

HB

195

COMMITTEE REPORT
SENATE

FURTHER: State Affairs and
Finance

3/8/79

Date: 3/13/79

Mr. President:

The Committee on JUDICIARY has had HB 19, an
providing for an advisory committee on judicial sentencing practices

under consideration and (a majority of the committee) (~~the committee~~)
reports it back with the following recommendations:

- do pass [] do not pass
- [] do pass with attached amendments(s)
- [] replace with CS for _____ [] same title
[] new title
- and recommends _____
- [] AND attaches a "Letter of Intent" [] New Fiscal Note
- [] reports it back without recommendation
- [] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

3 copies
 1 Melend
 1 Connett

MEMBERS HAVING
OTHER RECOMMENDATIONS:

2 Danburth - No Rec
 2 Bill Ray NO REC

3
CHAIRMAN

Bob's file.

The \$5,000 was ~~not~~ ^{deleted} addressed in HB 196 because finance committee thought that it was foolish to make appropriations for a bill that might not make it even to their committee.

According to Finance A. P. Gary Paska when HB 195 reaches their committee they will tack a \$5,000 fiscal note to it.

- 1. Change in recent years
74-74

→ 2. Courts have appointed a
sentencing guidelines Com.

780.012

1173 ~~34~~ 396

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
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JUNEAU, ALASKA 99801
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M E M O R A N D U M

TO: Representative Anderson
FROM: Don Clocksin *DC*
DATE: February 16, 1979
SUBJECT: Sentencing Studies

1. Summary of Findings

In April, 1977, the Alaska Judicial Council issued a Preliminary Report analyzing felony sentencing patterns in Alaska from 1974 to 1976. On September 6, 1978, the Council issued a follow-up report documenting one finding from their studies - that race affected the length of a sentence. In October, the Alaska Court System prepared their own analysis of the Judicial Council data, and on October 30, the Judicial Council submitted a response to the Court System critique.

Though the statistical battle rages, a couple facts seem to be accepted by both the Council and the Court System. This memo addresses only the questions regarding Natives, not Blacks.

- a. Particularly in Fairbanks, Natives convicted of felonies receive jail time much more often than whites.
- b. Natives convicted of misdemeanors receive longer sentences than whites.

2. Discussion

The Court System has rejected the Judicial Council study as incomplete and inaccurate.

If racial disparity in sentencing does indeed exist in Alaska, the Judicial Council study has not proven it to what we would consider an acceptable degree.

However, when one reads the Court System analysis and compares it with the study, it is clear that both agree a disparity exists and that it is based on race. This general rejection of the Judicial Council's efforts is contradicted by the following, quoted from the Court System analysis.

"The Black and Native races have significantly lower probation rates."

"Natives receive higher sentences across the board . . ."

". . . the finding of potential racial disparity appears probable for Natives on misdemeanor sentences . . ."

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Representative Anderson
February 16, 1979

Once we conclude that a disparity exists, the next step is to look at all other explanations for the disparity. A number are mentioned in the two reports, while some others are not adequately considered. First, the findings indicate that a greater percentage of Natives are unemployed. The Court System concludes from that fact that more Natives get jail time because more of them are unemployed and thus cannot be put on probation.

Second, a substantially larger percentage of crimes by Natives are alcohol-related. The implication is that a greater sentence was imposed because alcohol was involved, not because a Native was involved.

Third, indications are that Natives have fewer ties to the community (Anchorage or Fairbanks) and that it is this "instability" which results in no probation, not the fact a Native is involved.

Fourth, a factor which seems to have been missed by all parties to this dispute is what kind of lawyer was available. Natives are much more likely to be represented by the Public Defender and much more likely to get jail time and longer sentences. The data seems to indicate that representation by appointed counsel has much more effect on length of sentence than most other factors. Since Public Defender defendants get longer sentences, and Natives more often must use the P.D., this factor should be looked at more carefully.

Fifth, another factor all but ignored by the studies is the demeanor of the defendant in open court. We may hypothesize that bush Natives, with different language and cultural backgrounds, handle themselves poorly when talking with the judge. We may also assume that, despite all the talk of objective sentencing criteria, the way a person behaves in front of a judge substantially affects the judge's sentence.

The important point to make about all these other "explanations" for the disparity in sentencing is that they tend to prove the racism rather than disprove it. Natives who 1) come from the bush; 2) cannot find jobs there; 3) have alcohol problems because of dramatic socio-cultural changes; 4) are poorer; 5) have no choice as to their lawyer; and 6) are forced into a foreign justice system, are suffering from those characteristics. Since they are uniquely Native characteristics in Alaska, heavier sentences based upon those characteristics are racist.

