THE WALL STREET JOURNAL

In 46 B.C., Julius Caesar proclaimed that a year would be pegged at 365 days, with an extra day added every fourth year. What was good enough for Caesar has been good enough for the rest of us ever since—except for the nation's bankers.

A lot of bankers are using a 360-day year to compute the interest they charge to borrowers on commercial and corporate loans. This means, in effect, that they are collecting a smidgin more interest on these loans than their stated "annual" interest rates would indicate.

Though the practice has been going on for many, many years, it is only recently that borrowers have gotten angry enough about it to fight back. Lawsuits have been filed in Chicago, Philadelphia, Portland, Ore., and elsewhere, alleging that because the banks calculate on the basis of a bobtailed year they are charging an effective interest rate higher than that stated on loan agreements. Sometimes, it is alleged, these charges violate state usury laws.

\$145 Million a Year

Though only small amounts of money are involved in the difference between the 365 and 360-day charges on any one loan, the nickels and dimes add up to an impressive pile.

Wright Patman, chairman of the House Banking and Currency Committee and the principal burr under the bankers' saddle, estimates that use of the bobtailed year results in overcharges to borrowers of at least \$145 million a year. "This practice," he grumbled in a speech to Congress, "comes down to just plain old-fashioned greed. It is the kind of thing that saps the confidence of the American people in the banking system."

Use of the short year is sweeping. In a 1971 study, the Federal Reserve System found that most of the 232 banks responding based at least some commercial and corporate loan charges on it. More recent inquiries by this newspaper disclose that the practice is still widespread; for example, 15 of the nation's biggest banks admit to employing it.

According to the bankers, use of the bobtailed year began before the widespread use of adding machines; clerks who had to do the computations with pencil and paper found it a lot easier to multiply and divide by 360 rather than 365 or 366. Since nobody seemed to care much, the banks kept it up. "Converting our computers to 365 would be a massive job," says one officer of a major bank.

Borrowers Aren't Sympathetic

The argument that the 360-day year is custom and would be too much trouble to change meets with absolutely no sympathy among borrowers. They point out that some banks use the short year to figure the interest they charge to borrowers while charging 365-day rates despite

the difficulty in multiplying and dividing) to figure their payout to savings account depositors. And the bankers' own bank, the Federal Reserve System, itself uses the 365-day year in calculating what it will charge member banks borrowing from it.

The 1971 study by the Fed indicates there is no pattern to use of the short year. The same bank, it found, may use the short year in calculating interest on one loan but not on another. ("Little guy" borrowers aren't affected, since their loans are usually repaid in monthly installments that cover a whole 365-day year.)

Harold L. Perlman, a Chicago businessman and lawyer, got angry enough about the whole thing to file a class-action lawsuit in 1970 against First National Bank of Chicago, a unit of First Chicago Corp. The suit alleges that the bank overcharged Mr. Perlman about \$5,000 by using the bobtailed year to calculate interest on two five-year loans totaling \$1.7 million.

The suit also says that Mr. Perlman, who claims he learned of the short-year calculation only when he couldn't reconcile a bank interest charge with his own figures, wasn't told that his loans were based on a 360-day year. It asks that the bank refund the alleged overcharges to him and to every other customer who might be affected.

Bending a Little

First National replies that the 360-day year is traditional and that Mr. Perlman, a long-time customer of the bank, was aware of this. The bank moved to dismiss the lawsuit as a class action, but the Cook County circuit court

denied the petition; the bank has appealed to the Illinois Appellate Court.

Banks have already lost a round in Oregon, where a federal district court has ruled that actual interest charges on several loans made by First National Bank of Oregon, a Portland-based unit of Western Bancorporation, were in excess of permissible state maximums. The reason: The bank was using the 360-day year. First National has appealed. In the meantime, another class action is pending in Philadelphia, where a lawyer has accused 20 banks of violating state usury ceilings through use of the bobtailed year.

As a result of the New Jersey state supreme court decision, 78 savings and loan associations in that state were required to rebate to borrowers about \$2.4 million in overcharges resulting from their computing mortgage interest rates on the 360-day year. The court had declared use of the bobtailed year illegal in mortgage contracts of more than one year.

The banks are bending a little under the pressure. For one thing, corporate financial officers now are a lot more aware of the bankers' year. "We have many more corporate borrowers who've been insisting on a 365-day clause in their loan agreements. They're getting it, because we don't want them to go elsewhere," says an executive of a major California bank. In other cases, borrowers report that their bankers have quietly abandoned the practice without being asked, or at least have begun disclosing their use of the 360-day year in their loan agreements.

BANK RECORDS AND FOREIGN TRANSACTIONS

For Legislative History of Act, see p. 4394

PUBLIC LAW 91-508; 84 STAT. 1114

[H. R. 15073]

An Act to amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

TITLE I—FINANCIAL RECORDKEEPING

Chapter	Sec.
1. Insured Banks and Insured Institutions	101
2. Other Financial Institutions	121

Chapter 1.—INSURED BANKS AND INSURED INSTITUTIONS

Sec.
101. Retention of records by insured banks.
102. Retention of records by insured institutions.

§ 101. Retention of records by insured banks

The Federal Deposit Insurance Act is amended (1) by redesignating sections 21 and 22 as 22 and 23, respectively, and (2) by inserting the following new section immediately after section 20:

"Sec. 21. (a) (1) The Congress finds that adequate records maintained by insured banks have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that microfilm or other reproductions and other records made by banks of checks, as well as records kept by banks of the identity of persons maintaining or authorized to act with respect to accounts therein, have been of particular value in this respect.

"(2) It is the purpose of this section to require the maintenance of appropriate types of records by insured banks in the United States where such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

"(b) Where the Secretary of the Treasury (referred to in this section as the 'Secretary') determines that the maintenance of appropriate types of records and other evidence by insured banks has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he shall prescribe regulations to carry out the purposes of this section.

"(c) Each insured bank shall maintain such records and other evidence, in such form as the Secretary shall require, of the identity of each person having an account in the United States with the bank and of each individual authorized to sign checks, make withdrawals, or otherwise act with respect to any such account. The Secretary may make such exemptions from any requirement otherwise imposed

under this subsection as are consistent with the purposes of this section.

"(d) Each insured bank shall make, to the extent that the regulations of the Secretary so require—

"(1) a microfilm or other reproduction of each check, draft, or similar instrument drawn on it and presented to it for payment; and

"(2) a record of each check, draft, or similar instrument received by it for deposit or collection, together with an identification of the party for whose account it is to be deposited or collected, unless the bank has already made a record of the party's identity pursuant to subsection (c).

"(e) Whenever any individual engages (whether as principal, agent, or bailee) in any transaction with an insured bank which is required to be reported or recorded under the Currency and Foreign Transactions Reporting Act, the bank shall require and retain such evidence of the identity of that individual as the Secretary may prescribe as appropriate under the circumstances.

"(f) In addition to or in lieu of the records and evidence otherwise referred to in this section, each insured bank shall maintain such records and evidence as the Secretary may prescribe to carry out the purposes of this section.

"(g) Any type of record or evidence required under this section shall be retained for such period as the Secretary may prescribe for the type in question. Any period so prescribed shall not exceed six years unless the Secretary determines, having regard for the purposes of this section, that a longer period is necessary in the case of a particular type of record or evidence.

"(h) The Secretary shall include in his annual report to the Congress information on his implementation of the authority conferred by this section and any similar authority with respect to record-keeping or reporting requirements conferred by other provisions of law."

§ 102. Retention of records by insured institutions

Title IV of the National Housing Act⁵² is amended by adding at the end thereof the following new section:

"Sec. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks."

Chapter 2.—OTHER FINANCIAL INSTITUTIONS

Sec.

121. Congressional findings and purpose.

122. Authority of Secretary with respect to reports on ownership and control.

123. Authority of Secretary with respect to recordkeeping and procedures.

124. Injunctions.

^{52.} 12 U.S.C.A. § 1724 et seq.

- 125. Civil penalties.
- 126. Criminal penalty.
- 127. Additional criminal penalty in certain cases.
- 128. Compliance.
- 129. Administrative procedure.

§ 121. Congressional findings and purpose

(a) The Congress finds that certain records maintained by businesses engaged in the functions described in section 123(b) of this Act have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings. The Congress further finds that the power to require reports of changes in the ownership, control, and managements of types of financial institutions referred to in section 122 of this Act may be necessary for the same purpose.

(b) It is the purpose of this chapter to require the maintenance of appropriate types of records and the making of appropriate reports by such businesses in the United States where such records or reports have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 122. Authority of Secretary with respect to reports on ownership and control

Where the Secretary determines that the making of appropriate reports by uninsured banks or uninsured institutions of any type with respect to their ownership, control, and managements and any changes therein has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such banks or institutions to make such reports as he determines in respect of such ownership, control, and managements and changes therein.

§ 123. Authority of Secretary with respect to recordkeeping and procedures

(a) Where the Secretary determines that the maintenance of appropriate records and procedures by any uninsured bank or uninsured institution, or any person engaging in the business of carrying on in the United States any of the functions referred to in subsection (b) of this section, has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, he may by regulation require such bank, institution, or person—

(1) to require, retain, or maintain, with respect to its functions as an uninsured bank or uninsured institution or its functions referred to in subsection (b), any records or evidence of any type which the Secretary is authorized under section 21 of the Federal Deposit Insurance Act to require insured banks to require, retain, or maintain; and

(2) to maintain procedures to assure compliance with requirements imposed under this chapter. For the purposes of any civil or criminal penalty, a separate violation of any requirement under this paragraph occurs with respect to each day and each

separate office, branch, or place of business in which the violation occurs or continues.

(b) The authority of the Secretary under this section extends to any person engaging in the business of carrying on any of the following functions:

(1) Issuing or redeeming checks, money orders, travelers' checks, or similar instruments, except as an incident to the conduct of its own nonfinancial business.

(2) Transferring funds or credits domestically or internationally.

(3) Operating a currency exchange or otherwise dealing in foreign currencies or credits.

(4) Operating a credit card system.

(5) Performing such similar, related, or substitute functions for any of the foregoing or for banking as may be specified by the Secretary in regulations.

§ 124. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of any regulation under this chapter, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with any regulation of the Secretary under this chapter.

§ 125. Civil penalties

(a) For each willful violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding \$1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this section, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

§ 126. Criminal penalty

Whoever willfully violates any regulation under this chapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

§ 127. Additional criminal penalty in certain cases

Whoever willfully violates any regulation under this chapter, section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act, where the violation is committed in further-

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ance of the commission of any violation of Federal law punishable by imprisonment for more than one year, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

§ 128. Compliance

The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

§ 129. Administrative procedure

The administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, shall apply to all proceedings under this chapter, section 21 of the Federal Deposit Insurance Act, and section 411 of the National Housing Act.

TITLE II—REPORTS OF CURRENCY AND FOREIGN TRANSACTIONS

Chapter	Sec.
1. General Provisions	201
2. Domestic Currency Transactions	221
3. Reports of Exports and Imports of Monetary Instruments	231
4. Foreign Transactions	241

Chapter 1.—GENERAL PROVISIONS

Sec.	
201.	Short title.
202.	Purpose.
203.	Definitions and rules of construction.
204.	Regulations.
205.	Compliance.
206.	Exemptions.
207.	Civil penalty.
208.	Injunctions.
209.	Criminal penalty.
210.	Additional criminal penalty in certain cases.
211.	Immunity of witnesses.
212.	Availability of information to other Federal agencies.
213.	Administrative procedure.

§ 201. Short title

This title may be cited as the "Currency and Foreign Transactions Reporting Act".

§ 202. Purpose

It is the purpose of this title to require certain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

§ 203. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section apply for the purposes of this title.

(b) The term "Secretary" means the Secretary of the Treasury.

(c) The term "person" includes natural persons, partnerships, trusts, estates, associations, corporations, and all entities cognizable as legal personalities. The term also includes any governmental department or agency specified by the Secretary either for the purpose of this title generally or any particular requirement thereunder.

(d) The term "United States", used in a geographical sense, includes the States and the District of Columbia, and to the extent the Secretary shall by regulation specify, either for the purposes of this title generally or any particular requirement thereunder, the Commonwealth of Puerto Rico, the possessions of the United States, United States military establishments, and United States diplomatic establishments.

(e) The term "financial institution" means any person which does business in any one or more of the following capacities:

(1) an insured bank as defined in section 3 of the Federal Deposit Insurance Act;

(2) a commercial bank or trust company;

(3) a private banker;

(4) an agency or a branch within the United States of any foreign bank;

(5) an insured institution as defined in section 401 of the National Housing Act;

(6) a savings bank, building and loan association, credit union, industrial bank, or other thrift institution;

(7) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934;

(8) a broker or dealer in securities or commodities;

(9) an investment banker or investment company;

(10) a currency exchange;

(11) an issuer, redeemer or cashier of travelers' checks, checks, money orders, or similar instruments;

(12) an operator of a credit card system;

(13) an insurance company;

(14) a dealer in precious metals, stones, or jewels;

(15) a pawnbroker;

(16) a loan or finance company;

(17) a travel agency;

(18) a licensed transmitter of funds;

(19) a telegraph company;

(20) a Federal, State, or local government institution which performs any of the functions of any of the businesses listed above; or

(21) any other type of business or institution performing similar, related, or substitute functions specified by the Secretary by regulation for the purposes of the provision of this title to which the regulation relates.

(f) The term "domestic", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears

to the performance by such institutions or agencies of functions within the United States.

(g) The term "financial agency" means any person which acts in the capacity of a financial institution or in the capacity of a bailee, depository trustee, agent, or in any other similar capacity with respect to money, credit, securities, or gold or transactions therein, on behalf of any person other than a government, a monetary or financial authority when acting as such, or an international financial institution of which the United States is a member.

(h) The term "foreign", used with reference to institutions or agencies, limits the applicability of the provision wherein it appears to the performance by such institutions or agencies of functions outside the United States.

(i) References to this title or any provision thereof include regulations issued under this title or the provision thereof in question.

(j) All reports required under this title and all records of any such reports are specifically exempted from disclosure under section 552 of title 5, United States Code.

(k) For the purposes of section 1001 of title 18, United States Code, the contents of reports required under any provision of this title are statements and representations in matters within the jurisdiction of an agency of the United States.

(l) The term "monetary instruments" means coin and currency of the United States, and in addition, such foreign coin and currencies, and such types of travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, and stock with title passing upon delivery, or the equivalent thereof, as the Secretary may by regulation specify for the purposes of the provision of this title to which the regulation relates.

§ 204. Regulations

The Secretary shall prescribe such regulations as he may deem appropriate to carry out the purposes of this title.

§ 205. Compliance

(a) The Secretary shall have the responsibility to assure compliance with the requirements of this title and may delegate such responsibility to the appropriate bank supervisory agency, or other supervisory agency.

(b) The Secretary may by regulation require any class of domestic financial institutions to maintain such procedures as he may deem appropriate to assure compliance with the provisions of this title. For the purposes of both civil and criminal penalties for violations of this section, a separate violation shall be deemed to occur with respect to each day and each separate office, branch, or place of business in which the violation occurs or continues.

§ 206. Exemptions

The Secretary may make such exemptions from any requirement otherwise imposed under this title as he may deem appropriate. Any

such exemption may be conditional or unconditional, by regulation, order, or licensing, or any combination thereof, and may relate to any particular transaction, to the type or amount of the transaction, to the party or parties or the classification of parties, or to any combination thereof. The Secretary may in his discretion, in any manner giving actual or constructive notice to the parties affected, revoke any exemption made under this section. Any such revocation shall remain in effect pending any judicial review.

§ 207. Civil penalty

(a) For each willful violation of this title, the Secretary may assess upon any domestic financial institution, and upon any partner, director, officer, or employee thereof who willfully participates in the violation, a civil penalty not exceeding \$1,000.

(b) In the event of the failure of any person to pay any penalty assessed under this title, a civil action for the recovery thereof may, in the discretion of the Secretary, be brought in the name of the United States.

§ 208. Injunctions

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in any acts or practices constituting a violation of the provisions of this title, or of any order thereunder, he may in his discretion bring an action, in the proper district court of the United States or the proper United States court of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. Upon application of the Secretary, any such court may also issue mandatory injunctions commanding any person to comply with the provisions of this title or any order of the Secretary made in pursuance thereof.

§ 209. Criminal penalty

Whoever willfully violates any provision of this title or any regulation under this title shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

§ 210. Additional criminal penalty in certain cases

Whoever willfully violates any provision of this title where the violation is—

(1) committed in furtherance of the commission of any other violation of Federal law, or

(2) committed as part of a pattern of illegal activity involving transactions exceeding \$100,000 in any twelve-month period, shall be fined not more than \$500,000 or imprisoned not more than five years, or both.

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§ 221.

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§ 211. Immunity of witnesses

Whenever a witness refuses on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding involving any violation of this title before or ancillary to—

- (1) a court or grand jury of the United States,
- (2) an agency of the United States, or
- (3) either House of Congress, a joint committee of the two

Houses, or a committee or a subcommittee of either House, and the person presiding over the proceeding communicates to the witness an order requiring him to give testimony or provide other information, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. No such testimony or other information so compelled under the order or evidence or other information which is obtained by the exploitation of such testimony may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

§ 212. Availability of information to other Federal agencies

The Secretary shall, upon such conditions and pursuant to such procedures as he may by regulation prescribe, make any information set forth in reports filed pursuant to this title available for a purpose consistent with the provisions of this title to any other department or agency of the Federal Government on the request of the head of such department or agency.

§ 213. Administrative procedure

Subject to section 203(j), the administrative procedure and judicial review provisions of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, shall apply to all proceedings under this title.

Chapter 2.—DOMESTIC CURRENCY TRANSACTIONS

Sec.

221. Reports of currency transactions required.
222. Persons required to file reports.
223. Reporting procedure.

§ 221. Reports of currency transactions required

Transactions involving any domestic financial institution shall be reported to the Secretary at such time, in such manner, and in such detail as the Secretary may require if they involve the payment, receipt, or transfer of United States currency, or such other monetary instruments as the Secretary may specify, in such amounts, denominations, or both, or under such circumstances, as the Secretary shall by regulation prescribe.

§ 222. Persons required to file reports

The report of any transaction required to be reported under this chapter shall be signed or otherwise made both by the domestic financial institution involved and by one or more of the other parties

thereto or participants therein, as the Secretary may require. If any party to or participant in the transaction is not an individual acting only for himself, the report shall identify the person or persons on whose behalf the transaction is entered into, and shall be made by the individuals acting as agents or bailees with respect thereto.

§ 223. Reporting procedure

(a) The Secretary may in his discretion designate domestic financial institutions, individually or by class, as agents of the United States to receive reports required under this chapter, except that an institution which is not insured, chartered, examined, or registered as such by any agency of the United States may not be so designated without its consent. The Secretary may suspend or revoke any such designation for any violation of this Act, or section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act.

(b) Any person (other than an institution designated under subsection (a)) required to file a report under this chapter with respect to a transaction with a domestic financial institution shall file the report with that institution, except that (1) if the institution is not designated under subsection (a), the report shall be filed as the Secretary shall prescribe, and (2) any such person may, at his election and in lieu of filing the report in the manner hereinabove prescribed, file the report with the Secretary. Domestic financial institutions designated under subsection (a) shall transmit reports filed with them, and shall file their own reports, as the Secretary shall prescribe.

Chapter 3.—REPORTS OF EXPORTS AND IMPORTS OF MONETARY INSTRUMENTS

- Sec.
- 231. Reports required.
- 232. Forfeiture.
- 233. Civil liability.
- 234. Remission by the Secretary.
- 235. Enforcement authority.

§ 231. Reports required

(a) Except as provided in subsection (c) of this section, whoever, whether as principal, agent, or bailee, or by an agent or bailee, knowingly—

(1) transports or causes to be transported monetary instruments—

(A) from any place within the United States to or through any place outside the United States, or

(B) to any place within the United States from or through any place outside the United States, or

(2) receives monetary instruments at the termination of their transportation to the United States from or through any place outside the United States

in an amount exceeding \$5,000 on any one occasion shall file a report or reports in accordance with subsection (b) of this section.