The difficulty with the Court System response is that it agrees with the data but rejects the hypothesis. Their attitude does not seem particularly constructive. A few examples: 1) Neither the Court System nor the Judicial Council lend any significance to the greater presence of alcohol in Native crimes or the almost non-existent role of drugs in Native crimes; 2) The Court System spends 10 pages

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critiquing the findings on felony sentencing but only 3 pages on the misdemeanor sentences, when the latter clearly shows a racial disparity; and 3) The Court System discusses variables which absolve them of responsibility (e.g., unemployment) but do not discuss other explanations which place more responsibility on the justice system (e.g., demeanor in court; the pre-sentence report). By arguing that racial disparity has not been proven, the Court System unnecessarily delays any study of solutions.

3. Recommended Actions

Further study is clearly needed. The resolutions and bills on the subject are correct in their assumption that the disparity exists and methods for addressing it must be looked at. The study should look at the following:

- a. comparison of alcohol-related crimes by Natives with alcohol-related crimes by whites;
- b. comparison of crimes by unemployed Natives with crimes by unemployed whites;
- c. comparison of sentencing patterns of rural courts with those of urban courts;
- d. comparison of pre-sentencing reports on Natives with those on whites;
- e. the importance of demeanor and visual and oral communication between probation officer and defendant and between judge and defendant in sentencing decisions;
- f. the correlation between representation by a public defender and by private counsel and whether lower quality representation, if it occurs, affects Natives more than whites; and
- g. the effect of alcohol on charges filed by the police and prosecutor and whether any such variable affects Natives more than whites.

Two general points to be made: First, it is likely, based upon any comparison between rural and urban courts, that Natives receive fairer sentences if they are sentenced close to home. If the lack of ties to the community is relevant to the sentencing decision, then sentencing by a court closer to the defendant's home is likely to be less harsh. We should consider making an effort of getting community-based correction facilities in rural areas and more effort at returning the defendant to his or her home for sentencing.

A second but related point is that, if a person is sentenced to jail time, he or she often is sent outside the state to do time. This hurts Natives particularly since their language and cultural differences make them an oddity in the lower 48. Rehabilitation is very difficult the further a person is taken from their home and relatives. Without family contact and assistance in finding

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jobs, the ability to readjust to society becomes overwhelmingly difficult. If you are interested in the state's practice of shipping prisoners out of the state to serve their time, you may want to look at SB 32 which makes it easier to do so. It would adopt the Interstate Corrections Compact to facilitate out-of-state transfers and allow the Division of Corrections to avoid its obligation to encourage rehabilitation.

DC:vtb

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



Alaska Judicial Council

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CHIEF JUSTICE
SUPREME COURT

EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

February 13, 1979

Pat Berck
House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Pat:

Enclosed are copies of additional materials on race disparities in sentencing. Sorry for the delay-- printing took awhile.

Please let me know if you'd like more explanation or other information.

Sincerely,

Teresa J. White
Research Supervisor

Enclosure



Alaska Judicial Council

3034 STREET
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October 30, 1978

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EXECUTIVE DIRECTOR
MICHAEL L. RUBINSTEIN

MEMORANDUM

TO: MICHAEL L. RUBINSTEIN
FROM: STEVENS H. CLARKE
RE: RELATIONSHIP BETWEEN RACE AND SENTENCING

In this memo I want to summarize the statistical findings of the Judicial Council's plea bargaining study with respect to race and sentencing, and also to reply to the report of Merle P. Martin (October 1978). What I have to say here draws not only from my own thinking, but also from discussions with your consultant Professor Gary Koch of the UNC Biostatistics Department (a professional statistician). I would like to begin with some general comments on the controversy surrounding our study.

Scope of the plea bargaining study: As you know, the purpose of the Judicial Council's plea bargaining study was to measure the effects of the official prohibition of plea bargaining; more specifically, the Council's study sought to compare criminal case dispositions in Year One (the year before the prohibition went into effect) with those in Year

Two (the first year when the prohibition was in force), adjusting for other important factors that might change from one year to the next. In analyzing sentencing patterns to compare Year One and Year Two, we felt compelled to take into account a number of factors, including race, that might affect sentencing, in order to compare Year One and Year Two validly. Thus, in a sense, our findings on race and sentencing were a by-product of the plea bargaining study; we did not set out to analyze race as such.

However, I feel that our findings are quite reliable to establish certain facts about the relationship between race and sentencing. The main thing we have established is that the study data show a relationship between race and sentencing that should not be ignored. It suggests that further study may be needed as well as efforts to improve the sentencing process. (I have some ideas about future research in this area but will discuss them with you separately.) It is interesting that Merle Martin, although he disagrees with our methods (and we with his), seems to agree with our general conclusion that the evidence of possible race discrimination should not be ignored.

Sentencing must be placed in context. Writers on sentencing reform sometimes give the impression that sentencing is an independent judicial decision, from which it follows that if anything is wrong with the sentence, the judge is to blame. In fact, we know that this is untrue. The sentence is the result of a number of decisions by the police, prosecutor, defense counsel, and others, as well as the sentencing judge. Being a minority group member may mean a disadvantage

: at each of these decision points. I
lata you have recently been collecting will
oint.

on the blame on certain judges. I would
hat the Judicial Council's plea bargaining
used to try to confine the race-sentence
ertain individual judges. One reason is
not the only actor in the process that
ence. Another reason is that the plea
was not designed for an analysis of indi-
titudes and practices; that sort of analysis
ery different design.

of Analysis in Plea Bargaining Study

bargaining study, we chose as the unit of
e"--a single charge against a single de-
the relevant information on both the
t charge. This was a logical choice and
our findings regarding race and sentencing.
had several charges, we chose to analyze
information plus defendant information)
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lleged criminal acts and in the effect of
he evidence, which could be different for
o we were concerned not only with sentencing
entire spectrum of court processing of
luding post-arrest screening, court dispo-
, plea to reduced charge, plea to original
ad the overall probability that a felony

charge would lead to conviction plus an active sentence. This concern also dictated that we start with the smallest available "atom" of information. Initially we had no basis for grouping multiple charges together. In the analysis, we took pains to find out how the handling of a case was affected by the number and type of its "companion cases" (other cases involving the same defendant). Should the occasion arise for future research, we now have a basis for grouping multiple charges together and analyzing the processing of felonies on a defendant as well as a case basis.

The use of the case as a unit of computation has not prevented our sentencing analysis from being meaningful. When we reach the conclusion that, for example, being black is associated with more severe sentencing in drug cases, it should be remembered that this means that a person charged with a drug felony and convicted tends to get a more severe sentence on that charge if he is black. If he was charged with or convicted of more than one offense, this fact will also tend to exacerbate the sentence, as our analysis shows, but the contribution of race and other factors is estimated separately from the contribution of companion cases.

II. Findings of Plea Bargaining Study Regarding Race and Sentencing

I would like to summarize here the methodology and findings of the Judicial Council's study with regard to the relationship between race and sentencing. In doing this, I will be making reference to the preliminary draft of the report by Gary Koch and myself on the felony statistical study ("The Effect of the Prohibition of Plea Bargaining on

the Disposition of Felony Cases in Alaska Criminal Courts", September 1978), especially Section VII and Tables VII-1 through VII-10, and also to my memo to you of July 30, 1978, entitled "Relationship of Race to Sentencing."

In analyzing sentencing, our main objective was to compare sentences in Year One and Year Two, before and after the plea bargaining ban went into effect. We identified factors that had an important relationship to sentencing in both years (other than the new policy against plea bargaining) and took these factors into account statistically in estimating the impact of the plea bargaining ban. In other words, we sought to estimate the effect of the plea bargaining ban on sentencing independently of the effects of other factors.

In doing this, we used two very different statistical techniques--not one, as Merle Martin says. Each technique had its strengths and weaknesses, but because the strengths and weaknesses were different, each technique could be used as a check on the other. In general, the results obtained from the two techniques agreed with each other; this gave us more confidence in the results of each. (Compare Table VII-8 of the draft report with Tables VII-3, -4, 6, and -7.) We concluded that our findings on sentencing were not an "artifact" (accidental result) of using a single statistical technique.

All cases were included in our sentencing study where the original charge was a felony and the defendant was eventually convicted, even though the charge may have been reduced to a misdemeanor. The reduction would, of course, have affected the sentence. We took into account not only the nature of the original felony charge but also the actual

offense of which the defendant was finally convicted, so that the impact of reduction would be measured.

A. Multiple Regression (Sentence Length)

1. Methodology

Our multiple regression analysis estimated the effects of a number of factors on the length of the active sentence received in a case. A probationary sentence with no active imprisonment was treated as a sentence of length zero. In order to reduce the possible distortion of our analysis by a few extremely long sentences, we performed the multiple regression calculations on the logarithm of the sentence.

Because the type or "class" of the original felony charged was strongly related to variations in sentence length, and because we believed that other factors might affect the sentence quite differently depending on the class of the original felony charge, we performed the multiple regression separately within the four major classes of cases: Class 2 (violent felonies other than murder and kidnapping); Class 3 (burglary, larceny, receiving, etc.); Class 4 (fraud, forgery, embezzlement, worthless checks), and Class 5 (drug felonies). We left out Class 1 (murder and kidnapping) and Class 6 (morals felonies) because they contained too few cases for detailed analysis.