(b) Reports required under this section shall be filed at such times and places, and may contain such of the following information and any additional information, in such form and in such detail, as the Secretary may require:

(1) The legal capacity in which the person filing the report is acting with respect to the monetary instruments transported.

(2) The origin, destination, and route of the transportation.

(3) Where the monetary instruments are not legally and beneficially owned by the person transporting the same, or are transported for any purpose other than the use in his own behalf of the person transporting the same, the identities of the person from whom the monetary instruments are received, or to whom they are to be delivered, or both.

(4) The amounts and types of monetary instruments transported.

(c) Subsection (a) does not apply to any common carrier of passengers in respect of monetary instruments in the possession of its passengers, nor to any common carrier of goods in respect of shipments of monetary instruments not declared to be such by the shipper.

§ 232. Forfeiture

(a) Any monetary instruments which are in the process of any transportation with respect to which any report required to be filed under section 231(1) either has not been filed or contains material omissions or misstatements are subject to seizure and forfeiture to the United States.

(b) For the purpose of this section, monetary instruments transported by mail, by any common carrier, or by any messenger or bailee, are in process of transportation from the time they are delivered into the possession of the postal service, common carrier, messenger, or bailee until the time they are delivered into or retained in the possession of the addressee or intended recipient or any agent of the addressee or intended recipient for purposes other than further transportation within, or across any border of, the United States.

§ 233. Civil liability

The Secretary may assess a civil penalty upon any person who fails to file any report required under section 231, or who files such a report containing any material omission or misstatement. The amount of the penalty shall not exceed the amount of the monetary instruments with respect to whose transportation the report was required to be filed. The liabilities imposed by this chapter are in addition to any other liabilities, civil or criminal, except that the liability under this section shall be reduced by any amount actually forfeited under section 232.

§ 234. Remission by the Secretary

The Secretary may in his discretion remit any forfeiture or penalty under this chapter in whole or in part upon such terms and conditions as he deems reasonable and just.

§ 235. Enforcement authority

§ 242

(a) If the Secretary has reason to believe that monetary instruments are in the process of transportation and with respect to which a report required under section 231 has not been filed or contains material omissions or misstatements, he may apply to any court of competent jurisdiction for a search warrant. Upon a showing of probable cause, the court may issue a warrant authorizing the search of any or all of the following:

- (1) One or more designated persons.
- (2) One or more designated or described places or premises.
- (3) One or more designated or described letters, parcels, packages, or other physical objects.
- (4) One or more designated or described vehicles.

Any application for a search warrant pursuant to this section shall be accompanied by allegations of fact supporting the application.

(b) This section is not in derogation of the authority of the Secretary under any other law.

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CHAPTER 4.—FOREIGN TRANSACTIONS

Sec.

241. Records and reports required.

242. Classifications and requirements.

§ 301.

§ 241. Records and reports required

(a) The Secretary of the Treasury, having due regard for the need to avoid impeding or controlling the export or import of currency or other monetary instruments and having due regard also for the need to avoid burdening unreasonably persons who legitimately engage in transactions with foreign financial agencies, shall by regulation require any resident or citizen of the United States, or person in the United States and doing business therein, who engages in any transaction or maintains any relationship, directly or indirectly, on behalf of himself or another, with a foreign financial agency to maintain records or to file reports, or both, setting forth such of the following information, in such form and in such detail, as the Secretary may require:

- (1) The identities and addresses of the parties to the transaction or relationship.
- (2) The legal capacities in which the parties to the transaction or relationship are acting, and the identities of the real parties in interest if one or more of the parties are not acting solely as principals.
- (3) A description of the transaction or relationship including the amounts of money, credit, or other property involved.

(b) No person required to maintain records under this section shall be required to produce or otherwise disclose the contents of the records except in compliance with a subpoena or summons duly authorized and issued or as may otherwise be required by law.

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§ 242. Classifications and requirements

The Secretary may prescribe:

- (1) Any reasonable classification of persons subject to or exempt from any requirement imposed under section 241.
- (2) The foreign country or countries as to which any requirement imposed under section 241 applies or does not apply if, in the judgment of the Secretary, uniform applicability of any such requirement to all foreign countries is unnecessary or undesirable.
- (3) The magnitude of transactions subject to any requirement imposed under section 241.
- (4) Types of transactions subject to or exempt from any requirement imposed under section 241.
- (5) Such other matters as he may deem necessary to the application of this chapter.

TITLE III—MARGIN REQUIREMENTS

§ 301. Amendment of section 7 of the Securities Exchange Act of 1934

(a) Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g)⁶³ is amended by adding at the end thereof the following new subsection:

"(f) (1) It is unlawful for any United States person, or any foreign person controlled by a United States person or acting on behalf of or in conjunction with such person, to obtain, receive, or enjoy the beneficial use of a loan or other extension of credit from any lender (without regard to whether the lender's office or place of business is in a State or the transaction occurred in whole or in part within a State) for the purpose of (A) purchasing or carrying United States securities, or (B) purchasing or carrying within the United States of any other securities, if, under this section or rules and regulations prescribed thereunder, the loan or other credit transaction is prohibited or would be prohibited if it had been made or the transaction had otherwise occurred in a lender's office or other place of business in a State.

"(2) For the purposes of this subsection—

"(A) The term 'United States person' includes a person which is organized or exists under the laws of any State or, in the case of a natural person, a citizen or resident of the United States; a domestic estate; or a trust in which one or more of the foregoing persons has a cumulative direct or indirect beneficial interest in excess of 50 per centum of the value of the trust.

"(B) The term 'United States security' means a security (other than an exempted security) issued by a person incorporated under the laws of any State, or whose principal place of business is within a State.

"(C) The term 'foreign person controlled by a United States person' includes any noncorporate entity in which United States

⁶³ 15 U.S.C.A. § 78g(f) (1) to (3).

persons directly or indirectly have more than a 50 per centum beneficial interest, and any corporation in which one or more United States persons, directly or indirectly, own stock possessing more than 50 per centum of the total combined voting power of all classes of stock entitled to vote, or more than 50 per centum of the total value of shares of all classes of stock.

"(3) The Board of Governors of the Federal Reserve System may, in its discretion and with due regard for the purposes of this section, by rule or regulation exempt any class of United States persons or foreign persons controlled by a United States person from the application of this subsection."

(b) The amendment made by subsection (a) of this section does not affect the continuing validity of any rule or regulation under section 7 of the Securities Exchange Act of 1934 in effect prior to the effective date of the amendment.

TITLE IV—EFFECTIVE DATES

§ 401. Effective dates

(a) Except as otherwise provided in this section, titles I, II, and III of this Act and the amendments made thereby take effect on the first day of the seventh calendar month which begins after the date of enactment.

(b) The Secretary of the Treasury may by regulation provide that any provision of title I or II or any amendment made thereby shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment.

(c) The Board of Governors of the Federal Reserve System may by regulation provide that the amendment made by title III shall be effective on any date not earlier than the publication of the regulation in the Federal Register and not later than the first day of the thirteenth calendar month which begins after the date of enactment.

TITLE V—PROVISIONS RELATING TO CREDIT CARDS

Sec. 501. Section 103 of the Truth in Lending Act (82 Stat. 146)⁶⁴ is amended by redesignating subsections (j), (k), and (l) as subsections (p), (q), and (r), respectively, and by adding after subsection (i) the following:

"(j) The term 'adequate notice', as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

64. 16 U.S.C.A. § 1601 et seq.

"(k) The term 'credit card' means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

"(l) The term 'accepted credit card' means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

"(m) The term 'cardholder' means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

"(n) The term 'card issuer' means any person who issues a credit card, or the agent of such person with respect to such card.

"(o) The term 'unauthorized use', as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit."

Sec. 502. (a) The Truth in Lending Act (82 Stat. 146) is amended by adding after section 131 the following sections:

"§ 132. Issuance of credit cards

"No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card.

"§ 133. Liability of holder of credit card

"(a) A cardholder shall be liable for the unauthorized use of a credit card only if the card is an accepted credit card, the liability is not in excess of \$50, the card issuer gives adequate notice to the cardholder of the potential liability, the card issuer has provided the cardholder with a self-addressed, prestamped notification to be mailed by the cardholder in the event of the loss or theft of the credit card, and the unauthorized use occurs before the cardholder has notified the card issuer that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise. Notwithstanding the foregoing, no cardholder shall be liable for the unauthorized use of any credit card which was issued on or after the effective date of this section, and, after the expiration of twelve months following such effective date, no cardholder shall be liable for the unauthorized use of any credit card regardless of the date of its issuance, unless (1) the conditions of liability specified in the preceding sentence are met, and (2) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it. For the purposes of this section, a cardholder notifies a card issuer by taking such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

"(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

"(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

"(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card.

"§ 134. Fraudulent use of credit card

"Whoever, in a transaction affecting interstate or foreign commerce, uses any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card to obtain goods or services, or both, having a retail value aggregating \$5,000 or more, shall be fined not more than \$10,000 or imprisoned not more than five years, or both."

(b) The table of contents of chapter 2 of the Truth in Lending Act is amended by adding at the end thereof the following:

- "132. Issuance of credit cards.
- "133. Liability of holder of credit card.
- "134. Fraudulent use of credit card."

Sec. 503. The amendments to the Truth in Lending Act made by this title become effective as follows:

- (1) Section 132 of such Act takes effect upon the date of enactment of this title.
- (2) Section 133 of such Act takes effect upon the expiration of 90 days after such date of enactment.
- (3) Section 134 of such Act applies to offenses committed on or after such date of enactment.

TITLE VI—PROVISIONS RELATING TO CREDIT REPORTING AGENCIES

AMENDMENT OF CONSUMER CREDIT PROTECTION ACT

Sec. 601. The Consumer Credit Protection Act⁵⁵ is amended by adding at the end thereof the following new title:

"TITLE VI—CONSUMER CREDIT REPORTING

- "Sec.
- "601. Short title.
- "602. Findings and purpose.
- "603. Definitions and rules of construction.
- "604. Permissible purposes of reports.
- "605. Obsolete information.
- "606. Disclosure of investigative consumer reports.

55. 15 U.S.C.A. § 1601 et seq.

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- "607. Compliance procedures.
- "608. Disclosures to governmental agencies.
- "609. Disclosure to consumers.
- "610. Conditions of disclosure to consumers.
- "611. Procedure in case of disputed accuracy.
- "612. Charges for certain disclosures.
- "613. Public record information for employment purposes.
- "614. Restrictions on investigative consumer reports.
- "615. Requirements on users of consumer reports.
- "616. Civil liability for willful noncompliance.
- "617. Civil liability for negligent noncompliance.
- "618. Jurisdiction of courts; limitation of actions.
- "619. Obtaining information under false pretenses.
- "620. Unauthorized disclosures by officers or employees.
- "621. Administrative enforcement.
- "622. Relation to State laws.

"§ 601. Short title

~~"This title may be cited as the Fair Credit Reporting Act."~~

"§ 602. Findings and purpose

"(a) The Congress makes the following findings:

"(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

"(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

"(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

"(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

"(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

"§ 603. Definitions and rules of construction

"(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

"(b) The term 'person' means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

"(c) The term 'consumer' means an individual.

“(d) The term ‘consumer report’ means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under section 615.

“(e) The term ‘investigative consumer report’ means a consumer report or portion thereof in which information on a consumer’s character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer’s credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

“(f) The term ‘consumer reporting agency’ means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

“(g) The term ‘file’, when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

“(h) The term ‘employment purposes’ when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

“(i) The term ‘medical information’ means information or records obtained, with the consent of the individual to whom it relates, from

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licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

“§ 604. Permissible purposes of reports

“A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

“(1) In response to the order of a court having jurisdiction to issue such an order.

“(2) In accordance with the written instructions of the consumer to whom it relates.

“(3) To a person which it has reason to believe—

“(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

“(B) intends to use the information for employment purposes; or

“(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

“(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

“(E) otherwise has a legitimate business need for information in connection with a business transaction in which the consumer is involved.

“§ 605. Obsolete information

“(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

“(1) Bankruptcies which, from date of adjudication of the most recent bankruptcy, antedate the report by more than fourteen years.

“(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

“(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

“(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

“(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

“(6) Any other adverse item of information which antedates the report by more than seven years.

“(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

“(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$50,000 or more;

"(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of \$50,000 or more; or

"(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal \$20,000, or more.

"§ 606. Disclosure of investigative consumer reports

"(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

"(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

"(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

"(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written request made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a) (1), shall make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

"(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b).

"§ 607. Compliance procedures

"(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable

grounds for believing that the consumer report will not be used for a purpose listed in section 604.

"(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

"§ 608. Disclosures to governmental agencies

"Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency.

"§ 609. Disclosures to consumers

"(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

"(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

"(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided*, That in the event an action is brought under this title, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

"(3) The recipients of any consumer report on the consumer which it has furnished—

"(A) for employment purposes within the two-year period preceding the request, and

"(B) for any other purpose within the six-month period preceding the request.

"(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date.

"§ 610. Conditions of disclosure to consumers

"(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.

"(b) The disclosures required under section 609 shall be made to the consumer—

"(1) in person if he appears in person and furnishes proper identification; or

"(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll

charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

“(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

“(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer’s file in such person’s presence.

“(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer.

“§ 611. Procedure in case of disputed accuracy

“(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be verified, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer’s file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

“(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

“(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrelevant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer’s statement or a clear and accurate codification, or summary thereof.

“(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the

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consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

“§ 612. Charges for certain disclosures

“A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

“§ 613. Public record information for employment purposes

“A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

“(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

“(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

“§ 614. Restrictions on investigative consumer reports

“Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three month period preceding the date the subsequent report is furnished.

“§ 615. Requirements on users of consumer reports

“(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

“(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

“(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b).

“§ 616. Civil liability for willful noncompliance

“Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

“(1) any actual damages sustained by the consumer as a result of the failure;

“(2) such amount of punitive damages as the court may allow; and

“(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

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“§ 617. Civil liability for negligent noncompliance

“Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

“(1) any actual damages sustained by the consumer as a result of the failure;

“(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney’s fees as determined by the court.

“§ 618. Jurisdiction of courts; limitation of actions

“An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant’s liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

“§ 619. Obtaining information under false pretenses

“Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“§ 620. Unauthorized disclosures by officers or employees

“Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency’s files to a person not authorized to receive that information shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

“§ 621. Administrative enforcement

“(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by

the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

“(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

“(1) section 8 of the Federal Deposit Insurance Act, in the case of:

“(A) national banks, by the Comptroller of the Currency;

“(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

“(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

“(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

“(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

“(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

“(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

“(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

“(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act.

Oct. 26

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In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law.

"§ 622. Relation to State laws

"This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency."

EFFECTIVE DATE

Sec. 602. Section 504 of the Consumer Credit Protection Act⁵⁶ is amended by adding at the end thereof the following new subsection:

"(d) Title VI takes effect upon the expiration of one hundred and eighty days following the date of its enactment."

Approved October 26, 1970.

**DISTRICT OF COLUMBIA—POLICEMEN AND FIREMEN'S
RETIREMENT AND DISABILITY ACT
AMENDMENTS OF 1970**

PUBLIC LAW 91-509; 84 STAT. 1136

[S. 2695]

An Act to provide for the retirement of officers and members of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, the Executive Protective Service, and of certain officers and members of the United States Secret Service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 12 of the Act of September 1, 1916 (39 Stat. 718), as amended (D.C.Code, sec. 4-521 et seq.) is amended as follows:

(1) Paragraph (4) of subsection (a) of such section (D.C.Code, sec. 4-521) is amended to read as follows:

"(4) The term 'widower' means the surviving husband of a member who was married to such individual while she was a member."

(2) Paragraph (5) of subsection (a) of such section (D.C.Code, sec. 4-521) is amended to read as follows:

"(5) (A) The term 'child' means an unmarried child, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before the age of eighteen, is incapable of self-support.

56. 15 U.S.C.A. § 1681 note.

AMU PROGRESS REPORT

The Trustees of AMU are aggressively implementing changes in the direction of the University. The new direction was begun when the Board of Trustees was restructured so as to place the decision-making power in the hands of Alaskan Board members. Thus AMU is managed locally by the following Alaskan Trustees:

Mrs. Ruth Barrack	Alaska National Bank of the North
Ret. Major General John Bennett	Vice President, Era Helicopters
Harry E. Carter	Commissioner, Land Use Planning Commission
Robert O. Denny	President, Rodmar, Inc.
Miss Nina Faust	Lecturer, Language & Literature, Tennis and Student
Frederick Hood, Jr., M.D.	Surgeon
V. Louise Kellogg	Owner, Spring Creek Farm
James Kross	Private Consultant
Raymond I. Peterson	President, Wien Consolidated Airlines
John Overbey	Vice President, Forty-nine North, Inc.
The Honorable John Sackett	President, Tanana Chiefs & member of the Alaska State Senate
William H. Scott	Managing Partner, Peat, Marwick, Mitchell and Company
Lewis E. Simpson	President, Insurance, Inc.
Gordon Wear	President, Wear Insurance Agency
Ac Wischmeier	Superintendent, The Alaska Missionary Conference

Less than 25% of Alaskan Trustees of the University are related to the United Methodist Church in any way.

Thus, AMU, although presently smaller and only 13 years old, has joined a group of colleges and universities including Northwestern, Wesleyan, Emory, Duke, University of Denver and Southern Methodist, in which the denomination relatedness is history rather than control.

One of the continuing concerns of the Trustees has to do with the possibility of changing the name of the university to project more adequately the basic nature and new direction of the university.

The first task of the restructured Board of Trustees was to seek a new president who was a professional educator and not a clergyman, as the previous presidents had been. Dr. John O. Picton came to the

presidency directly from the Northwest Regional Educational Laboratory in Portland, Oregon, where as a specialist, his assignment was to work with public and private elementary, and secondary schools, and universities to increase the accountability and relevancy of their programs.

Dr. Picton was already in possession of data concerning Alaskan education by virtue of having participated in special programs for Alaskan elementary, secondary, university, and State Department of Education personnel, as well as having directed a study of the educational needs of Alaska.

From such a background, Dr. Picton moved quickly to identify the staff that he would need to achieve his objectives and he began making new assignments which resulted in a restructured administration which capitalizes on identifiable strengths.

In this connection and with respect to the emphasis on accountability, the governance of the university has come to include a policy recommending body made up of students, faculty, trustees, staff, and administrators called the University Senate.

The proceeds from the sale of land to the State of Alaska for the Anchorage Senior College campus of the University of Alaska were used immediately to retire all accounts payable and to put AMU on a pay as you go basis.

A management consulting concern has restructured the financial accountability system of the University, which has resulted in increased efficiency and economies including reduction in personnel.

The thesis that Alaskan students want diverse higher educational opportunities which will fit their needs, was substantiated when, as a result of the passage and funding of the state tuition grant legislation, AMU's enrollment showed a substantial increase over previous

years. In addition to the numerical increase in enrollment which resulted in excess of 1200 different individuals, plus more than 200 cross-registered students from the University of Alaska program in Anchorage, there was a marked increase in the statewide and cultural diversity of the student body.

Concurrent with the restructuring of the Board of Trustees and the Administration deliberate steps have been taken to make the academic programs at AMU more responsive to both the immediate and long range needs of Alaskans. Through an intensive series of activities, representative trustees, faculty, students, staff, and administrators have identified some major challenging needs of Alaska to which the University will address its program. Those challenging needs which have been selected were selected because of present capabilities and programs already in process.

The target needs are centered in health services; inter-cultural studies, with Native Studies as a basic component; environmental studies; and the liberal arts.

One of the new mechanisms for the implementation of the programs designed to meet the needs of Alaskans is Cooperative Education. For the first time in Alaskan education it will be possible for students to systematically combine academic studies with their chosen professional work experience outside, as well as inside the state, which will result in a well educated person in touch with the realities of the world of work.

Continuing the consortium efforts, begun in the late 1960's by U of A Regents and AMU Trustees, now visible in the Consortium Library, and further strengthened by the enlightened action of the State Legislature, the new direction of AMU is a natural extension of the higher

educational resources of Alaska.

AMU is grateful and proud to be at work in Alaska during these challenging years of the State's development.



DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATION
WASHINGTON, D.C. 20202

February 1, 1973

Dear Colleague:

The President's budget for the Fiscal Year 1974 was presented to Congress this week, together with a revised regular budget for education for the Fiscal Year 1973, which ends June 30. (Education has already received a supplemental appropriation for FY 73.)

This letter explains the major educational policies and priorities reflected in the President's recommendations as they relate to HEW's Education Division. The Division comprises the Office of Education, the National Institute of Education, and the Fund for the Improvement of Postsecondary Education.

The President's primary objectives of increasing employment and halting inflation, without resorting to tax increases, underlie the budgetary recommendations affecting all Federal agencies. These controlling conditions have transcended other policy considerations in the recently concluded budget building period.

For education, the budget sustains our highest priorities while cutting relatively marginal programs and making way for new Administration Initiatives to restructure and reform the Federal role in education.

The budget of the Office of Education, the largest component of the Education Division, totals \$5.35 billion in regular funds for 1973 and \$5.1 billion for 1974, with several programs being phased out.

Highlights of 1973 Revisions

The revised regular 1973 budget totals \$5.5 billion for the Education Division, compared with the \$5.3 billion appropriated for FY 72 and the \$6.1 billion originally requested for FY 73.

The difference between this submission and the original FY 73 request is largely due to an adjustment to take account of the \$271 million appropriated for Emergency School Assistance, instead of the \$1 billion originally requested, and \$10 million appropriated for Postsecondary Innovation, rather than the \$100 million requested by the President. The revised budget also reflects the elimination or reduction of certain narrowly focused programs.

Highlights of 1974 Budget

The 1974 budget for the Education Division totals \$5.3 billion. Major initiatives reflected in the 1974 proposal include:

1. Student Assistance. A 1974 request for \$959 million, combined with a 1973 supplemental of \$622 million, brings to nearly \$1.6 billion the amount budgeted to implement fully the Basic Educational Opportunity Grants program enacted last year. Under the new program, students in greatest need would receive the greatest amount of Federal assistance. Requests for the special programs for the disadvantaged -- Talent Search, Special Services, and Upward Bound -- are continued at the 1973 supplemental request level of \$70.3 million, a significant increase from \$56 million in 1972.

2. Special Education Revenue Sharing. The 1974 budget places high priority on the consolidation of Federal programs of formula grant assistance to the States for elementary and secondary education, with \$2.5 billion requested for this purpose. Under the proposal, more than 30 programs would be restructured into one authority covering five broad areas of national interest. This would provide greater flexibility for States and local education agencies to tailor programs and resources according to their own needs.

3. Minority Assistance. Aid for developing institutions of higher education is maintained at the 1973 supplemental request level of \$100 million. For bilingual education, the budget calls for \$35 million under Title VII of the Elementary and Secondary Education Act and \$10 million under the Emergency School Aid Act. Because of the large existing effort directed toward Indian education, no funds are requested to support the recently authorized Indian Education Act, an authority which would duplicate much of the assistance which is already provided and which would be maintained at a high level in

FY 1974. Nearly \$80 million has already been made available for compensatory programs, construction projects, and other efforts designed to supplement Bureau of Indian Affairs support for Federally operated Indian schools and to assist local education agencies serving Indian students.

4. Aid for Desegregating Schools. The 1974 budget requests \$271 million to continue at the 1973 level this major Administration initiative to help school districts throughout the country meet the additional costs of school desegregation. Most of the Emergency School Assistance funds appropriated in 1973 will be spent in academic year 1973-74.

5. National Institute of Education. The FY 73 budget totaled \$119 million, to which was added \$24 million from Office of Economic Opportunity programs, bringing the total FY 73 operating budget to \$143 million. The FY 74 budget requests an additional \$19 million, for a total of \$162 million for this new agency, which was established at Administration request to provide a national focus to the educational research effort. A number of former OE programs, and corresponding budget requests, have been transferred to NIE. However, almost one third of requested NIE funds would be unencumbered by previous commitments.

6. Postsecondary Innovation. The 1974 budget would increase from \$10 million to \$15 million the funding for this new program to support innovation and reform in post-secondary education.

7. Elementary and Secondary Education. More than \$3 billion of the 1974 request is for elementary and secondary programs. This includes \$2.5 billion for Education Revenue Sharing, \$271 million for Emergency School Assistance, \$94 million for an increase in demonstration programs and training and research for the handicapped, and \$181.5 million for other elementary and secondary programs. Among these, a major priority is further refinement of Career Education. Fourteen million dollars in new funds is programmed for demonstrating the effectiveness of several Career Education models; \$21 million in support of existing programs of innovation, curriculum development, and research reflects other aspects of the Career Education effort.

Programs recommended for elimination include impact aid payments for children whose parents work for the Federal Government but do not live on Federal property. (Since their

parents pay local property taxes like other citizens, these children do not constitute an exceptional economic burden on local schools.)

Support for State departments of education under Title V of the Elementary and Secondary Education Act would also be terminated in 1974. (Substantial Federal sums have already been spent under Title V to strengthen State agencies, which should now be in a position to maintain their own programs as Federal aid is consolidated under Education Revenue Sharing. State departments are eligible also for general revenue sharing funds.)

The experimental Follow Through program authorized by the Economic Opportunity Act was already scheduled to be phased out beginning in 1974. (Information on its most successful compensatory programs for children in the early elementary grades will be disseminated to local school districts for incorporation in their regular compensatory programs as they see fit.)

8. Postsecondary Education. The 1974 higher education budget would provide \$1.8 billion, an increase of \$116 million over the revised 1973 level, reflecting the Administration's commitment to increasing postsecondary opportunities. Institutional assistance is focused on strengthening developing institutions, particularly black colleges and other institutions serving large numbers of minorities. Programs designated for elimination include subsidies of interest on private loans for facilities construction, and categorical assistance for language training and area studies, university community services, aid to land-grant colleges, and support for training of college teacher personnel.

9. Educational Development. The Office of Education budget also includes \$123 million for educational development activities. This request represents a reduction from 1973 of \$53 million, some \$33 million of which would be in personnel training programs. However, support would be continued for training activities with high impact on the education of disadvantaged children. Most of the remaining decrease would result from the termination of environmental education and nutrition and health projects and reductions in the funding of drug education, dropout prevention, and educational broadcasting facilities and in the Federal contribution to Sesame Street and the Electric Company. Increases of \$3.7 million for support of educational statistics and of \$1 million for the National Achievement study are requested, bringing total requested funding for these programs to \$7.9 million and \$7 million respectively.

10. Library Programs. The 1974 budget would terminate Federal support for library programs. With the increasing availability of general revenue sharing funds, States and localities should be able to assume the support previously provided for public libraries. Assistance for elementary and secondary school libraries will be available to State and local officials under Education Revenue Sharing according to their relative priorities. Moreover, the present law does not provide for aiming library funds on the basis of economic need, with the result that resources are dissipated with no significant impact.

College library support is not recommended because legislative amendments have made it impossible to set funding priorities. Basic grants go to all institutions regardless of need, resulting in amounts so small as to have little if any effect on the quality of most colleges' library programs.

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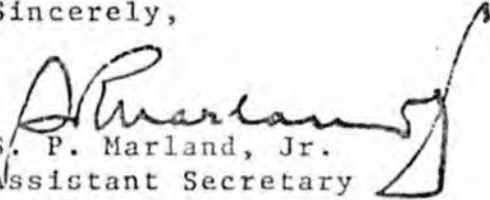
In summary, the Education Division budget seeks to sustain the highest priorities of the Administration while reducing programs which have accomplished their purpose or have been found ineffective. I recognize that, to you who are experiencing so keenly the fiscal problems of our schools and colleges, the proposed level of Federal assistance for these two years must be gravely disappointing. I intend to continue to serve as an advocate for our educational needs within the Government, seeking to point the way toward more effective and equitable Federal support.

At the same time, it should be recognized that the budget reflects the strain of transition to a sounder and more rational Federal role. The time has come to halt the proliferation of narrow categorical programs, which inevitably impose distorted priorities at the local level.

This budget seeks to provide Federal assistance in broad, national-purpose areas with greater flexibility and responsibility for managing and aiming program funds where the problems actually are. Such a restructuring of the Federal role should lay the basis for more substantial assistance in the future.

Appended is a summary of the budget. Detailed tables showing distribution to States and other recipients will be published after final action by the Congress and the President.

Sincerely,


S. P. Marland, Jr.
Assistant Secretary
for Education

Addressees:

Superintendents of Schools
College and University Presidents
Professional Organizations
OE Managers

EDUCATION
(BUDGET AUTHORITY IN MILLIONS)

	1972	1973	1974
EDUCATION REVENUE SHARING _____	\$2,496	\$2,521	\$2,527
EMERGENCY SCHOOL ASSISTANCE _____	106	271	271
OTHER ELEMENTARY AND SECONDARY EDUCATION _____	706	461	276
HIGHER EDUCATION _____	1,430	1,697	1,813
EDUCATIONAL DEVELOPMENT _____	207	176	123
LIBRARY RESOURCES _____	176	138	—
NATIONAL INSTITUTE OF EDUCATION _____	99	119	162
POSTSECONDARY INNOVATION _____	—	10	15
ADMINISTRATION _____	80	93	90
TOTAL	5,301	5,485	5,277

EDUCATION REVENUE SHARING

(BUDGET AUTHORITY IN MILLIONS)

	1972	1973	1974
EDUCATION REVENUE SHARING _____	\$ —	\$ —	\$2,527
CATEGORICAL PROGRAMS TO BE FOLDED INTO REVENUE SHARING.			
EDUCATIONALLY DEPRIVED CHILDREN (TITLE I) _____	1,598	1,585	—
SUPPLEMENTARY SERVICES _____	146	146	—
IMPACTED AREA AID ("A" CHILDREN) _____	189	227	—
EDUCATION FOR THE HANDICAPPED _____	37	37	—
VOCATIONAL EDUCATION _____	475	475	—
ADULT BASIC EDUCATION _____	51	51	—
TOTAL	<u>2,496</u>	<u>2,521</u>	<u>2,527*</u>

*\$244 MILLION FOR THE SCHOOL LUNCH PROGRAM, CARRIED IN THE AGRICULTURE BUDGET,
WILL ALSO BE INCLUDED, BRINGING THE TOTAL TO \$2,771 MILLION

HIGHER EDUCATION

(BUDGET AUTHORITY IN MILLIONS)

	1972	1973	1974
STUDENT ASSISTANCE:			
BASIC OPPORTUNITY GRANTS _____	\$220	\$622	\$959
WORK-STUDY AND COOPERATIVE EDUCATION _____	428	261	261
INSURED LOANS, SUBSIDIES, AND DEFAULTS _____	210	292	368
DIRECT LOANS _____	317	293	5
SUBTOTAL	<u>1,175</u>	<u>1,468</u>	<u>1,593</u>
SPECIAL PROGRAMS FOR THE DISADVANTAGED _____	56	70	70
INSTITUTIONAL ASSISTANCE:			
STRENGTHENING DEVELOPING INSTITUTIONS _____	52	100	100
CONSTRUCTION GRANTS, SUBSIDIES & LOANS _____	77	19	36
OTHER INSTITUTIONAL SUPPORT _____	43	20	7
SUBTOTAL	<u>172</u>	<u>139</u>	<u>143</u>
COLLEGE PERSONNEL DEVELOPMENT _____	27	20	7
TOTAL	<u>1,430</u>	<u>1,697</u>	<u>1,813</u>

OTHER EDUCATION PROGRAMS

(BUDGET AUTHORITY IN MILLIONS)

ELEMENTARY AND SECONDARY EDUCATION	1972	1973	1974
BILINGUAL EDUCATION	\$35	\$35	\$35
FOLLOW THROUGH	62	58	41
EDUCATION FOR THE HANDICAPPED	72	93	94
VOCATIONAL AND ADULT EDUCATION SPECIAL PROJECTS	31	31	45
IMPACTED AREA AID	423	204	61
OTHER	83	40	—
TOTAL	706	461	276
EDUCATIONAL DEVELOPMENT			
EDUCATION PROFESSIONS DEVELOPMENT:			
TEACHER CORPS	37	37	37
OTHER PROFESSIONAL DEVELOPMENT	107	69	36
SUBTOTAL	144	106	73
EDUCATIONAL BROADCASTING FACILITIES	13	13	10
RIGHT TO READ	2	12	12
DATA SYSTEMS IMPROVEMENT	10	10	15
OTHER PROGRAMS	38	35	13
TOTAL	207	176	123

Testimony of William E. Davis, Alaska Methodist University SB 124 - HB 181
Joint Committees on Health, Education, & Social Services, Alaska Legislature
February 28, 1973

Dr. Beirne, Senator Thomas, members of the Committees.

My name is Dr. William E. Davis; I am the Director of Research at Alaska Methodist University.

May I begin by expressing AMU's gratitude to all of you for the time and attention you are devoting to the concerns of Higher Education in Alaska. I want to assure you that your efforts are appreciated and your hard work is appreciated.

I have been asked by the President of AMU, Dr. John O. Picton, to express his personal regret at not being able to appear today. He is this week in Seattle, visiting the Region X HEW office; in New York, visiting private foundations and industries; and possibly Washington, D.C., for meetings with the U. S. Office of Education. His trips, however, does reflect the efforts of the present administration to seek aggressively support for AMU from the private sector.

Turning now to SB 124 and HB 181, the technical amendments to the tuition grant law. We are generally in favor of these amendments and certainly welcome efforts to clarify provisions of the bill. In most cases the changes proposed speak to problem areas we have recognized in the program.

We agree with the changes in Sects. 1, 2, 4, & 5 deleting the word "election" in reference to the Committee.

We favor adding the phrase "a year" in Sect. 6 to clarify the interest rate period.

We certainly agree with Sect. 7 amendments. Even though the matter has been corrected by regulation, it was never our belief that students should have to pay less than the fees charged by the public institution.

DAVIS

Jt. HESS testimony - 2/28/73

We favor the Sect. 8 changes believing that a "blue ribbon" group to determine the cost differentials.

We agree with the clarifications in Sect. 11 regarding who sets the grants and with Sect. 12 appellate procedures.

Finally, we support the Sect 14 change defining a part-time student as one enrolled for six rather than two semester hour credits.

We request clarification of the following changes.

1. Sect. 3. Is it your intention to supply each applicant with a full set of the regulations? There now is a summary of them on the application papers, but the full set is a rather thick document. It would seem an unnecessary expense to provide each eligible student with a full set of the regulations.
2. Sect. 9. We are unclear as to the intent of this new section. Mr. Hall's Explanatory memo says it will prevent "pyramiding" of federal grants on top of the state program. There is no way that we would charge double tuition to students and so, unless there is some reason why this formula is absolutely essential, we would favor not adding it. Furthermore, who would use the formula? If the state grant officer were the one, the private institutions would have to put their financial packages together before the state grants were made which would become an onerous administrative chore.
3. Sect. 10(f) Our position here is difficult to state. Naturally, we favor the present interpretation of the selection committee which allows us to use the balance of tuition paid to count toward our requisite 22.5%. We also suppose that this was not the intent of the Legislation as passed.

DAVIS - p. 3

Jt. HESS testimony - 2/28/73

We wonder if a compromise is possible? Could room and board be deleted so that only the balance of tuition and fees counted as "nonpublic sources?" Or as another alternative, perhaps you would consider crediting some portion, say 50%, of tuition and fees beyond the state grant? Certainly what parent's pay towards their children's education ought to be permissible as "non-public" sources.

We agree, of course, with the clarifying definition at the end of this section regarding "remission of tuition" and "contractual agreement ...".

We would favor one wording change: Line 27 we believe should read "grants shall be credited only in the year the gift or grant vests in the donee."

4. Sect. 10 (g). This section, to be frank, puzzles us. We realize the basis for establishing the instructional costs at the public university but the logic of the "parallelism" is not clear. On the one hand, we are computing costs to determine the grant award; in this section you are limiting how we can spend our income.

At the very least, the accounting problems would be tremendous since we would have to separate tuition grant income from all other sources to insure that it not be spent in any of the listed areas.

If you believe that the legislative intent to spend the monies on academic and instructional programs must be stated statutorily, then cannot this be phrased without recourse to the University of Alaska's budget categories? For example, what is the definition of research and public service? We simply don't break our budget into these divisions.

May I cite one more example. Intramural athletics are sometime part of our required academic program. It is going to be very difficult to break out the costs for non-required intramurals vs. required intramurals to be sure tuition grant income is not used to pay a particular professor's salary.

Again unless it is absolutely necessary, we would favor deletion of this new section.

5. Sect 12. On line 20 of pg 6 we request that the phrase "certified public accounting" be changed to "auditing".

6. Sect 13. We applaud the effort here to clarify the potential situation that existed under the present wording. We do favor adding one phrase at the very end of the sentence (pg. 7, line 2) as follows:

"under a consortium agreement between any public and private Alaskan higher educational institutions."

Since there are legally binding instruments, in the case of ANU between the Regents and the Trustees, and in the case of Sheldon Jackson, a contract with the community college, we believe this phraseology will meet the problem of defining a consortium.

Thank you for your consideration of these points.

HB 180 -- SB 123

May I begin by saying that Alaska Methodist University favors the establishment of the type of postsecondary planning commission that is proposed in this legislation. We have some serious reservations about the particular composition and functions as provided for in these bills but want to be sure to be recorded as favoring the concept.

With respect to the composition of the Commission, we recognize that a great deal of thought has gone into the suggested arrangement. However, from the point of view of private higher education, we find the commission unbalanced. Surely if the Regents have two members, one each from the Boards of Trustees of Sheldon Jackson and AMU would be more equitable. Since there is also a member from the Community Colleges, is there a need for two Regents? The "1202" commission is designed to deal with community colleges more than anything else; surely this alone is an argument for the representation of Sheldon Jackson as the only two-year private institution in the state.

We also note that proprietary institutions are not named specifically as members of the Commission but are assumed as appointees from the general public. We favor specific members from proprietary institutions.

While recognizing the federal requirement for "broad and equitable representation" from the general public, we find the limitations specified in 903 (b) [p. 3 lines 1 - 7] far too

DAVIS - p. 6.

Jt. HESS testimony 2/28/73

specific. If this is demanded by the federal guidelines, I suppose we must have it but if we can avoid it, such specificity should be eschewed.

With reference to the functions of the commission, we believe that some sharpening needs to occur. Perhaps in the beginning the commission should focus only on planning. Advising might come later. For example, the Trustees of AMU, as the corporate body responsible for the institution, believe it is their responsibility to determine the programs appropriate to our resources and interests. I am sure the Trustees will be pleased to work with the Commission but also am sure they will be chary of counsel if they feel it intrudes on their responsibility.

We recognize that this is a most difficult area to define and have no specific wording changes to propose for this section but we do hope you will give careful attention to the charge of the commission.

Since there are already state agencies responsible for and funded to take care of the administrative details under existing federal programs, we are not in favor of transferring these programs to the Commission unless required by federal statute. We would drop sections 2 through 5 of 909 (b).

There is one wording change we request and that is on pg. 6 line 2. The Commission should be able to request but not require data from the institutions involved.

In keeping with the statement above, we do not favor at this time moving the tuition grant program to the Commission.

In closing may I thank you again for your continuing concern about the youth of Alaska. After all, that's why we are here -- to decide how best to provide for the needs of the college and university students of the state. We know you have their best interests always before you; we too are seeking to serve them. With the continuing commitment you show, we cannot help but meet these challenges.

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

I. REQUEST

Bill Identification: House Bill 232
 Title: An Act relating to the Districts of the Superior Court
 Requested by: Legislative Finance Date: March 22, 1973
 Return Date Requested: March 29, 1973
 Agency: Alaska Court System Program: Administration of Justice

II. FISCAL DETAIL

Budget Request Unit(s) Affected: None
 A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	/	/	/	/
MAN MONTHS (P./T.)	/	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

House Bill 232 would create no additional costs for the Alaska Court System. The realignment of judicial districts would require a reassignment of duties among Judges in the second and fourth districts, but the overall cost should remain the same.