The multiple regression approach offered the advantage of estimating the simultaneous effects on sentence length of a number of factors. We included as factors such things as the specific offense of conviction, companion charges and convictions (if any), record of convictions, whether the defendant was on probation or parole, the defendant's age,

sex, race, income, employment, occupation, marital status, and family ties, and others. Some of these factors were "screened out" in a preliminary one-way analysis of variance that preceded our multiple regression computations, because they displayed no clear relationship to sentence length. Other factors were shown by the multiple regression to have no important relationship to sentence length. Tables VII-3 through VII-7 in the draft report show the estimated contribution to sentence length only of those factors that survived the initial screening and were shown to be significantly related to sentence length by the multiple regression runs.

I want to emphasize that we had to examine all these factors in the multiple regression in order to properly compare sentence lengths before and after the plea bargaining ban. If any turned out to be significantly related to sentence length, the multiple regression computer program adjusted for them in estimating the effect of a case being filed in Year Two (after the plea bargaining ban) rather than in Year One. The same can be said of the multiple regression estimate of each factor's importance: the contribution of each factor was estimated independently of the contribution of all other important factors.

2. Multiple regression results

The multiple regression analysis showed that, along with a number of other factors, race was significantly related to sentence length in Class 3 (burglary, larceny, and receiving), Class 4 (fraud, forgery, embezzlement, etc.), and Class 5 (drug) cases. Specifically, being black

or native rather than "other" (i.e. white) was estimated to increase sentence length by the following percentages, exclusive of the effects of other factors, in the following classes: Class 2--no race effect; Class 3--black 277 per cent, native 94 per cent; Class 4--black 452 per cent, native 441 per cent; Class 5--black 467 per cent, native no effect. (See Tables VII-3 through VII-7 of draft statistical report.)

Why was no race effect found in Class 2 cases--those where the initial charge was a violent felony other than murder or kidnapping? We do not know, but can speculate that the inherent seriousness of a violent crime overshadowed the effect of the defendant's race.

How complete was the description of variation in sentence length provided by the multiple regression? The regression "explained" 51 per cent of the variance in the logarithm of sentence length in Class 2 cases, 27 per cent in Class 3 cases, 53 per cent in Class 4 cases, and 49 per cent in Class 5 cases. (These figures are incorrectly stated on p. 11 of Merle Martin's report.) These estimates of percent of variance explained (" R^2 ") indicate that we have not explained all the variation in sentence length in our study; however, they are fairly typical of research of this kind. The fact that we have not statistically explained all of the variance in sentence length indicates that we have left out factors that affected sentence length. These may have been subjective factors that we could not have included in our study data, such as the defendant's demeanor or physical appearance in court, or his attitude toward

court personnel. Note that these missing factors could have "explained" the apparent relationship of race to sentence length. In other words, information that we did not or could not capture in the sentencing study might explain why blacks and natives received longer sentences.

3. Median sentences for nonwhites if they had been white

The multiple regression results provided a way of estimating what the nonwhite defendants' sentences would have been if they had been white, as explained in my July 30 memo to you. In computing these, we included all relevant factors in each nonwhite defendant's cases except that we changed his race to "other". We then compared the estimated "white" medians with the actual medians, as shown below.

		<u>Actual Median Sentence</u>	<u>Estimated Median Sentence if White</u>
Class 3 (burglary, larceny, etc.)	Black	3.0 months	0.3 months
	Native	0.4	0.2
Class 4 (fraud, forgery, etc.)	Black	0.0	0.0
	Native	14.0	0.6
Class 5 (drugs)	Black	24.0	1.0
	Native	1.0	0.2

This comparison shows medians higher for blacks than whites in Classes 3 and 5, and medians higher for natives than whites in Classes 3, 4, and 5. (The comparison of medians is somewhat different than the multiple regression results stated in the previous subsection. This is because the estimate of contribution to sentence length in multiple regression was based not on the median but on the mean of

the log of the sentence length considering the full distribution of sentence lengths, including those above and below the median.)

II. Cluster Analysis (Probability of Active Sentence of 30 Days or More)

1. Methodology

We regard the cluster analysis method as more rigorous, given the purpose it was used for, than multiple regression. Multiple regression has certain weaknesses, including the problems that may be caused by multicollinearity and interaction effects. (I will not explain these in detail here.) Cluster analysis is practically immune to both of these possible problems (multicollinearity and interaction effects) because it involves looking at the effect of a given factor (such as race) over a number of discrete groups ("clusters") of cases defined in terms of other factors identified as important.