IV. ATTACHMENTS

V. DATE: March 29, 1973

PREPARED BY:

Richard Barrier
 Richard Barrier

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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

I. REQUEST

Bill Identification: House Bill 231
 Title: An act establishing a fifth district of the Superior Court
 Requested by: Legislative Finance Date: March 22, 1973
 Return Date Requested: March 29, 1973
 Agency: Alaska Court System Program: Administration of Justice

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Alaska Court System

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 73	FY 74	FY 75	FY 76	FY 77	FY 78
100 PERSONAL SERVICES	74.7	80.0	85.0	92.0	99.0	106.0
200 TRAVEL	10.0	11.0	12.0	13.0	14.0	15.0
300 CONTRACTUAL	58.1	62.0	65.0	70.0	75.0	80.0
400 COMMODITIES	2.0	2.2	2.4	2.7	3.0	3.3
500 EQUIPMENT	10.5	1.0	1.0	1.0	1.0	1.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	155.3	156.2	165.4	178.7	192.0	205.3

B. FUNDING: (Thousands of dollars)

GENERAL FUND	155.3	156.2	165.4	178.7	192.0	205.3
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	3 /	3 /	3 /	3 /	3 /	3 /
MAN MONTHS (P./T.)	36 /	36 /	36 /	36 /	36 /	36 /

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. ATTACHMENTS

Supplement I - Operating Costs
 Supplement II - Capital Costs

V. DATE: March 29, 1973

PREPARED BY:

Richard Barrier
 Richard Barrier

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

SUPPLEMENT TO FISCAL NOTE FOR HB 231
 Establishing a fifth district of the Superior Court

100	Personnel	Judge	Salary 33,000 Empl. Ben. 6,600	39,600
		Clerk of Court I	Salary Range 14 15,756 Empl. Ben. 3,051	18,807
		Deputy Clerk of Court III	Salary Range 12 13,596 Empl. Ben. 2,719	<u>16,315</u>
				<u>74,722</u>
200	Travel	Travel of judge and staff to remote areas for trials		10,000
300	Contractual			
		Communications	1,400	
		Repairs and Service	200	
		Trans. of new hire	1,500	
		Rental of space	20,000	
		Jury Costs	<u>35,000</u>	58,100
400	Commodities			
		Office Supplies		2,000
500	Equipment			
		Judge:		
		1 Executive desk	325	
		1 Swivel chair	225	
		2 Bookcases @ 113	226	
		4 Side chairs @ 171	684	
		1 Conference table	200	
		1 Filing cabinet	154	
		1 Coatrack	50	
		1 Dictating Unit	495	
		1 Dictating Unit (Portable)	450	
		1 Transcribing Unit	495	
		1 Dictaphone Recording Equipment	3,200	
		1 Flag with standards	115	
		12 Folding chairs @ 9	108	
		1 Receipt machine	100	
		1 Time stamp	400	
		1 Copy machine	<u>450</u>	7,677
		Clerk of Court I		
		1 Executive desk	220	
		1 Swivel chair	110	
		1 Typewriter	549	
		2 Side chairs @ 40	80	
		1 Coatrack	50	
		2 Filing cabinets @ 125	250	
		1 Bookcase	100	
		1 Work table	<u>200</u>	1,559

500 Equipment (Continued)

Deputy Clerk of Court III:		
1 Executive desk	220	
1 Swivel chair	110	
1 Typewriter	549	
2 Side chairs @ 40	80	
1 Coatrack	50	
1 Filing cabinet	125	
1 Bookcase	<u>100</u>	<u>1,234</u>
		10,470

*Rental of space would be on a temporary basis, until a permanent facility can be constructed. (See attached analysis of the capital project.) In the interim, the Superior Court Judge of the Fifth District would work out of Fairbanks, conducting trials in Barrow and other locations as necessary. Only after a permanent facility is constructed in Barrow could the Alaska Court System station a judge there on a full-time basis.

SUPPLEMENT #2

House Bill No. 231 - Creation of a Fifth Judicial District, from election district 21, 18, 20, and 22 within the boundary of the North Slope Borough, as those districts are described in Article XIV of the State Constitution on March 19, 1959, at this time creates a problem of locating or building a suitable facility for the Court to operate from.

The Alaska Court System has joined planning for a facility at Barrow as follows:

1. Barrow Air Terminal Complex - In 1971, we agreed to participate in this venture with the City of Barrow, the state and federal funds were to be provided. No results as yet.
2. State Combined Facility - The General Fund appropriation for 1970 in amount of approximately 33 million included a facility for Barrow. No action was concluded.
3. Senate Bill No. 163 is currently before the legislature. A request for a Barrow facility in amount of \$435,000 is included in this package.

ANALYSIS

1. Barrow: Present Space and Deficiencies

Located in the Second Judicial District--court presided over by a full-time magistrate, Sadie Neakok.

Current Space--up until January 25, 1972 Magistrate Neakok held court and operated from her home. As of January 25 we have rented 324 sq. ft. of office space in the Post Office Building.

Deficiencies of Present Space:

- a. No courtroom or jury space.
- b. Inadequate court facilities for clerical work area and no space for recording functions.
- c. Unsatisfactory reference library both as to content and space provision.
- d. No space for ancillary court agencies.

A facility that provides 5,800 sq. ft. is a minimum requirement for Superior Court operation.

Definition:

A minor court facility of 5,800 sq. ft. is designed to provide the capability of holding Superior Court trials at each location and to provide adequate library reference material.

SUPPLEMENT #2 (Continued)

Space Evaluation:

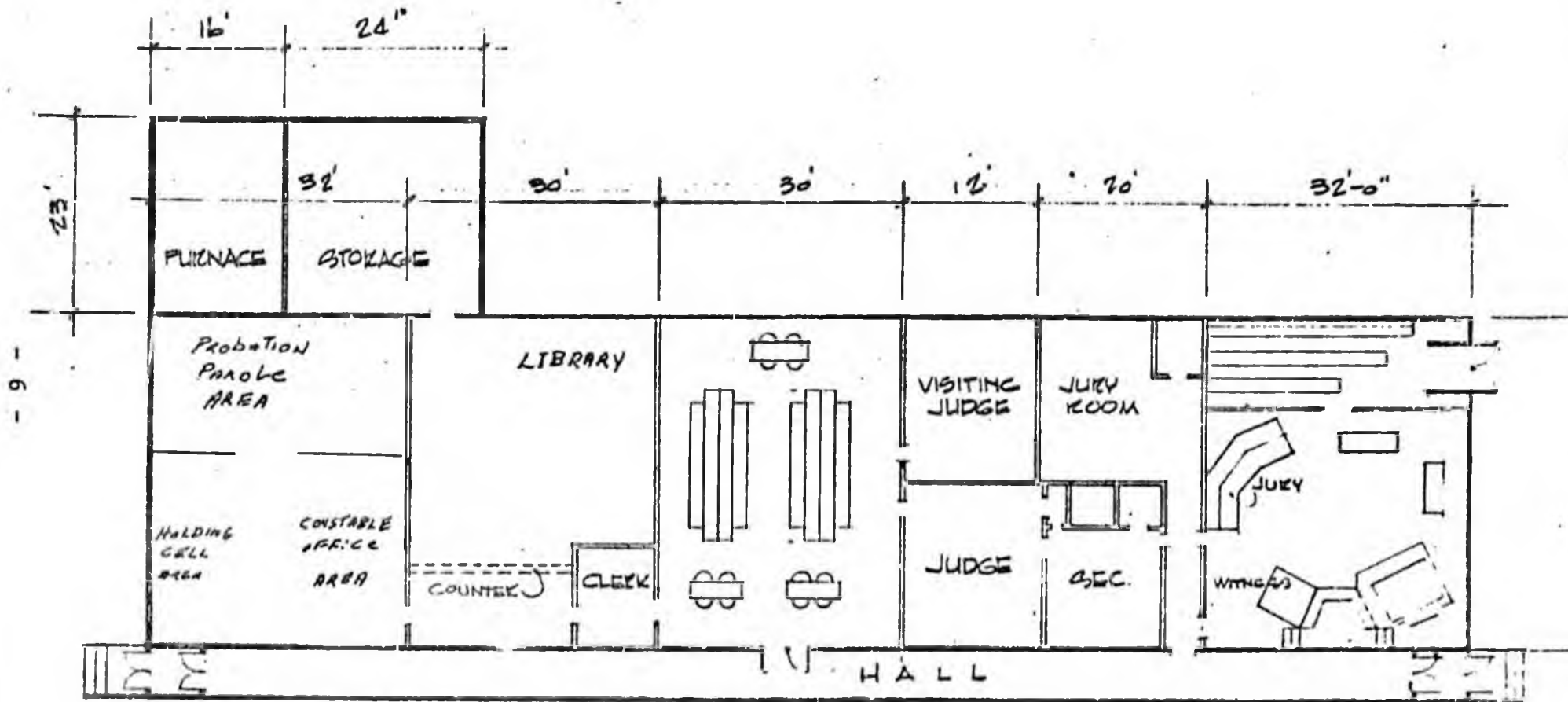
The enclosed floor plan for a facility of 5,800 sq. ft. is designed to be used as is or it can be utilized with other space requirements to be built on the other side of the hall. Space has been provided within the Court System plan for related State and Village Police Programs.

Recommendation:

In the event a Fifth District is created the Court System could operate from Fairbanks until a facility is provided at the earliest possible moment in Barrow. The Utkeagvik Presbyterian Church has recently made an addition to its church and we plan to use part of the old church for courtroom purposes on a rental basis.

The Court System requests that any creation of a Fifth Judicial District should include a provision for construction of a minor facility as defined in this report.

Suggested Floor Plan for 5,800 square foot Bush Justice Facilities



SCALE 1/16" = 1'

CONCILIATION IN THE NATIVE VILLAGE:
AN EXPERIMENT IN ALASKA JUSTICE

by

Stephen Conn and Arthur Hippler

Since Alaska was purchased from Russia in 1867, its legal system has faced logistical challenges which are unique to this great land of 586,000,000 square miles. Other procedural challenges are similar to those which many court systems confront when they attempt to provide adequate forums to scattered, rural populations whose culture and history are quite different from those who laid the basis for the evolution of Anglo-American jurisprudence.

The first challenge to the unified court system of Alaska is the state's size. Half of the state's 300,000 plus population lives in Anchorage, Fairbanks, and Juneau, and the rest is scattered widely in villages and towns which are usually only accessible by river, sea, or air. Within this group are nearly 55,000 Indians, Eskimos, and Aleuts who reside in over 200 villages with populations ranging from 25 to 2,500.

The interior Indian and Eskimo villages of Alaska have their own history of law ways and special relationships to American law. The intervention of white law in the person of law officers, traveling judges and unofficial agents, the military, missionaries, and others has offered them only a partial experience with a complete justice system as most Americans know it. This long-term disengagement from the legal process occurred for several reasons. In the territory's earliest days Native-Americans were not considered to be citizens. However, even when this stigma was removed by Congress in the early 1920s, villages were more dependent upon their own mechanisms for judging

disputes and punishing offenders than they could be from the traveling judge or police officer whose domain was immense.

A typical Eskimo village, for example, consists of 300 people living along a river bank or an ocean beach, 60 miles from the nearest neighbor and three hundred miles from the regional center where troopers are stationed and a professional judge visits or resides. In many cases villages are separated by tundra which is impassable during periods of thaw and freeze. In nearly all cases they are unconnected by roads. Communication is maintained by radio and the not completely reliable "bush air services."

Chief among the Native populations which have been hardest to service are Athabascan Indians who reside in the vast Alaska interior, Yupik Eskimos whose fifty villages in 90,000 square miles in Southwestern Alaska were served by a single trooper, and Inupiat and Siberian Eskimos whose whaling communities are situated on the coasts of the Arctic Ocean and Bering Sea.

These Native groups have been served since the inception of white contact at the turn of the century by professionals who either removed serious offenders to distant courts or who came into the village on special trips to mete out justice. Although the territorial and later state court system provided lay judges in these rural areas, private attorneys have continued to reside in predominately white urban and rural communities. District attorneys, public defenders, and legal services attorneys are only now beginning to make increased visits to villages to investigate cases. However, their litigation is located in the district and superior courts located outside of the smaller villages.

The problem of daily justice has by and large been left to forums which operated extralegally or with only a partial legal jurisdiction. Village councils emerged as the principle forums for disputes in many Eskimo and Indian villages. Some drew their authority from incorporation under the Indian Reorganization Act of 1934. The act allowed the group to make and enforce rules upon its members. Others looked to territorial and state law which allowed villages without magistrates to define ordinances and enforce them in proceedings similar to those of the court. Finally, in recent years traditional villages were aided by troopers and district attorneys in the definition of simple village rules which had their descriptive analogues in state criminal law. The operating theory, while extralegal, was a practical one: the council would attempt to enforce its law and failing that could look to professionals to fly into the village, make a formal arrest, and prosecute the offender.

Council justice was achieved primarily through a process of conciliation. In modern terms it could be considered the first practical diversion project within a state court system. It achieved what professionals were effectively blocked from achieving without continued residence in the village--a system whereby lesser conflicts could be resolved within the home community.

In 1970 spurred by the vigorous advocacy of reforms in rural justice by the late Chief Justice George Boney, academicians, legal professionals, and Native representatives met in the state's first conference addressed to the problem of bush justice.

Procedural recommendations of the conference focused upon the two historical problems confronted by the justice system and its Native clients. The conference resolved that:

"The locale 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," and further, that "there must be greater access to legal services and the process of justice in village Alaska."

While the conference saw the strengthening of village councils as central to the administration of justice, several factors were already at work to diminish extralegal council activity.

Most significant was the increased appointment of magistrates in Native villages. These courts with limited criminal and civil jurisdiction appeared to supplant the council because their legal authority was clearly mandated. However, overlooked by policymakers was the distinct difference between the adversary approach which was theoretically available in magistrate court and the less formal conciliatory approach which was the mainstay of councils.

Even if councils had not been supplanted by magistrates, however, other responsibilities were accruing to village political leadership which gave them less time to delve deeply into local disputes. Increased visits by government agents, delegated responsibility to the councils to appoint village health aides and administer welfare programs, and more recently, governmental responsibility for ten townships of land in the Alaska Native Land Claims Settlement Act worked to remake village councils into local governments not

unlike those found in many rural towns. Council members who were effective conciliators within the village were often replaced by residents who could communicate with outside bureaucrats.

Ironically, more regular visits by troopers and attorneys after the conference on bush justice undid or substantially changed the capacity of the councils to make an initial determination regarding the dispute. Although sophisticated troopers and professionals still sought the council's advice, their arrival signaled the removal of the dispute from the council for all practical purposes.

How then could the legal system broaden its access to Native residents and at the same time allow the locus of decision making in the administration of justice to be retained in the village?

The authors, an attorney and cultural anthropologist, sought answers to this fundamental question. They have attempted to look at both customary law ways and particularly at the process of dispute resolution embodied in council justice to define from this an alternative legal process for Alaska villages which would not block Natives from fully exercising their Constitutional rights but would not deny them an opportunity to define and resolve disputes according to their own perception of the problems, the parties to the problem, and the appropriate remedies for intravillage conflicts. The fundamental difference between the procedure finally defined by the authors, the conciliation board, and that which had been developed by the Natives themselves as a village council was that it was capable of being structurally integrated into the Alaska justice process. It was expected that the process within that structure would be similar to that followed in the council.

Besides conducting intensive interviews, observing cases being resolved in the villages, and securing old council records, the authors looked to other countries for models. Their final decision was to give procedural meaning to a state statute which allows the victims of most misdemeanors to compromise with the offender and then offer this compromise to the court to see if the judge will accept it in lieu of a continued criminal justice process.

The premise upon which the Alaska experiment is grounded was developed independently but is very similar to one developed elsewhere. In 1969 the Center for Dispute Settlement of the American Arbitration Association developed in Philadelphia and in other cities a process through which private criminal warrants could be delegated to a community disputes settlement tribunal. The 4-A project (Arbitration as an Alternative to the Private Criminal Warranty) was established because the court and criminal was not seen as the most effective forum for the resolution of "neighborhood squabbles."

An evaluator of the 4-A project stated:

The key to the Center's 4-A operation is applying dimensions and the principals of mediation, arbitration, fact finding and conciliation that the American Arbitration Association has used successfully during nearly fifty years of experience in dispute settlement. The four years of the Center's existence have proven in approximately two thousand cases that these arbitral techniques applied to community disputes procedure lasting and satisfying results not only to those directly involved but to the community as a whole.

This approach can be easily compared with the Alaska village format. The key to the operation of the conciliation board in Eskimo and (in the foreseeable future) other Native villages is that it draws techniques developed by the Natives themselves in nearly seventy years of council hearings.

In order to understand how conciliation works as an alternative to criminal process in rural Eskimo villages, it is useful to compare it with the notable project now sponsored by the American Arbitration Association's Center for Dispute Settlement in conjunction with the Philadelphia municipal court. The author Conn recently viewed this project in operation.

In the Philadelphia project private criminal complaints are diverted by the court administrator, a lay person, and to a lesser extent by the municipal judge or member of the district attorneys office. In the village the village constable may suggest conciliation in lieu of arrest or the state magistrate may suggest conciliation. Private individuals may also conciliate disputes on their own initiative.

Case selection for the conciliation-arbitration process in Philadelphia is determined by personnel of the court system. They apply their own private criteria to this process and appear to order parties to attempt conciliation rather than to explain the alternative in depth to potential participants. It is left to Center personnel to explain the conciliation process to participants both at the court and at the center and to then attempt to make the process work either as arbitration or as conciliation.

In the village the process turns first upon judgment of local law enforcement personnel and the local judge if a complaint has been made to them and second upon full cooperation by victim and the alleged offender. If either refuses to conciliate, the option is waived.

In Philadelphia the clients of the conciliation process tend to be black and poor and to live in the core of the city. This reflects in part the

jurisdiction of the municipal court and the propensity of urban poor to use the criminal process instead of the civil process which requires legal representation even when the conflict might have broader civil remedial needs than criminal. If a disputant approached the police, the police would advise them to file a criminal complaint unless the police have witnessed the violation of a misdemeanor.

In the village the clients for the process will be uniformly village Eskimos. Although a limited civil jurisdiction for damages up to \$1,000 in the local magistrate court is available, few Natives in the villages have experienced or are familiar with civil actions except for actions for divorce, adoption, or intestate proceedings. None of these latter actions are available under the jurisdiction of magistrate courts. When problems were heard before the village council, no distinction was made between civil and criminal disputes. Also, magistrate courts cannot offer remedies in equity such as specific performance. If such remedies are requested or affirmative defenses to contract or tort actions are raised, the magistrate must dismiss the action and have it filed in district court in a town many miles by air from any Native village. Finally, although urban residents may be easily referred to legal services programs or to private attorneys, no legal services attorneys are available to village Natives except in larger towns or in cities. Only a single private attorney resides in any of the 200 Native villages in Alaska.

In Philadelphia the case is actually transferred to the Center. The arbitrators may either aid the parties in arriving at a consent agreement or reach a determination themselves and issue an award after ten days. Even

where consent agreements are arrived out, the arbitrators in cases observed by the author indicated that they were acting with the full authority of the municipal court and pointed out to participants that they could enforce agreements by employing the contempt power of the court or in the case where particular acts are embodied in the agreement or award by filing a civil action for enforcement of the act if the party does not comply with the agreement.

The conciliation board in the village cannot equate its authority with the local court. Its relationship to the formal actors in the legal process is informal. Although the Philadelphia project is supported both through an agreement with the municipal court system and the state law on arbitration, the Alaska experiment is procedurally an informal arrangement subject to judicial approval. If the arbitration of small claims under the Alaska arbitration law is to be afforded villages, the state statute on arbitration of small claims would have to be amended to allow for arbitration by persons other than attorneys or magistrates.

Arbitrators in the Philadelphia project are predominately lawyers and other professional persons. An evaluation report of the project noted the need to bring more women and blacks from the urban community into the process. Arbitrators are paid \$40 per case from federal funds.

The village project employs not less than three conciliators drawn from a panel of five residents who were appointed by the village council. Village

conciliators were selected to reflect young, middle-aged, and old Eskimo residents. The head of the experimental conciliation board, for example, is an older resident, ~~who is said by some to be a shaman~~. He has been an advocate of a legal challenge to place secondary schools in the village. A younger member of the board was a plaintiff in the suit. The council selected conciliators based upon their capacity for independent judgment, their propensity not to try to dominate others, and their absence of identification with established authorities such as employment with the Bureau of Indian Affairs. For example, a Catholic priest who serves the village was not selected. Thus the qualifications for conciliators are similar to those of councilmen who served Eskimos for many years.

In order to insure impartiality, the Philadelphia arbitrator appointed to a case discloses any relationship to the parties, "financial, professional, social, or other kind." Arbitrators with such relationships are not selected.

Village conciliators, by definition, are very familiar with the disputants. This is perceived as a virtue. However, one or more members of the panel may be rejected if the disputants feel that he or she harbors any special prejudice or is too closely related to one side or the other.

The Philadelphia arbitrators may have professional training in law. Each of the original conciliators was trained in conciliation techniques at Temple University. Others have been trained by listening and observing other conciliators work.

The background of most of the village conciliators is limited to knowledge of the village council process. Since this process was conciliatory and

dealt with the same kinds of cases and remedies suggested by cases brought to conciliation, this is ironically the best possible "legal experience" the conciliators might be afforded. The conciliators in the experimental project are also being trained by the authors in basic contracts, torts, and criminal and family law in order that they can lay before disputants alternative remedies and place conciliation in its appropriate perspective for them. It is envisioned that videotapes and filmed lectures of conciliation will be sent to villages which organize boards if the experiment is accepted for other Native villages since the transportation of conciliators from village to village would be prohibitive.

Cases Heard

The Philadelphia project, according to a staff member, handles cases which might be grouped by participants in the following manner:

Feuds between neighbors which involve the acts of their children account for sixty percent of the caseload. While these cases did not arrive at the court as juvenile cases, but only after the feud spilled over into aggressive acts by adults. A tentative evaluation of cases which will be coming or have come before the conciliation board in the village also indicate that young people's action will figure strongly in disputes. However, in the case of the village informal conciliation will be directed at juveniles rather than at their parents. Juveniles have traditionally been held responsible for their misconduct in hearings before the village council. Alaska juvenile procedure was removed from lower courts to the Superior Court located outside

of the village after studies indicated the ineptitude of lower court judges and absence of facilities provided by the state to house or rehabilitate juvenile offenders. This reorganization of the structure of juvenile justice occurred at the same time that the Public Health Service work in Native villages was achieving a remarkable drop in infant mortality. What this has meant for the villages is that large numbers of young people are guided by drastically smaller numbers of adults. The first state of Alaska juvenile proceedings is the informal disposition of offenders--which means in practice, engagement of juveniles and their parents before the court and promises of the juvenile to obey the law. The conciliation board is capable of broadening the scope of and importance of this informal disposition in a manner which in form nearly replicates the lectures delivered to juveniles in a group directed at individual misconduct in the traditional meeting and social quarters of Alaska Eskimos, the Kosga. These proceedings will compensate in part for the total absence of juvenile correctional personnel and facilities in small villages by reinforcing traditional approaches to correction. They will offer a new option to the village which now must send youthful offenders outside of the village to cities where the formal division of corrections can deal with juvenile matters.

Disputes involving petty larceny or misuse of property by one or both of the parties accord for 15 percent of the Philadelphia cases. This category of cases is very similar to cases involving conversion of personal property or damage to property in the village. These disputes have a civil remedy before the magistrate. However, with the withdrawal of the village council

and with the absence of attorneys, no remedy which would offer redress to private persons in the village was available until the conciliation board took charge of these cases. These cases find their way to the conciliation board initially and do not often emanate from the filing of a criminal complaint.

Domestic disputes involving third parties account for twenty-five percent of the Philadelphia cases. Again, the conciliation board addressed from its inception husband and wife conflicts.

For example, a drinking husband had been fined and jailed on several occasions for beating his wife. The magistrate looked to the board as a counseling agent because it was evident that police action against the husband only served to deepen the conflict between the husband and wife. A fine came out of the collective pocket of the family and not the husband. These cases had been well handled by the village councils.

Finally, disputes between neighbors accounted for ten percent of the Philadelphia cases. Dogs, misplaced trash cans, noise, and other long-term grievances spilled over into private criminal complaints for assault and harrassments. Native villages, like any community, have their share of these disputes. However, rapid relief of the disputes was, if anything, more important for village neighbors because most remain neighbors for life and look to each other for help and support in collective economic endeavors such as salmon fishing or the hunting of sea mammals from seal and walruses to whales which require crews of village men to work together under situations of comparative harmony.

In the past there was no middle way to deal with grievances which arose when, for example, a neighbor, "feeling good," abused his invitation to drink and frightened his neighbors wife and children or broke household utensils. Similarly, acts which were tantamount to theft and privately considered as theft were often treated by Eskimos as "loans" since the sharper characterization meant that the trooper had to be notified and the social relationship irreparably broken. As one Native undergraduate noted to the authors in a class on law from the village perspective, if a neighbor assaulted another neighbor while drunk, the most expedient thing to be done was to enlist the help of council members to simply just forget about it. Even where the trooper was radioed or written to by the council, his capacity to react to each complaint was limited.

Traditionally, acts of violence were not handled very well by the council. They would usually leave smoldering grievances which resulted in counter acts of violence. Since knives and firearms are universally employed in Native villages as means of livelihood, control of weapons as a general measure or even removal of weapons from a person known to misuse them when he drinks is an improbable and dangerous alternative. Yet, even more fundamental to Native complaints which demanded some form of intervention by a forum which understood them were acts which had in them the seeds of violent response. These included gossip or even threats which in non-Native urban communities might be casually dismissed as "street talk." Cases which date from the inception of Canadian and American disposition of murders in the Arctic show a nearly invariable pattern of victim percipitation in an Eskimo sense, if not in a legal sense -- for example, the famous example of the murder

of a white trader who was set up for murder after he had threatened to shoot an Eskimo who shared his girlfriend as well as all the dogs. The trader's anger over a woman was incomprehensible to the Eskimos. His threat to shoot all the dogs was tantamount to a threat to destroy the entire Eskimo hunting party. He was viewed as mad and thus too dangerous to be left alive.

Lesser acts were also measured according to their propensity to provoke violent reprisals and not according to the dictates of abstract morality. Thus while sexual intercourse between an adult and several underage girls did not incur the strong punishment by one council in a northern Eskimo village, according to its records, the theft of cigarettes at a seal hole, the letter writing between a single resident and married women, and gambling were all viewed as activities which could spill over into violent confrontations which when begun no one could stop.

In this light, while eighty percent of the complaints in Philadelphia involve assaults, the cases which now are coming to the conciliation board involve acts where less violence is apparent. Potential violence, should the dispute not be nipped in the bud, is more evident in the eyes of the villagers who hear the dispute or who bring it to the board.

The style of the arbitrators in Philadelphia, which the author Conn observed, and the conciliators in the village where the authors work is very similar. Although, as stated, the authority of the village board is not as formal as the authority of the Philadelphia arbitrators, the impression of authority is real enough for persons to consider well the advice of board

members. This authority stems in part from the implicit support of the board by the magistrate and police. Its members know and participants know that the magistrate is very likely to accept the agreement reached if the dispute was initiated by an arrest or complaint to the magistrate. They also know that if they are to control the outcome of the conflict, that it is before the board and not before the magistrate, trooper, or higher court that this might occur. In some instances they recognize that the board is the only viable alternative to legal process which they enjoy. Travel, delay, and expense are insured if they file a civil complaint in a court outside of the village. In such matters as slander, for example, the magistrate does not have subject matter jurisdiction over the dispute. Finally, the board represents a cross section of village opinion. What the village feels about a particular dispute and its outcome or what the village will feel weighs heavily on participants.

Both arbitrators and conciliators in the village delve beneath the surface of the dispute and attempt to place it into the context of the larger conflict or cooperative relationship between the disputants. Neither points the finger of guilt but instead stresses both good and bad acts by both persons. Both forums seek to discover if a third party, who is not before them, is a catalyst to the conflict and may bring that person into the hearing to bring home his role more forcefully. However, in this the village board is in a superior position. The Philadelphia forum has subpoena power but no enforcement power over persons not immediately subject to the conflict. The village board lacks legal authority in either manner but can employ its

personal knowledge and the social impact of village opinion to assure the third party's attendance and obedience to the agreement reached. While the Philadelphia arbitrator may simply order or advise the disputants not to listen or to have nothing to do with the third party, be he the other woman or man, or the neighborhood gossip, etc., the village board must consider how to improve the relationship between the third party and the disputants.

The board's concern with reworking the relationships of disputants and others who have a hand in local disputes presents what could be termed its greatest challenge.

While consent agreements or arbitration awards in Philadelphia regularly order that the urban disputants have nothing to do with one another, the village board can rarely employ this device unless one disputant or the other can be urged to leave the village. The council regularly called troopers to arrest and remove unrepentant offenders, but this modern-day form of banishment for a period of weeks or months is more a signal of failure than of success of conciliation. The "reintegration of the offender back into the community," the oft quoted goal of correctional programs, was the only goal of council justice. It is similarly the goal of the conciliation board.

The tool for enforcement that the conciliation board employs is, as with the Philadelphia project, only partially its power to remand cases back into the courts. The Philadelphia project recalls disputants and uses letters and phone calls as intermediate steps to insure compliance with agreements. Similarly, the board speaks to persons who have come before it; and if necessary, calls for new meetings with them.

Evaluation of Both Projects

The 4-A project of the Center for Dispute Resolution is a proven success. In its several years of operation, the center has resolved hundreds of disputes and has time to evaluate and rework its operating procedure.

The village conciliation project is only a half dozen months old. Its structure has been defined principally by the Native participants themselves. Whether or not the project can take up the slack left in legal process with the demise of the village council as a parajudicial forum remains to be seen. So also will legal policymakers in Alaska have to look closely at the project and cases which have come before it to assure themselves that it will strengthen rather than weaken the local justice system of the unified court system which professionals wholeheartedly desire to improve for their rural constituency.

The authors are optimistic that the conciliation process as an adjunct to rural justice will not only improve justice for Alaska Natives but will point the way for other innovative endeavors to improve the quality of justice for rural consumers in other parts of the United States. Unless the justice system meets consumers of justice halfway, especially consumers whose experience with the Anglo-American process has been less relevant to them than their own approaches to disputes, then these communities will lose the opportunity to preserve community well-being through a fundamental commitment to due process of law.

AN ACTION PLAN FOR VILLAGE JUSTICE

Introduction

The goal of this action program is to offer substantive due process on a daily basis to residents of Alaska villages. Its promise is that Natives must be transformed from consumers to decision makers and participants in the system. The suggestions for specific reforms outlined here are drawn from over two years of firsthand analysis of the process of justice as it actually exists in the village - not as a single bureaucratic endeavor but as the product of several which set their own standards of quality and define (with the aid of state and federal funds) their own means to attain them.

The presence of a complete justice system in every village is a debt owed to every citizen. The attainment of the substance of justice and not merely the form of justice will be difficult unless new roles and new institutions are devised which will complement the visiting judge, lawyer, or trooper.

These roles and institutions described here have been used in other places. Their historical reference point in Alaska is the village council which succeeded in offering a legal forum when courts did not.

Both professionals and villagers have specific roles in the justice system suggested here. In this new bush justice system, they are as mutually dependent as in the old system - the difference is the roles of villagers would be authenticated and fully incorporated into the modern state system of law.

TABLE OF CONTENTS

- I. Action Program for Village Justice - Outline
- II. The way to Get this Action
- III. Myths and Facts About this Action Plan
 - Appendix I An Action Program for Village Justice - The Problem
 - Appendix II Bush Criminal Justice (Expenditure of Funds)
 - Appendix III Conciliation Boards - Rough Draft of a Bill

I. Action Program for Village Justice - Outline

A. Each village needs the following:

1. A magistrate
2. A village constable
3. A lay advocate
4. A conciliation board
5. A lay correctional supervisor (or supervisors)

B. In its relationship with the regional center nearest to the village, the village should expect:

1. Monthly visits by the legal services attorney and contact with the lay advocate. Comparable contact by the public defender with the lay advocate.
2. That the judge who sentences a village offender in a distant place solicit and receive from the correctional specialist and village council information useful in considering whether or not to reintegrate the offender to the village, and if so, on what terms.
3. That troopers regularly visit the village to work with the village constable.
4. That all resident members of the lay justice system in the village receive continuing legal education and videotapes and film suitable to present community legal education in the language and tradition of the village.
5. That redistricting allow those served by a district and superior court judge to solely elect him. That professional judges be selected who are willing to live in the region.

6. That advocates be trained linguistically and substantively to explain legal concepts to potential or actual participants.

C. Explanation - definition of jobs

1. The magistrate will act according to his present jurisdiction in criminal and civil matters.
2. The village constable will be trained to investigate and act as prosecutor in cases heard by the magistrate.
3. The lay advocate will act in criminal and civil cases before the magistrate. He will refer matters to the legal services or private attorney or public defender. He will act as an advocate in administrative hearings.
4. The conciliation board will receive criminal cases diverted from the police-magisterial process with the consent of offender and victim and according to statute. It will also serve a counseling function in the informal disposition of juvenile cases by the magistrate.
5. The lay correctional specialist will aid in the reintegration of offenders returned to the village. He will also help make pre-sentence investigations for advocates and the court in cases removed from the village.

II. The Way to Get this Action

- A. Native people can either see present programs in the justice system redirected towards these ends or move directly to receive federal Law Enforcement Assistance Funds to contract with capable experts to establish these programs.

For example, the Antioch School of Law has the country's leading program for paralegals. The Vera Institute of Justice has a

technical assistance unit and long experience in programs that divert offenders from the criminal justice process.

- B. Statutorily, they can introduce legislation to authorize the use of paralegals and conciliation boards as components of the justice system. Training for these and other lay members should be regionalized and directed toward clusters of villages according to the needs of the villages. Use of the burgeoning community college network is one possibility. Use of satellite communication is another.

State appropriations should supplement the legal services and offer to public defenders and troopers sufficient funds for each to travel to all villages upon request.

- C. Further suggestions

1. Language

- a. State adoption of HR 9727 to train interpreters in Native languages for every court in the state. Until such an act is passed a court rule should state no waiver of rights from a non-English speaking defendant should be accepted without representation by an attorney.
- b. The court's response to its belated discovery that Native speakers could not readily communicate complex legal instructions is to call for a pilot program to train a single interpreter for the Bethel court. This response fails to protect the rights of non-English speaking defendants in other courts who regularly waive rights without an attorney to advise them of the consequences.

2. Paralegals

- a. Development of a lay advocate program¹ to provide a lay person in each village that does not have an attorney to advise defendants before the magistrate court and to refer potential clients to public defenders and to legal services or private attorneys.
- b. To accomplish this the program of the proposed Alaska Criminal Justice Center must be directed to regionalized training of paralegals. Regional corporations should apply directly for grants from the Indian desk of DEAA just as tribes in the lower 48 are doing if the opinions of Native people are not adopted in the planning of the justice center. State legislation should carve out an exception to the unauthorized practice of law statute to allow paralegals to do this.

3. Diversion

Diversion is one way for Natives to control the legal process. Legislation should provide for the establishment of community conciliation boards² for towns of less than 1,000 persons who can:

- a. conciliate petty misdemeanors within the terms of AS 45.120 and 12.45.130.

¹ A pilot course for Native paralegals in village law will be taught in the spring semester by Professor Conn on the Fairbanks campus of the University of Alaska.

² The National Center for Dispute Settlement of the American Arbitration Association has introduced a comparable program of arbitration as an alternative to the private criminal warrant into the courts systems of Philadelphia, Rochester, Akron and Cleveland. Professor Conn has arranged to view this program. He is also testing the use of a conciliation board in a Southwestern Eskimo village.

- b. handle civil matters where claims are too small to warrant the use of an attorney or beneath the \$500 limit used by Legal Services.
 - c. aid judges in the informal disposition of juvenile complaints.
4. Civil Representation
- a. State appropriations should supplement the Alaska Legal Services budget to allow for a monthly visit of an attorney to every village in Alaska.
 - b. Grants might subsidize the travel of private Alaskan lawyers to Native villages.
5. Sentencing
- a. No non-resident judge should be allowed to sentence an offender whose offense relates to a village where no court sits without receiving testimony from the governing body of the village on matters relevant to the disposition of the defendant.
6. Corrections
- a. Lay correctional aides who are residents of Native villages should be trained in regional locations to supervise offenders returned to the village.
7. Criminal Representation
- a. A public defender should be assigned for every state trooper in the bush.
8. Location of Hearings
- a. Physical capacity of the village to house participants in court proceedings comfortably should not be a criterion for choice of a trial location.

9. Participation in Policy Making

- a. The magistrate supervisor should have a Native planning committee to deal with the Native magistrate system.
- b. The Department of Public Safety should institute a crash program to hire and train a fixed quota of Native troopers to serve in the bush.
- c. A Native planning committee should also work with the Division of Corrections to define and provide job opportunities and programs for Natives in the villages.
- d. The AFN could delegate a member to the Alaska Criminal Justice Center Research and Planning Committee.
- e. A Native planning committee should work with the staff of the Criminal Justice Planning Agency and have veto authority over programs or use of funds which affect bush justice.
- f. A Native should be appointed to the Alcoholic Beverage Control Board to redirect liquor policy as it affects the bush.

10. Education

- a. The University of Alaska should immediately develop a program of bicultural community legal education that employs the present videotape machines, closed circuit TV networks, movie houses and (prospectively) the satellite TV network to reach villagers in the villages.
- b. The regional corporations should press the University to institute a regular law school program in conjunction with UCLA law school and a legal technician program in conjunction with Antioch School of Law.

11. Investigation

- a. The state should sponsor a second bush justice conference to review accomplishments and failures of each component of the justice system.
- b. The AFN should demand an investigation of the rural justice system by the United States Commission on Civil Rights.

12. Redistricting and Reorganization

- a. Finally, the state justice system should be redistricted to provide for districts built along cultural lines with similar reorganization of all components of the justice system.
- b. Superior court judges who are not prepared to live full-time in Native towns should not be appointed.

Conclusion to Parts I and II.

The foregoing recommendations require state legislation, some state appropriations and a complete overhaul of federal programs.

With land claims, Natives can contemplate material well-being for the first time. However, unless the system provides usable forums, means of law enforcement and correction in the villages, the social well-being of every villager will be threatened. Village life will be put to a test that it is not likely to meet.

III. Myths and Facts About this Action Plan

- A. 1. Myth - Use of conciliation boards and paralegals represents a radical step and institutionalization of a different system of justice for Natives.
2. Fact - It is the agents of territorial and state government that have offered village Natives a different system of justice. The IRA villages, Village Incorporation Act, village "rules" offered for enforcement by the district attorney and troopers, and finally the magistrate system that purports to be an adversary system although attorneys are unavailable, were radical departures from the system of due process available to non-villagers. The reforms are the best practical attempt to offer justice services in the villages. They effect due process there as elsewhere in the state and offer meaningful choices to Natives within a single justice system.
- B. 1. Myth - The failure of Natives to comprehend the defendant's rights from a linguistic standpoint can be remedied by interpreters and will transform the Native defendant into an active participant in the justice system.
2. Fact - Even where a defendant understands his right to an attorney, he does not have one who is physically accessible. To retain one is costly. The rights are premised on physically accessible attorneys. Finally, if non-English speakers cannot comprehend, magistrates and other courts should not accept waivers of defendants' rights and should appoint attorneys on their own initiative. Since this step is extraordinarily

difficult, employment of paralegals in the village to take up defendants' cases on their behalf and interpret legal concepts and rights substantively to defendants seems the only practical step if due process of law is to be secured for village residents.

Finally, knowledgeable defendants will discover that there have been only 6 acquittals by trial in district court in Bethel in four years. Attorneys plea bargain for defendants. That is the only use or purpose of an advocate in the present system.

- C. 1. Myth - Judges who come to reside in larger towns near the villages will get to know enough about people to sentence them.
- 2. Fact - Only the village is an apt source of information for determining whether or not a defendant should return and on what conditions. Only villagers can talk about his past conduct and likelihood to rejoin the community. Only villagers are available to supervise offenders returned to the villages.
- D. 1. Myth - Village problems can be solved with increased travel by professionals.
- 2. Fact - Particular services of the justice system - a workable forum, a source of legal information, adequate law enforcement, and alternative means to correct offenses - are needed on a daily basis. No agency can demonstrate an adequate record of response to village needs because each agency has depended upon an understaffed agency that serves many villages inadequately.

- E. 1. Myth - A public safety building (jail), lay magistrate, and village policeman equal a justice system.
2. Fact - No legal policymaker would tolerate this for his family and his community. He expects Constitutional guarantees to have meaning in his community; this same expectation should be reflected in the kind of legal system he helps to organize in Native villages.

APPENDIX I

An Action Program for Village Justice - The Problem

The first conference resolution of the Bush Justice Conference of 1970 was:

"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."

The crux of the action plan is to bring due process to the Native villages of Alaska, particularly the small Eskimo, Athabascan and Aleut villages. In order for villagers to control the process of justice:

- (1) reforms must take place that place Natives in political control of the direction of programs and funds which affect them as consumers,
- (2) theoretical choices of potential clients of the justice system must be transformed into comprehensible and real choices, (3) special roles, procedures and legal education programs must be defined and implemented for village residents to compensate for the historical failure of the territory and state to offer them experience with a complete justice system.

Since 1970 there have been piecemeal attempts at reform by the several agencies that serve the bush. They have not succeeded for several reasons apart from the absence of active Native roles in the definition and the implementation of these programs.

1. Failure to recognize that, most Athabascan, Eskimo, or Aleut villages with less than first class city status have not been granted a judicial system but a council system as a system of adjudication. Some councils enforced law under modified version of the Alaska IRA, others under state statute, the Village Incorporation Act. Still other traditional based villages were "granted" rules to enforce by police and prosecutors. In each case there was no experience with lawyers and judges in the villages, no juvenile justice system, no correctional programs other than suspended or imposed fines or jails, no jury trials other than inquests held by visiting judges. In each case the territorial and state government explicitly reinforced the local system by taking out of the village more serious cases via the police. The offender was removed and jailed with only rare and informal communication back to the village regarding the details of the legal process outside and the ultimate disposition of the case.

2. It is a myth to conclude that Natives were ever offered a choice between a complete justice system in the Anglo-American tradition and the one that they employed. It is also a myth to conclude that they are now being offered a complete justice system in the village or that villagers can draw from their own experience and critically determine the capacity of the justice system to serve them.

Even with the advent of the magistrate program, the villagers did not receive a complete adversarial program which included trained advocates, ready to define and argue criminal and civil cases. The wide ranging court decisions which have expanded the right to representation and

trial by jury by one's rural peers have had little or no impact on village justice because:

- A. Public defenders are rarely physically available in villages. In the whole of Eskimo Alaska, only two public defenders serve, one in Bethel and one in Nome. Clients who request attorneys are billed after the case is over and many feel impelled to pay.
- B. Public defenders will usually try a case before a professional court judge outside of the village if the choice is allowed by statute.
- C. The average client does not understand the use of attorneys, the difference between evidentiary guilt and guilty feelings and finally the use of attorneys in securing bail reduction and in plea bargaining even where an offense has been committed.
- D. Jury trials are generally limited by court rule to locales where physical facilities are available for housing, meals, etc. Many lawyers fear jury trials before non-whites, eg.; they fear that Natives will be swayed by testimony of police and prosecutors since they have been offered scant experience with the adversarial or trial process.
- E. Although preliminary hearings are occasionally taken into villages, even this attempt to show the process at work is being limited as a grand jury is more frequently employed in larger Native towns.
- F. Even where Natives secure lawyers, acquittals are extraordinarily rare in the bush court system. Thus, the potential client must

weigh his removal from the village, loss of contact with family and work, etc. against representation by the outside attorney in a criminal case which he is likely to lose.

3. Corrections

Although there has been much talk of reintegration of the offender into his local community, there has been no meaningful programmatic effort to do this by the Division of Corrections. The Division of Corrections did not promote the village public safety building program to allow local, safe, short term incarceration. Its correctional aide program was set up vertically to help the probation officer but with scant consideration of horizontal integration of correctional reporting with village justice.

As the late Butch Swartz, an intern for the Criminal Justice Planning Agency put it:

"We are upgrading police services in many bush communities and providing new jails to hold the offenders apprehended by these newly trained and equipped police forces. We are not, however, doing anything to divert these offenders or to rehabilitate them in their own communities."

While the legislature removed juvenile justice from lower courts with the exception of emergency action and informal disposition, corrections has done nothing in small villages to flesh out disposition in the village by training and paying persons for supervision of juvenile offenders.

It can be argued that with the increasingly youthful village population and plans underway to make secondary education available to young people who stay in the village, the failure of corrections to support local programs in small villages is potentially the worst of various failures of the justice system to serve Native people.

4. Attorneys and Civil Cases

The private bar with few exceptions does not reside in predominantly Native villages. Alaska Legal Services has an office in Bethel but in no other Native village.

The concept of a civil or private case (apart from domestic relations cases) is practically unknown in village Alaska. Furthermore, administrative redress in employment matters, discrimination and welfare actions are unknown. No fair hearings emanate from the large number of public assistance clients in the bush because few view these administrative determinations as challengeable.

Legal services attorneys follow an administrative rule that does not allow them to take cases of less than \$500 monetary value. These are the small claims that are most likely to appear in magistrate court and allowed there. Furthermore, even if a legal services' attorney takes a civil case against a Native on behalf of a second Native, he can only represent one side. (Provision has some times been made by legal services for representation of the other side in domestic cases.)

Legal services attorneys who visit the village find important cases against outside agencies or persons that they can file in outside courts. However, there is no person in the village trained to spot such cases and notify these attorneys

5. The Courts

While the courts under the aegis of Chief Justice Rabinowitz have shown the most systematic concern with the improvement of the justice system, their success will be concentrated in the several larger Native towns - Bethel, Barrow, Kotzebue, and Ft. Yukon. The magistrate system is infamous. Furthermore, the key relationships between the sentencing judges in larger towns and the villages on such fundamental matters as the possibility of returning of the offender to the village under terms agreeable to the offender and the village or, conversely, the removal of a person for extended periods of time are marred by absence of communication by the village of facts concerning the offender and his place in the village. Dependence upon the magistrate or trooper is inadequate to secure information comparable to that obtained in investigations for urban offenders by professionals. Yet in view of the impact of crime in the village and the personal impact of offenders in small villages, this communication seems vital. Neither district attorneys nor defense attorneys have resources to make thorough investigations in any but the most serious cases. In juvenile cases, investigations by correction officers are short, casual and entirely controlled by the correction officers.

6. Police

The village constable training program which began to train and subsidize resident police service was cut by the legislature. Federal funds from the program have been diverted. Villages left without funds to pay local police have had to forgo use of revenue sharing funds in other vital areas, such as fire protection, to pay for police. Many

villages were not affected at all by the program and have no trained local police.

State trooper manpower allocations have been determined by the pipeline and not by the needs of rural Alaskan communities.

7. Attorney General

The attorney general's office has failed to give systematic assistance to communities who send ordinances for review into the Department of Community and Regional Affairs. They have not assisted rural communities in regulating liquor traffic or aided them in consumer protection.

8. Funding and Control of Funding

LEEA monies have consistently been channeled to urban and not rural needs. See the Schwartz memo. Appendix 2. Native opinion in the formulation of the criminal justice plan, especially the opinion of Native consumers has not been solicited except in rapid-fire hearings in larger Native towns.

9. Education

Although legal education is the only means for many Natives to overcome the gap between their experience with the second-class justice system in the bush and the one they confront as a result of reforms, the justice system and universities have provided no such program of bicultural legal education in the villages.

10. Language

Not only is the experience of urbanized justice different for the Native participant but it is literally incomprehensible for many non-English speakers. No trained interpreters are available in the court system.

Conclusions

The rural justice system in Alaska is a system of systematic outlawery in its denial of due process to rural Natives. The Natives did not do this to themselves. They did not request to be placed in special legal categories and to receive:

- Councils that enforced the law under the Alaska Indian Reorganization Act when other communities received United States Commissioners.
- Councils which were supposed to enforce village ordinances in proceedings which "shall substantially conform with those proceedings generally held before a magistrate," AS 29.25.310, while urban defendants enjoyed explicit Constitutional guarantees which were comprehensible to them.
- A lay magistrate system of untrained judges which purports to offer the adversary system but does not include lawyers in the village or professional correctional assistance because these professionals choose to live in urban areas.

The concern of the justice system is too often with form - the appearance of a judge and jail in every village - and not with substance. The judicial system as a source of due process has often abdicated its responsibility in village Alaska and been no more than a rubber stamp for law enforcement.

The consumers of the rural justice system can affect the change necessary to make all of the resources of the justice system accessible to rural Natives.

APPENDIX II

Lauris S. Parker
 Executive Director
 Criminal Justice Planning Agency

DATE: July 17, 1973

Carroll L. Swartz
 Carroll L. Swartz
 Corrections Intern
 Criminal Justice Planning Agency
 Office of the Governor

SUBJECT: Bush Criminal Justice

One of the strongest challenges facing this agency and the Governor's Commission is the improvement of criminal justice in the bush. During the past four years, LEAA grants benefiting bush areas have amounted to 10.8% of Alaska's block grant and 11.1% of all LEAA grant funds awarded in the state. These appear to be unfairly low percentages when one considers that the bush includes 95% of Alaska's land area and 20% of its population. Although rural crime is not being accurately measured, estimates indicate that as many as 20 to 25% of Alaska's part I crimes occur in the state's bush areas. Furthermore, 32% of Alaska's offenders are of native descent, and most of these individuals are originally from the bush.

It is clear from these figures that our agency must expand its efforts to improve criminal justice in the bush areas of Alaska; this can not be a point of contention. The essential question is the form this expanded aid should assume. In the past, LEAA grant assistance to the bush has been rather heavily concentrated in two areas, construction and police assistance. Out of \$652,096 awarded to bush programs in the years 1969-1973, \$293,524, or 44.7% has been used for construction of five criminal justice facilities, and \$233,385, or 35.7%, went to police assistance programs. Two reasons lie behind this funding pattern: first the LEAA Indian Desk prefers police assistance and construction projects to projects aimed at changing people, inasmuch as the latter involve less tangible, more qualitative goals and methods of implementation; and second, a real need exists for both construction and police assistance. Consequently, no argument can be made against spending funds in these areas, but confined emphasis on them has caused other rehabilitative projects to be neglected.

Future grant assistance would be more effective if an appropriate balance system is maintained. This calls for increased funding of programs aimed at changing the individuals coming to the attention of the criminal justice system.

The logic of this balance is quite simple. We are upgrading police services in many bush communities and providing new jails to hold the offenders apprehended by these newly trained and equipped police forces. We are not, however, doing anything to divert these offenders or to rehabilitate them in their own communities. Consequently, the police will continue to keep the new jails full of the same offenders returning time after time. To lessen the impact of such recidivism, programs to change these offenders are essential. Indeed, the full benefits of new jails and better police service will only be realized when an equal effort is made to rehabilitate and/or divert the individuals coming to the attention of the criminal justice system.

Furthermore, programs correcting the bush offender in his own community will also reduce the high percentage of native offenders confined in the state's institutions. Most of these individuals enter the criminal justice system in their home communities, are "rehabilitated" in Anchorage, Juneau, or Fairbanks and afterward remain in the larger cities as criminal justice problems.

The legal component has been neglected in our past funding of bush justice projects. In 1971, LEAA funds were used to hold a magistrate seminar and training conference and to provide new magistrate orientation, but there has been no continuing effort in this area comparable with bush constable training. It should be mentioned that a portion of the funds used for criminal justice facility construction have benefitted the legal system by providing some magistrates with courtrooms and office space not previously available. Besides these, the only other program that assisted the bush legal system was the public defender's paralegal intern in 1972. In general, all of these projects have had some positive impact on bush justice and in the future a greater number of similar projects should be funded. These kinds of programs directly respond to the recommendations of Alaska's first Bush Justice Conference (held in 1970 and funded with an LEAA grant). The Conference stated that "special emphasis must be given to the development of man-power capable of dealing effectively with the administration of justice in village Alaska, and to appropriate education for the affected public." Magistrate training and use of paralegal personnel are two very good ways to fulfill this need.

A further inadequacy of LEAA funding in bush areas is the small amount of grant funds awarded to units of local government. Exclusive of construction funds, only 15.0% of the

total grant monies awarded to bush projects have gone to units of local government. This is less than half of the 1973 plan estimate of 33.8% local pass through on Alaska block grant funds. This low level of local pass through to bush communities is not caused by any inherent bias or insensitivity to bush needs by the Governor's Commission or this office. Rather it is due to the difficulty we have in soliciting acceptable applications from bush areas, to the small number of such applications, and to the larger problem of assuring that grants awarded in these areas are administered in compliance with LEAA regulations. Indeed in the past an over-readiness on the part of the Governor's Commission and the staff to make awards to bush areas has resulted in audit and monitoring problems on some projects.

The inability of many bush communities to competitively apply for and administer grant funds remains a continuing problem. Recently, CIPA staff worked closely with city officials in Kotzebue and Barrow to assist both communities in preparing applications for jail planning; both projects were funded. This kind of close technical assistance would seem to be the key to increasing the pass through to bush communities. Present plans to place a native criminal justice planner in the agency will allow us to provide this level of service to many more communities. Such a position will also enable the agency to better assess and plan for the needs of bush Alaska more completely than we have been capable of doing in the past. Most important though, the increase in local pass through to bush communities fostered by this position will indicate the commitment of both the Governor's Commission and this agency to the improvement of criminal justice in the bush.

Additional involvement of units of local government in improving the criminal justice system will also further one of the strongest recommendations of the 1970 Bush Justice Conference, that there "be greater native participation at all levels in the administration of justice." Indeed, furthering the goals of the Bush Justice Conference would be one of the major responsibilities of the native criminal justice planner. He could also begin to plan for another similar conference to consider, as Alaska Legal Services ~~bush~~ ~~team~~ has recommended, programs to meet needs which have largely been determined. The bush justice team investigation, if adopted by the Commission, would also greatly benefit from the services of our native criminal justice planner.

Conference or not, this is our agency's primary task in the bush - for in the final analysis, we cannot fully determine or meet the needs of the bush justice system; we may only assist the system to meet them itself.

ACTION AND DISCRETIONARY FUNDING FOR BUSH JUSTICE

1969	NONE	-0-
1970	Bethel Jail Planning	\$ 3,660
	Bush Justice Conference	13,584
	TOTAL	<u>\$17,244</u>
1971	Village Police Training	\$55,231
	Annette Island Crime Control Project	24,226
	Bethel Police Equipment	2,904
	New Magistrate Orientation	2,125
	Native Criminal Justice Planner (Planning, Part B)	25,000
	Planning for City & Bush Police Officer Training	2,266
	Magistrate Seminar & Training Conference	31,569
	Bethel Jail Construction (Part E)	50,000
	Annette Island Reservation Law Enforcement Program (Discretionary)	17,490
	TOTAL	<u>\$210,811</u>
1972	Village Police Training	\$67,619
	Bethel Police Identification System	609
	Alaska Public Defender Paralegal Intern	4,000
	Corrections Jail Standards & Assistance	32,072
	Bethel Teen Center	15,000
	Native Village Intern (Discretionary)	3,837
	Police Communications System & Equipment	9,500
	TOTAL	<u>\$132,637</u>
1973	Kotzebue Jail Planning	\$14,590
	Barrow Jail Planning	10,000
	Emonak Criminal Justice Facility (Disc.)	33,333
	St. Mary's Criminal Justice Fac. (Disc.)	33,334
	Kiana Criminal Justice Facility (Disc.)	33,333
	Village Police Training (Discretionary)	53,540
	Metlakatla Correctional Facility (Disc.)	79,940
	Selawik Criminal Justice Facility (Disc.)	33,334
	TOTAL	<u>\$291,404</u>
	GRAND TOTAL	<u>\$652,096</u>
ACTION	\$329,455	
DISCRETIONARY	\$322,641	

APPENDIX III

COMMUNITY CONCILIATION BOARDS

The purpose of this act is to provide local forums for the conciliation of petty criminal and civil complaints in villages and cities of less than one thousand persons according to the 1972 census where no district court is presently sitting or is located within a distance of thirty miles.

The conciliation board may:

1. conciliate petty criminal offenses within the terms of AS 12.45.120 and 12.45.130.
2. handle civil matters of less than \$500 in claimed damages.
3. handle informal disposition of complaints against juveniles.

The conciliation board shall have competence over any matter where a state magistrate has jurisdiction to hear the case.

There shall be not less than four or more than six members of the conciliation board. Each shall be fulltime residents of the village for not less than one year. One member shall be appointed as secretary. He shall summarize each proceeding, including names of persons who bring information to the council, the nature of the problem, and the compromise reached by the parties.

Copies of the compromise shall be transmitted to the nearest judge for review and approval. The board shall hold one copy of the compromise. Each party shall hold a copy of the compromise.

If the compromise is not followed, any aggrieved party shall have leave to file a civil action or private criminal complaint within sixty days.

The board will inquire within twenty days as to whether the compromise has been met by the parties and will have the power to recall the parties for such inquiry. The board shall notify local police agents, the magistrate and the district court where a compromise has not been effected.

Members of the board

Members of the board shall be part-time employees of the court system and paid at a sum of \$10 per meeting. The board shall keep minutes. Sessions of the board shall be private at the request of one of the parties.

Three of the six members of the conciliation board shall be female and three shall be male. Two shall be twenty-five years old or younger, two shall be twenty-six to fifty years of age, and two members shall be over fifty years of age.

If one-third of the electorate of a village or municipality speak a non-English language in ordinary social intercourse within the village or municipality, then at least three members of the conciliation board shall be conversant in that language.

No member of the conciliation board shall hold any other job directly related to the making, enforcement, or adjudication of law in the village or municipality while he is a member of the conciliation board.

Procedure

Each party to the dispute may submit oral or written information on his behalf and request the presence of any other member of the village. He may view or listen to information presented by the other party to the dispute. Board members may ask questions. Parties may ask questions.

At the conclusion of testimony, the board shall offer its suggestion as to a compromise after privately conferring. Each party shall suggest modifications. Parties may confer privately. The secretary shall write down the final compromise. Each party and board member shall sign the compromise.

The board may suggest work or fines paid to third parties as well as acts of remuneration between the parties as elements of the compromise.

Participation in conciliation is discretionary for each of the parties. Cases may be referred by the court, police, attorneys, or other persons. Referepts shall be notified of the resultant compromise or the failure to achieve a compromise.

PARALEGALS IN THE BUSH

Stephen Conn* and Arthur Hipplert†

INTRODUCTION

Paralegalism, that is, the assumption by lay persons of roles normally ascribed to professionally trained persons within the justice system, has from the inception of American sovereignty over the territory been the driving force of Alaska bush justice for rural natives.¹ United States Commissioners who were not attorneys, missionaries, school teachers, ship captains, and others were empowered to take or took for themselves the roles of law giver, law enforcer and law adjudicator.²

Since statehood when troopers, judges and attorneys began to offer an occasional presence in the remote villages, expediency and common sense tended to encourage the continued legal communication and resolution of disputes by residents of the village, specifically by village chiefs in Indian groups and village council members among both Indians and Eskimos.³ While lawyers and

* B.A., Colgate University, 1964; M.I.A., Columbia School of International Affairs, 1968; Doctor Juris, Columbia Law School, 1968. Member State Bar Associations of New York and New Mexico; Associate Professor of Law, Institute of Social, Economic and Government Research, University of Alaska, Fairbanks.

† B.A., University of California, Berkeley, 1963; Ph.D., University of California, Berkeley, 1968. Associate Professor of Anthropology, Institute of Social, Economic and Government Research, University of Alaska, Fairbanks.

¹ "More than 70 percent of Alaska's Natives (about 37,000 persons) live in 178 villages and towns that are predominantly native . . . throughout the half-million square miles of the state—an area greater than the combined areas of the 19 most eastern states of the United States . . . None of these is an urban place. Half of these places have a population of 155 persons or less." Federal Field Comm. for Dev. Planning in Alaska, *Alaska Natives and the Land* 6 (1968). "Although rural crime is not being accurately measured, estimates indicate that as many as 20 to 25% of Alaska's Part I crimes occur in the state's bush area. Furthermore, 32% of Alaska's offenders are of native decent, and most of these individuals are originally from the bush." Carroll L. Swartz, *Bush Criminal Justice*, July 17, 1973 (unpublished memorandum to Lauris S. Parker, Executive Director, Criminal Justice Planning Agency, Office of the Governor, on file in the agency, Juneau).

² M. Crane, *Governance For Alaska: Some Aspects of Representation* 154-56, 206-11 (1957) (unpublished doctoral dissertation in University of Alaska Library, Fairbanks); D. JENNIFER, *ESKIMO ADMINISTRATION* pt. I (1962).

In 1908 the Commissioner of Education for the territory recommended that teachers in villages be endowed with the formal legal authority of United States Commissioners or United States Marshals because: "The natives have learned the limitations of authority of the school teachers and of the native policemen. They are not inclined to lead a hygienic life and they will not unless compelled to do so. Nevertheless every native has great respect for any governmental authority that can maintain itself. It will not be difficult to establish better sanitary conditions when they know they will be punished for nonfulfillment of requirements." 1910 BUREAU OF EDUCATION ANN. REP. 1042.

³ A. Hippler & S. Conn, *Athabaskan Law Ways and Their Relationship to Contemporary Problems of "Bush Justice"*, August 1972, (located at University of Alaska, Fairbanks); A. Hippler & S. Conn, *Northern Eskimo Law Ways and Their*

jurists throughout the nation have defined new roles for paralegals because of their increasing workloads,⁴ the use of paralegals in Alaska did not come about due to the attorneys' desire to reduce their onerous professional obligations. It is instead the absence of accessible legal professionals in Alaska's rural areas which has resulted in a large portion of the state's justice system being composed of village-based, resident paralegals. Today these paralegals convey legal information, interpret law and facts, and even decide or weigh legal issues in the resolution of disputes.

The policy question that professionals in the Alaska justice system today confront is not whether or not to employ paralegals in rural Alaska, but how to enhance the professional's capacity to serve potential clients. Improved coordination with paralegals already at work and the development of a new group of specially trained paralegals could make much needed legal information accessible to rural Alaskans.

Presently, access to the courts and to legal professionals is limited because attorneys are concentrated in urban areas and in predominately non-native communities.⁵ This has left a vacuum which has been filled by paralegals and paralegal institutions. These paralegals, whether acting formally as United States Commissioners or magistrates or informally as village council members, proffer to rural natives a process of justice that is distinctly non-adversarial. They have often interpreted and enforced law in one step. Their influence upon the shared community perception of the legal process has been immense and little affected by court decisions that have attempted to extend into villages the Anglo-American jury system and representation by attorneys to prospective clients.⁶ It

Relationship to Contemporary Problems of "Bush Justice," June 1973 (located at University of Alaska, Fairbanks) [hereinafter cited as Bush Justice Reports].

⁴ "Caught at the crossroads of chronic caseloads and cost crunches, poverty lawyers and wealthy attorneys alike have a hounded duty to re-examine their traditional functions. In the critical self-appraisal they shall discover that many of their jealously guarded tasks can be performed equally well by non-lawyer legal assistants." M. Ader, *A Brief Guide to the Training and Deployment of Paraprofessionals*, 5 CLEARINGHOUSE REV. 1 (1971). See also Silver, *The Imminent Failure of Legal Services for the Poor: Why and How to Limit Caseload*, 46 J. URBAN L. 217 (1968); ABA SPECIAL COMMITTEE ON LEGAL ASSISTANTS, *THE UTILIZATION OF LEGAL ASSISTANTS BY LAW FIRMS IN THE UNITED STATES: LIBERATING THE LAWYER* (Preliminary Draft 1971).

⁵ Presently there are 530 members of the Alaska state bar. Ninety-three are located in Juneau, Sitka, Haines and Ketchikan, 357 in Anchorage, Kenai, Homer and Palmer (approximately 350 of these in Anchorage), seventy-two in Fairbanks and eight in Nome. Telephone conversation with the secretary to the executive director, Alaska Bar Association, October 1, 1973. Three attorneys reside in Bethel on contracts with Alaska State Public Defender Agency and Alaska Legal Services, Inc.

⁶ *Alexander v. City of Anchorage*, 490 P.2d 10 (Alaska 1971) (representation offered indigents where conviction may result in jail or loss of valuable licence or fine so heavy as to indicate criminality). On the guarantee to defendants from the bush of fellow villagers on juries, see also *Alvarado v. State*, 486 P.2d 891 (Alaska

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must be concluded that because attorneys are and will continue to be inaccessible to village communities on a daily basis, the decisions they would be called upon to make in an urban setting are being made and will continue to be made in the bush by paralegals who have had little or no formal legal training and under circumstances which render review by professionals impossible. Therefore, the shape of the justice system in rural villages and the roles of paralegals in the villages are inseparable issues.

I. PARALEGALISM IN ALASKA

Paralegals presently at work in Alaska's villages include village council members, lay magistrates, village constables, correctional aides, welfare fee agents and food stamp agents. Each of these individuals makes crucial legal judgments that are often technically outside of his scope of training or jurisdiction but that are critical to the continuing communication and application of law in the villages.

A. The Village Council as a Legal Forum

The village council has emerged as a local forum for dispute style had its antecedent, especially in southwest Alaska, in the lectures to offenders delivered in the Kashim, that traditional meeting and social center.⁷ Early teacher-missionaries who were attempting

1971). *Alvarado's* promised effect of more jury trials in the bush has been vitiated by plea bargaining and by ALASKA RULES OF COURT PROCEDURE AND ADMINISTRATION 18.1(a)(3), (c) (1973). The practical effect of this rule has been to give the administrative director the power to recommend that trials not be held in villages because of the absence of adequate public facilities. A recent decision by the state supreme court puts in question the capacity of most small villages to contract with the state to provide enforcement by the courts of local ordinances. It interprets broadly the "judicial services" that must be subsidized locally. See *State v. City of Anchorage*, — P.2d — (Alaska 1973, Opinion No. 932, September 12, 1973). Circuit riding by the district attorney, public defender and district or superior court judge has not brought trials to the villages. Instead, operating under extraordinary pressures of time and money (with a chartered plane often waiting their departure in smaller villages), they engage in plea bargaining that usually disposes of the entire docket of felonies without trials in the superior courts or further incarceration for the defendant. This process baffles village constables and other complaining witnesses who may have been brought into a nearby village to testify against their fellow-resident as well as villagers summoned for jury duty or those who visit the court to observe the adversary process for the first time.

7. "Besides being a community center in which fetes and dances were held and guests were entertained, it was the seat of government, the juveniles as well as supreme court, the source of news, the bachelor's club and the school of law and industry If boys were unruly, disrespectful or antagonistic, its venerable body took it into their hands to correct the offenders. The culprits would be placed in the center of the group, and the lecture they would receive from all sides approximated the 'third degree' in severity, for it would be kept up until the guilty ones turned red and hung their heads in shame or broke down and wept. This punishment was usually sufficient. It was meted out to boys, girls, men and women alike. If the drilling had no effect the offender might be banished from the village and should the

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to "civilize" such communities did not attempt to reinforce the Kashim as a legal institution, in large part because few understood it to be one. Instead, they tended to ridicule it⁸ while offering villages a council format, patterned after the New England town meeting, as a model for local democratic activity.⁹ Despite these efforts at reform, the process of lecture and reconciliation that marked a distinctly Eskimo approach to problem solving came to be the process of justice before the council. The village councils thus became the quasi-legislative and judicial bodies in the Alaskan bush.

Successful councils were marked by similar characteristics throughout Alaska's bush. They tended to employ conciliation between offenders and victims. They did not distinguish between criminal and civil offenses. Although their investigations were thorough, they sought to establish evidentiary guilt only when they decided to refer the matter to outside agents of territorial or state law.

Councils looked to outside authority for reinforcement of their jurisdiction and employed that authority as a second or even third tier of the local justice system.¹⁰ However, this use of outside authority as a threat did not mean that the adversary system or substantive state or territorial law was applied by the council. Outside authorities were notified when the council could not resolve the dispute in order that the offender be removed from the village. However, the removal of the offender and the subsequent court proceedings and correctional disposition had little or no substantive impact on council procedures in the villagers' eyes. The offender was removed, kept away for awhile, and then allowed to return.

crime be of sufficient gravity, the death penalty would be pronounced!" Keithan & Borah, *An Outpost of Civilization in the Arctic*, TRAVEL MAGAZINE, AUG. 1927, at 14.

⁸ "In the kosgas at Cape Prince of Wales and Diomed Islands countless valuable hours are wasted in drumming and howling just as the Ipanese people did hundreds of years ago when almost every people in the world were wild . . . [I.] little school boys are allowed to spend their sleeping time in the kosgas so that when they come to school they are too sleepy to learn anything. The school children outside are never allowed to visit dance houses. If they go their parents are punished . . . Long ago the Shismaref people decided that a dancing kosga was a bad thing for them and their children so they did a wise thing and used their kosga for firewood." Ookpek, *Kosga House Dancing*, THE ESKIMO, June 1917, at 4.

⁹ "The village council is fining owners of loose dogs one sack of coal each. Those who fail to clean up their yards are similarly fined. The coal is sold in summer and the proceeds used for buying lumber for coffins. This council is solving many village problems and shows how self-government improves a community." Wainwright, THE ESKIMO, July 1917, at 10.

¹⁰ Bush Justice Reports (1973), *supra* note 3, at 34-44. In the village of Wainwright during the 1940's, a council of elders of the Presbyterian church lectured offenders who were church members. When it could not satisfactorily reform the offender or conciliate a dispute, it sent the case to the village council. If the council's authoritative intervention did not succeed, the United States Commissioner in the village was notified. The commissioner handled the case informally if he could, but he could also notify the U.S. Marshal or district attorney in Nome in more serious cases. The council could bypass the commissioner and notify outsiders as well.

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The thrust of the council's procedure was directed at obtaining symbolic or material contrition from the offender because this was the desired goal of both the paralegals and the village society.¹¹

Offenses regularly resolved by the council included private injuries to persons and property, slander, gambling and riotous public acts committed while drunk. Cases sent out usually involved more violent acts committed by repeatedly violent persons such as rape and brandishing firearms while drunk.

The disposition of disputes by village councils has been encouraged by police agencies, local judges and, later, by district attorneys with little or no inquiry into the councils' technical or even Constitutional propriety. As a recent district attorney for the fourth judicial district explained it:

We fully recognize that such local rules of many of the villages are technically defective for want of authority in the village council to pass and enforce ordinances or because of conflicts with state law. Further, one could formulate constitutional objections to their content as well as to their enforcement and adjudication by the same body which enacted them, the village council. However, the position of the State Troopers as far as I have observed it, and the position of this office as well as of judges and magistrates concerned in administering justice in the villages, has been to encourage the village authorities to manage the smaller criminal affairs of their own communities as much as possible without resort to the formalities of state law. The beneficent effects of such indigenous forms of justice are observable in the communities in which they prevail.

This local administration of justice in terms which are understood and readily acquiesced in by the persons concerned is probably of ancient origin. Those who are aware of its operation would undoubtedly hope that it will not be stifled in the attempt to bring about improvements in our own criminal law system.¹²

The professional's response to the village council's role in dispute resolution was determined by logistics as well as by theory. His justice system simply could not reach villages with problems with the kind of reliable frequency necessary to maintain its own credibility. A single state trooper in Bethel in the early 1960's was

¹¹ Fines were employed as a means to indicate to outside police and judges that the council had taken action. However, because the fines were often in kind contributions to the village and often announced to give force to a lecture but not collected, the impersonal effect of court-imposed punishment was avoided.

¹² Letter from Stephen Cooper, district attorney, fourth judicial district, to Robert Arnold, Feb. 2, 1971 (on file, Institute of Social Economic and Government Research, Fairbanks).

allocated to serve over fifty villages widely dispersed over 90,000 square miles of often inaccessible islands, rivers and tundra. Even after two additional troopers had been added, the physical immensity of southwestern Alaska was not appreciably better managed.

B. State Magistrates

In village Alaska the introduction in the early 1960's of magistrates as lay judges of limited civil and criminal jurisdiction¹³ dictated a shift in paralegalism from a technically informal to a technically formal process. Today twenty-three of fifty-five magistrates are Alaska natives.¹⁴ As recognized officers of the district court, technically they have supplanted village councils as adjudicators in communities where they reside. However, this introduction of formal authority over petty misdemeanors and small civil claims has not meant that all disputes taken before the councils find their way to magistrate's court. The most important reason for this is that since there are no attorneys to direct civil complaints and to defend criminal charges, the new, magistrate-led, adversary system flounders. Alaska Legal Services (the major source of civil legal assistance in the bush) does not usually attempt to represent clients in the village in petty civil disputes.¹⁵ And unless the state public defender is present in the village, defendants in criminal actions usually do not request him.¹⁶

Because their training has been limited, sentencing magistrates often feel constrained by the penalties stipulated in criminal statutes and do not apply a process of conciliation as an alternative to a fine or jail term.¹⁷ Instead, they simply find defendants guilty and ameliorate what they see as arbitrarily harsh sentences by suspending imposition of them. Although by statute they are judicial officers, magistrates also function as the recipients of criminal complaints and are the most effective communicators of the complaints to the state troopers. In this light, they are perceived as an arm of law enforcement and not as an independent agent of the law who might consider anew the merits of those complaints.¹⁸

¹³ AS 22.15.120 (1962).

¹⁴ Memorandum, Background on Magistrates by Judicial District, August 8, 1973 (from William R. Nix, magistrate supervisor, to Arthur H. Snowden, administrative director, Alaska court system).

¹⁵ The board of Alaska Legal Services placed a \$500 minimum on civil disputes to be taken by staff attorneys. The rule is waived in matters where over-riding non-monetary issues may be joined if the case is taken. Fee-generating cases are referred to private attorneys. Interview with Eric Treisman, deputy director, Alaska Legal Services, Inc., in Fairbanks, Oct. 6, 1973.

¹⁶ Inexperience with the adversary system and with attorneys also color the attitudes of potential clients. See S. Conn and A. Hippler, Notes on Representation of Native Clients, September 7, 1972 (unpublished paper prepared for Alaska State Public Defender Agency).

¹⁷ Bush Justice Reports (1973), *supra* note 3, at 47.

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Ironically, native magistrates perform best as parajudges by operating outside their formal roles as they privately attempt to seek informal solutions to potential civil and criminal complaints. They often encourage other resident paralegals, such as the constables or the council, to conciliate matters that they feel do not deserve formal arrest and predictable sentence by the court.

C. Village Constables

Native police have been employed in villages from the inception of white contact with northern Eskimo communities.¹⁹ However, these police were usually employed as agents of the council and not as agents of the territorial and state police. They were charged with enforcement of council-made rules. Constables brought offenders and witnesses to the council meetings or conducted investigations for the council but did not conduct independent investigations that led to formal arrest.²⁰

The development of a village constable training program for southwest Alaska by the Department of Public Safety in 1971 represented a significant reallocation of responsibility among paralegals in the bush.²¹ Although constables were trained to investigate all offenses with the council and were under direct supervision by state troopers, the impact of the program has been to place personal authority in village constables to act as case resolvers as well as case investigators. In some villages, the council rejected this new state of affairs. However, what has emerged in other villages has been a distinctly diminished role for councils and a clearer line of authority and communication between constables and troopers who visit the village to review their work and to remove some of their cases for prosecution. Preliminary statistics on the resolution of cases submitted to troopers and to the state criminal justice planning agency indicate that in the villages affected, constables along with councils or magistrates have emerged as local conciliators.²² The long-range effect has been to weaken both the decision making authority of village councils and their leverage over which cases were capable of conciliation and which deserved removal from the village.

¹⁹ "The mission is under many obligations to Capt. Healy of the 'Bear' for bringing up our coal and supplies last year, and appointing ten Eskimo police to take charge of drunken natives who might be inclined to be disorderly." W. Lopp, *A Year Alone in Alaska*, 46 AMERICAN MISSIONARY 386, 391 (1892).

²⁰ Bush Justice Report (1973), *supra* note 3 at 34.

²¹ CRIMINAL JUSTICE PLANNING AGENCY, ALASKA CRIMINAL JUSTICE PLAN 31-32 (1972).

²² During a six months' period in 1972 village constables resolved 139 crimes, councils resolved 151, and 135 crimes resulted in court action in the village or in outside courts. Village Police Training, 1972 Annual Report 1 (unpublished report on file at the Criminal Justice Planning Agency, Juneau).

D. *Correctional Aides*

In 1971 the Division of Corrections instituted a program to introduce paralegals into larger bush communities to serve as assistants to probation officers. Aides were trained to investigate the home background of offenders, to research information to be put into the probation officers' reports, and to visit clients on probation who had been returned to the village. The program has been underfunded, under-equipped, and beset with resignations.²³ Functionally, it has failed to develop useful ties to the magistrate or to the councils that might have allowed for continued work in community-based correction by the council. However, correctional aides as well as other paralegals are solicited for legal advice by magistrates and councils in nearby villages.

E. *Other Village Paraprofessionals*

A survey of the present state of paralegalism in the bush must include those paralegals who administer the welfare program in the villages. The Department of Health and Social Services employs over 200 fee agents to take applications and to relay information to district officers.²⁴ The state's food stamp program also employs 200 agents from nominees suggested by village councils.²⁵ In its administration of a general assistance program in native villages, the Bureau of Indian Affairs uses several administrative approaches which place legal decisions regarding need in the hands of lay persons.²⁶ No cadre of legal advocates or attorneys are available in the villages to question professional or paraprofessional determinations regarding interpretations of the complex guidelines for welfare.

F. *The Paralegals as Ombudsmen*

The presiding district court judge of the fourth judicial district has described the overriding importance of the magistrate as a paralegal:

²³ Aides are located in Nome, Kotzebue, Barrow and Bethel. Their title had been changed to Program Service Aides. E. Pierson, *Aides Program Special Report and Evaluation* (unpublished and undated report on file in the Division of Corrections, Juneau).

²⁴ Telephone interview with Ray Pagenkopf, Program Administrator of Div. of Family and Children Services, Dept. of Health and Social Services, in Juneau, Oct. 1, 1973. The welfare fee agent program was terminated in 1969 but has been reinstated in 1973. See also ALASKA DIVISION OF PUBLIC WELFARE STAFF MANUAL § 333.12 (1970).

²⁵ Interview with Ray Pagenkopf, Dept. of Health and Social Services, in Fairbanks, Oct. 1, 1973.

²⁶ For example, general assistance is administered through the Fairbanks regional office of the Bureau of Indian Affairs in three ways. Assistance is channeled through a village advisory council in thirty Northern villages. Five village councils have contracts to issue assistance. Seven villages deal directly with the regional office. Interview with Robert Elliot, Bureau of Indian Affairs, in Fairbanks, Oct. 1, 1973.

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The magistrate until the recent past (if not still) has frequently been the *only* state official in many of the smaller cities and villages. Therefore he or she is *the* person to whom the local residents go for almost any assistance from the cradle to the grave, which automatically makes the magistrate the unofficial peacemaker for the community.²⁷

Yet other observers have remarked that in fact each paralegal who acts for a state agency, be he fee agent, constable or magistrate, becomes an ombudsman, a primary source of legal information and interpretation for his clients in such matters as social security and unemployment benefits, land claims, consumer complaints, and legal documents mailed to villagers that name them in actions for debts, divorces, or adoptions.²⁸ The village paralegals (as well as trusted troopers and officials who visit or communicate with the villages) may be less well equipped to respond to "submerged" legal issues than to the commonplace ones. There is presently no paralegal who can identify litigable issues that may have widespread implications for the quality of life of villagers.²⁹

G. Summary

As we have indicated, paralegals have been only partially successful in supplying legal information to villagers. However, they are the primary source of this information. They have rarely defined problems to the extent that attorneys are then contacted to pursue them in civil litigation, nor has that been their purpose. They have been more successful in diverting cases from the legal process. They offer authoritative attention to many problems without the red tape or delay concomitant in looking for the answer

²⁷ H. H. Connelly, *The Magistrates' Role in Alaska Past and Present* 7 (unpublished & undated paper prepared for the Magistrate Advisory Committee of the state supreme court).

²⁸ D. Jones, *Child Welfare Problems in an Alaska Native Village*, 143 *SOCIAL SERVICE REV.* 297, 302, 308 (1969). Interview with Dorothy Jones, Professor of Sociology, University of Alaska in Fairbanks, Oct. 2, 1973.

²⁹ In September 1973 a staff attorney of Alaska Legal Services visited a small Northern Eskimo village accompanied by author Conn and discovered the following potentially litigable issues: (1) a contract dispute between the village and the state over maintenance of the local airport runway; (2) a contract dispute between twenty-five residents and the state housing authority over the authority's failure to define in contracts of purchase the dollar value of "sweat equity" or the final purchase price of houses constructed in the village; (3) a further possible statutory violation by the agency due to its failure to consider utility costs in formulating monthly house payments; (4) an attempt by a subcontractor of the Environmental Protection Agency to have village council settle a contractual claim with the council for services of villagers in the construction of a water plant at twenty-five cents on the dollar; and (5) a dozen rejections of enrollments by the Department of Interior under the Alaska Native Claims Settlement Act, 43 U.S.C. §§ 1601-24 (1971). No paralegal in the village had been trained to realize the significance of legal questions in each of these matters. The council had requested the attorney because of physical imperfections in the houses constructed for purchase from the state agency. Other issues emerged only after discussion and review of the council's correspondence for the previous six months.

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from an outside agency or attorney. Paradoxically, as we have noted, the successful conciliation of disputes within the villages has occurred most often when paralegals performed outside their described roles or extralegally and were able to define the shape of legal procedure for themselves and for their clients.

If the state's legal community is to address problems in the bush through improved coordination with paralegals who can convey needed information about the legal process and who can when necessary adapt the process of justice to village expectations, it must recognize the two distinct functions of paralegals in Alaska. The first is to provide *on site* legal information sufficient to encourage potential clients to make knowledgeable choices and, if necessary, to obtain professional legal assistance in the realm of criminal, civil and administrative law. The second function is to divert from the legal process local conflicts that are best resolved in the village. Each function has been defined by the particular needs, successes and failures of paralegals who have been allowed to define the process of bush justice from territorial days to the present.

Paralegals will remain the primary source of justice for rural villages. Professionals must consider how best to improve their working relationship with them if cases that require exportation are to reach the courts and if alternatives to litigation or incarceration for lesser matters are to be retained.

It is no exaggeration to conclude that the rural justice system peopled by paralegals in Alaska is not merely a pale reflection of the law enforcement with judicial process found in urban areas, but is rather an entirely different phenomenon. To view Alaska's varied experience with paralegals and determined needs for the future more sharply, the models for paraprofessionalism developed in other places offer points of comparison and evaluation.

II. PARAPROFESSIONALISM: THE LARGER CONTEXT

A. Models for Paraprofessional Activity

Jean and Edgar Cahn, duly credited as the conceptualists of the neighborhood legal services in the United States,³⁰ were also instrumental in introducing paralegalism into programs that might offer models for Alaska, such as the Dixwell Legal Services Program which serves an urban ghetto and the Navajo legal services pro-

³⁰ Cahn & Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); Cahn & Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME L.J. 927 (1966).

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ject, Dinebeina Nahiilna Be Agaditahe. Paralegals in these instances were introduced to build bridges between ghetto or Indian communities and middle-class attorneys who sought to inform and assist clients without patronizing members of distinctly different cultural and social backgrounds. In each project, the roles of paralegals thus introduced were broadened by program participants from mere interlocutors to individuals who were themselves definers of legal issues, primary communicators of law, and dispute resolvers.³¹

As later functionally defined by the Calms in a proposal to establish the nation's first law school to "train, certify, and place legal technicians in paralegal positions"³² and "to institutionalize the education as an integral part of law school,"³³ the role-models for paralegals were grouped functionally into four categories: (1) legal assistant/legal secretary; (2) lay advocate; (3) law office administrator; and (4) arbitrator, mediator, ombudsman.³⁴ With the exception of the law office administrator, these role models are relevant to the discussion of Alaska's rural paralegals.

B. *Paraprofessional Roles: Legal Assistant*

The legal assistant "acts as a contact or referral agent, receptionist, interviewer, investigator and in other auxiliary roles."³⁵ This role has been explicitly sanctioned in American Bar Association interpretations of the Code of Professional Responsibility.³⁶ The legal assistant works directly as an adjunct to an attorney and does not offer legal advice. The Alaska State Public Defender Agency has employed law students and prospective law students in this capacity.³⁷ The difficulty of defining paralegals in Alaska merely as lay persons who operate from offices at a great distance from the village is that this would not offer preliminary communi-

³¹ Dixwell Legal Rights Ass'n, *Community Workers: a Manual for Lawyers*, in *A COMPILATION OF MATERIALS FOR THE LEGAL ASSISTANT AND THE LAY ADVOCATE* 251, 262 (1971) [hereinafter cited as *Dixwell Manual*]; Interview with Peterson Zah, Deputy Director of DNA legal service, on the work of lay advocates [hereinafter cited as *Zah Interview*] and Interview with Leonard B. Jimson, Tribal court advocate, in VICENTE, JIMSON, CONN & KELLOG, 2 *LAW OF THE PEOPLE* 238, 257 (1972).

³² Antioch School of Law, *Preliminary Program Description, The Training of Certified Legal Technicians* (undated) [hereinafter cited as *Antioch Program Design*].

³³ *Id.* at 1.

³⁴ *Id.* at 4-5.

³⁵ *Id.* at 4.

³⁶ "A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants, lay scribes, nonlawyer draftsmen or nonlawyer researchers. In fact he may employ nonlawyers to do any task for him except counsel clients about law matters, engage directly in the practice of law, appear in court or appear in formal proceedings a part of the judicial process, so long as it is he who takes the work and vouches for it to the client and becomes responsible to the client." ABA OPINION No. 316 (1967); ABA, *CODE OF PROFESSIONAL RESPONSIBILITY AND CODE OF JUDICIAL CONDUCT* 16 (1971).

³⁷ B. Timbers, *Office of the Public Defender Brings New Justice to the Bush*, 1 *ALASKA BAR BRIEF* 6 (1972).

cation with native people who do not recognize the possible responses available to them from the legal system. The legal assistant would respond only as attorneys presently respond, to problems of sufficient severity to merit litigation already defined in part by client groups.

C. *Paraprofessional Roles: Lay Advocates*

The second role of paralegals is that of lay advocate. As the Antioch proposal defines him:

This legal technician has great contact with the client community, acts as a community counselor, educates the disenfranchised to their legal rights. . . . He is informal advocate, counselor, investigator, researcher, sympathetic listener and negotiator. He enables the client community to feel less in awe of the system and more competent to articulate grievances, to seek remedies and to turn to the appropriate authorities or professionals for assistance where needed.³⁸

The lay advocate's forte is his capacity to relate legal information to the community because he is of the community. It is no exaggeration to state that the success of the Navajo project and the Dixwell project has been due to the use of resident lay advocates from the reservation or ghetto to *redefine* for prospective clients their grievances in fashions capable of local resolution or resolution with the assistance of an attorney.³⁹

Although one can conceal the true function of the lay advocate behind a semantic smoke screen and term it "community education," in fact his role has been to advise potential clients that their rights have been infringed upon, to refer them to attorneys, and often to act as an advocate on their behalf.

1. The Constitutional Response to Lay Advocacy

In three landmark cases, the United States Supreme Court has opened the way for this form of lay advocacy in Alaska. In *NAACP v. Button*,⁴⁰ the court held that first amendment rights as absorbed by the fourteenth amendment, particularly the freedoms of speech, assembly, and petition, mandated a showing of compelling state interest where the state's statutes on barratry or champerty and unauthorized practice of law functioned to proscribe lay persons' capacity to reach their peers with information regarding both

³⁸ Antioch Program Design at 4-5.

³⁹ Dixwell Manual at 260; Zab Interview at 254.

⁴⁰ 371 U.S. 415, 9 L. Ed. 2d 405 (1963).

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⁴¹ 377 U.S.

⁴² 389 U.S.

⁴³ *Id.* at 2

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Button dealt substantively with lay advocacy on behalf of equal protection suits against racial discrimination, political as well as legal issues of little pecuniary interest to the rank and file of the Virginia state bar. However, the decision's impact with respect to lay advocacy on behalf of private legal issues where a lawyer would be monetarily rewarded by the activities of *collaborating lay advocates* was left to be clarified by two later cases. In *Brotherhood of Railroad Trainmen v. Virginia*⁴¹ a particular attorney was the beneficiary of private referrals from the union. In *United Mineworkers v. Illinois State Bar Association*⁴² a salaried union attorney processed workmen's compensation claims.

Said the court in the latter case:

That the states have broad power to regulate the practice of law is, of course, beyond question. . . . But it is equally apparent that broad rules framed to protect the public and to preserve respect for the administration of justice can in their actual operation significantly impair the value of associational freedoms.⁴³

Thus it was held that *Button* and *Trainmen* were controlling, and that, notwithstanding the potential for remuneration, such advocacy was protected.

2. Beyond "Stirring Up Litigation" to Representation Roles

Even Cahn and Cahn could not have fully predicted the likely activities of a lay advocate in an Alaskan village. At least two representational roles might be considered in light of the present-day needs of villagers for local legal assistance. The lay advocate might question welfare and food stamp decisions made by other paralegals and represent clients in fair hearings. He might advise arrested residents on their legal rights and even represent them in preliminary appearances or hearings on misdemeanors before the local magistrate.

It can be argued that each of these activities goes beyond those roles described in *Button*, *Trainmen*, and *United Mineworkers*. Further, they may be prohibited by Alaska state statutes which limit the private practice of law "to active members of the state

⁴¹ 377 U.S. 1, 12 L. Ed. 2d 89 (1964).

⁴² 389 U.S. 217, 19 L. Ed. 2d 426 (1969).

⁴³ *Id.* at 222, 19 L. Ed. 2d at 430.

bar."⁴⁴ Whether or not activities of the lay advocate may constitutionally be restricted may turn upon the particular area of the law in which the paralegal becomes involved.

Representation by a lay advocate is specifically allowed welfare recipients in fair hearings by the federal rules which govern state welfare programs.⁴⁵ The Supreme Court has ruled that the supremacy clause⁴⁶ made federal rules overriding in a comparable administrative proceeding where lay representation was allowed.⁴⁷ However, it is likely that the issue of lay representation in rural Alaska would turn upon broader Constitutional issues.

The scope of these issues is best described by the consideration of the second hypothetical role for a lay advocate, his advisement of the arrested villager of his rights and initial representation of him when he makes crucial decisions before the magistrate—should he remain silent, should he enter a guilty plea, should he have a trial before the magistrate or request a hearing before a district judge, or should he request an attorney?

3. Alaska Villages and Prisons—An Analogy for the Lay Advocate?

In *Hackin v. Arizona*,⁴⁸ the United States Supreme Court dismissed an appeal for lack of a substantial federal question when an Arizonan lay advocate appealed from his conviction for unauthorized practice of law. Hackin had represented a state prisoner without charge because the state limited free representation and no attorney could be found to take on the job. However, in *Johnson v. Avery*⁴⁹ the high court held that the state could not prohibit the practice of a "prison lawyer" unless a reasonable alternative to lay representation was offered where the effect of such a prohibition was to abrogate the right of a fellow prisoner to file a writ of habeas corpus.

The majority opinion in *Johnson* emphasized not only the substantial right involved but also the particular deficiencies inherent among this isolated group of potential prisoner-petitioners that made self-help an unreasonable alternative. The majority said:

In a community where illiteracy and mental deficiency is notoriously high, it is not enough to ask a prisoner to be his

⁴⁴ AS 08.08.210 (who may practice) and AS 08.08.230 (unlawful practice as misdemeanor).

⁴⁵ See IV Handbook of Public Administration sec. 6200(3)(G)(2) (1967).

⁴⁶ U.S. CONST. art. VI.

⁴⁷ *Sperry v. Florida*, 373 U.S. 379, 10 L. Ed. 2d 428 (1963) (patent law).

⁴⁸ 389 U.S. 143, 19 L. Ed. 2d 347 (1967).

⁴⁹ 393 U.S. 483, 21 L. Ed. 2d 718 (1969).

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own lawyer. . . . Without assistance of fellow prisoners, some
meritorious claims would never see the light of a courtroom.⁶⁰

Prisons are doubtless special environments. However, in a comparative context of isolation, educational deprivation, inexperience with the legal system, and absence of accessible help from attorneys to define and frame issues, how different are prisons from many Alaska villages that have yet to be visited by an attorney?⁶¹

It might be argued that *Johnson* turned on an essential federal right for prisoners that had been effectively blocked by prison regulations as well as by circumstance. However, *Johnson* should be read in light of the expanded interpretation of *Button* in *Trainmen* and in *United Mineworkers*, where the court noted that its decision related to interference with the freedoms of speech, petition, and assembly in matters of local as well as federal concern.⁶² If the educational and physical constraints upon prisoners (and not merely the absence of state-furnished attorneys as in *Hackin*) gave the high court pause, could they balance the substantive evils that might well flow from the employment of village paralegals against the procedural and substantive rights lost where attorneys can be sought only with the combined blessing of good communications, good weather, and adequate travel budgets—and then necessarily with delay? These handicaps to representation are reinforced in the villages where a criminal defendant may or may not make a voluntary and intelligent waiver or assertion of his right to an attorney before a lay judge.⁶³ In fact, the lack of physical access to an attor-

⁶⁰ *Id.* at 487, 21 L. Ed. 2d at 721.

⁶¹ A comparison of the Southwestern Wade Hampton Census District and a sample of offenders in Alaska prisons is illustrative. While 16.5 percent of the offender sample had graduated from high school and an additional 10.2 percent had completed the General Educational Development Test to qualify for a high school diploma, only 8.9 percent of villagers in the census district had completed their high school education.

The median level of education for offenders was approximately nine years. The sample included juvenile offenders whose education had been interrupted by their incarceration. The median level of education of Wade Hampton adults (excluding those 24 years or younger) was 3.1 years. 1970 U.S. BUREAU OF CENSUS 3-157, table 120 (1971); Alaska Vocational Rehabilitation Services, *A Survey of Public Offenders* 12 (1970).

The data indicates that members of the adult prison population may have a higher level of present educational competence to make legal decisions than the adult population of a rural region in Alaska.

The economic deprivation of this rural district at least matches that of incarcerated persons. The 864 families and unrelated individuals in this thirteen village district had a per capita 1970 income of \$1,069 and median family income of \$2,417 with 66.8 percent of the families recorded below the defined poverty level and 74.5 percent recorded at 125 percent of the poverty level. 1970 U.S. BUREAU OF CENSUS PZ(1)-C3 (1971).

⁶² 389 U.S. at 224, 19 L. Ed. 2d at 431 (1967).

⁶³ One can ask whether any rural native defendant can knowingly and voluntarily waive his rights before a lay judge without access to advice by counsel or a

ney to discuss these waivers means that villagers may not employ their legal rights to obtain an attorney even when they are entitled to one.

D. Arbitrator-Mediator-Ombudsman: Proven Alternatives in Alaska

The last relevant model is the arbitrator-mediator-ombudsman to work within what the Cahns term "advocacy mechanisms." Within these "new" legal institutions, the paralegal intermediary will "provide mediation of disputes, take complaints and advise citizens . . . [and] form neighborhood advisory groups to the local prosecutor's officer . . ."⁵⁴

Employment of the paralegal as an intermediary offers perhaps less conflict and more historical precedent in Alaska than in any other state. The "new" institutions of which the Cahns write have an older institutional base in village councils.

What opportunities for incorporation of the institutional success of the council into present-day legal procedure exist? First, the "informal adjustment" of juvenile cases prior to the filing of a petition has, with the removal of juvenile cases from lower courts, become a job as yet undelegated but one that the council could implement so that village people could affect the juvenile's future and aid the legal process.⁵⁵

Second, the council could regularly apply Alaska statutes that allow misdemeanors with civil implications to be compromised be-

competently trained paralegal. Both the U.S. Supreme Court and the Supreme Court of Alaska have affirmed the right to "effective representation" by counsel absent knowing and intelligent waivers by the defendant in order to guarantee his right to a fair hearing that is not a "mockery and farce" but a "genuine trial." See *Powell v. Alabama*, 287 U.S. 45, 77 L. Ed. 158 (1932); *Escobedo v. Illinois*, 378 U.S. 478, 12 L. Ed. 2d 977 (1963); *Ingram v. State*, 450 P.2d 161 (Alaska 1969); and *Anderson v. State*, 438 P.2d 228 (Alaska 1968).

Whether lay judges can comprehensively communicate legal rights or effectively act in criminal matters even when attorneys represent defendants is the basis of a challenge of the lay judge system in rural California. *Amicus Argues Criminal Jurisdiction by Lay Judges Unconstitutional*, 6 CLEARINGHOUSE REV. 558 (1972). However, in Alaska, one could not garnish a due process argument against waivers (or trials) before lay judges with the argument of amicus, National Legal Aid and Defender Ass'n, that "the lay system is not longer justified by necessity."

⁵⁴ Antloch Program Design, *supra* note 34, at 5.

⁵⁵ A proposal to transfer jurisdiction of juveniles from the district court to superior court passed the legislature after successive failures in three legislative sessions. AS 47.10.10 (1962). However, some district court judges and magistrates continued to serve as masters under Civil Rule 53. See 1967-68 ALASKA JUDICIAL COUNCIL REP. 45 (1969).

Young adult advisory panels to serve as advisors to the court are already sanctioned by AS 47.10.075 (1962). Lay judges have been employed in New York to conciliate disputes between juvenile offenders and adults in a prehearing diversion project. W. Statsky, *The Training of Community Judges: Rehabilitative Adjudication*, COLUMB. SURVEY OF HUMAN RIGHTS LAW (1973) (at press).

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tween offenders and victims.⁵⁶ While the statutes do not encompass all village problems that might be conciliated, they lay the basis for a formalized arrangement between the court and the council that would allow the villages to retain decision-making power of cases that affect them immediately and that have historically been conciliated by paralegals in the village.

Third, in lieu of attempts by correctional aides to introduce new concepts of community-based rehabilitation, the council could be regularly employed to advise the magistrate regarding "social facts" that are relevant to his final disposition of the case.⁵⁷

E. Training for a New Paralegalism: Some Suggestions

One of the implications of the several roles that relate both to the existing paralegalism and to the new paralegalism that might be employed in Alaska is that training must be imaginative, thorough, and even more well grounded in village experience than that given paralegals who are prepared to work in daily association with attorneys. Even a legal assistant will make independent judgments as he travels and investigates cases on behalf of an attorney or legal agency.

Several guidelines emerge from existing programs that should focus planning for extensive paralegal education programs in Alaska universities.⁵⁸ First, the paralegal's education must match his job requirements. Training to do in-office work will not adequately educate the lay advocate who must regularly confront problems that relate to the law of contracts, torts, welfare, land claims, or criminal and civil procedure.

Second, the paralegals should not be trained in anticipation of jobs that do not and are not likely to exist. The villages do not need a large complement of legal secretaries. Potential sponsors and employers of paralegals, be they regional corporations or public agencies, should be drawn closely into the planning and definitional process by academicians.

Third, the cultural and historical experience of native people should be intrinsically tied to the training of native paralegals who will communicate and work within that special context. This means

⁵⁶ AS 12.45.120 and 12.45.130 (1962). For a description of analogous reforms see J. Kole, Arbitration as an Alternative to the Criminal Warrant, 56 JUDICATURE 295 (1973).

⁵⁷ S. Conn & A. Hippler, Bush Justice: Sentencing Reforms, Role for the Council (1973) (unpublished paper prepared for the state supreme court).

⁵⁸ See, e.g., Division of Community Services, Anchorage Community College of the University of Alaska, Paralegal Program, Professional Training for Legal Assistants, March 10, 1972 (unpublished proposal).

that if law is to be addressed in a comparative context, comparative with options that are customary or extra-legal but still effective, it should also be taught in that context.⁵⁹

The future of paralegalism is everywhere exciting, but for rural Alaska it offers the promise of effective representation and the engagement with the legal process by those denied it.

⁵⁹ Two examples of such training materials are W. Statsky, *Teaching Advocacy: Learner-Focused Training for Paralegals* (1973), and VICENTI, JIMSON, CONN & KELLOG, *supra* note 31.

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