The cluster technique involved several steps. First, sentence had to be defined in terms of discrete categories. We chose to divide sentences into two groups: (a) active sentences of 30 days or more, and (b) active sentences of less than 30 days plus probation sentences not involving any active imprisonment. Our task then became one of analyzing the probability that a convicted case would result in an active sentence of 30 days or more.

The next step was to select the factors most importantly related to the probability that the sentence would be 30 days or more. We first chose the class of the initial (felony) charge, which proved to have a very strong relation-

ship to the probability of 30 days or more. As in multiple regression, the cluster analysis was done separately in each of the four major classes of cases (Classes 2, 3, 4, and 5). Within each of these four classes, factors of major importance were selected: (a) the seriousness of the specific offense of conviction; (b) the defendant's felony conviction record; and (c) whether there were companion felony cases. (The companion case factor was not important in Class 4 cases.) This selection was done by selecting the most important factor based on chi-square per degrees of freedom and then by selecting the others by using our Mantel-Haenszel statistic (explained below) over successively defined groups. The selection was also influenced by the fact that these three factors had been responsible for much of the variation in sentence length explained in the multiple regression analysis.

The last step was to group cases, within each class, into clusters based on all combinations of the most important sentence-related factors, and to look for the effects of all remaining factors--including race--over all the clusters.

2. Results of cluster analysis

The results of the cluster analysis regarding race are given in Tables A, B, C, and D at the end of this memo. I would like to re-emphasize that the factors identified as important correlates of a sentence of 30 days or more--including race--were just about the same as those identified as important correlates of sentence length in the multiple regression analysis. This gives us added confidence in all the sentence findings, including those regarding race.

In each table, the proportion of cases in which sentences of 30 days or more were received are shown within a specific class, for each of six or eight clusters of cases, broken down by race. Figures for cases involving black or native defendants are shown separately and also combined; the figures for "other" are of course primarily for white defendants. At the bottom of each table, the value of the Mantel-Haenszel statistic (which has a chi-square distribution) is given. The value of the statistic for "DF=2" is the value for the three-way comparison of black, native, and white; the value for "DF=1" is for the two-way comparison of nonwhite (black and native combined with white).

In Class 2 convicted cases (Table A), we can see that race did not have an overall relationship to the probability of an active sentence of 30 days or more. The Mantel-Haenszel statistic is not significant. Looking at the separate clusters of Class 2 cases (the top eight rows of Table A), we can see that the percentages receiving 30 days or more are not markedly different for nonwhites (blacks plus natives) and whites ("other") in four clusters; in two clusters, nonwhites have higher rates, and in two other clusters, nonwhites have lower rates. Also, the total rates (bottom row) are not very different. Thus, our common sense here tells us what the statistic is telling us: there is no consistent race relationship.

In Class 3 convicted cases (Table B), we find significant overall race differences, both in terms of the three-way comparison (black-native-white) and the two-way comparison (nonwhite-white). This can be seen by inspection.

In seven of eight clusters (rows of Table B), nonwhites have a higher rate than whites; sometimes blacks have a higher rate than whites, sometimes natives have a higher rate than whites, and sometimes both do. The total rates (bottom row) are much higher for blacks and natives than for whites. The Mantel-Haenszel statistic indicates that these observed differences are very unlikely to have been accidental.

In Class 4 convicted cases (Table C), significant race differences also appear. The nonwhite rate is noticeably larger than the white rate in four of six clusters, smaller in one cluster, and about the same in one cluster. The total rates (bottom row) are higher for blacks and natives.

In Class 5 convicted cases, involving drug felonies as the initial charge (Table D), a significant race difference was also found. The nonwhite rate is higher than the white rate in five of eight clusters. The data are very "thin" in the first four clusters (top four rows of Table D), and our conclusions about Class 5 are thus more influenced by the last four clusters, where more cases are concentrated. The total rates (bottom row) are much higher for blacks and natives than for whites.

III. Comments on Merle Martin's Report

I want to reply to Merle Martin's criticism of the Judicial Council's sentencing study and comment on his own sentencing analysis based on a restructuring of our data. Page references are to "An Analysis of the Alaska Judicial Council's Interim Report on Sentencing Disparity", Merle P. Martin, October 1978.

A. Martin (p. 2): The Judicial Council's plea bargaining was not initially designed to analyze disparities in sentencing.

Reply: Wrong. We had to analyze variation in sentencing in order to estimate properly the impact of the plea bargaining ban. In particular, we had to check for possible race effects. The plea bargaining study was not solely a sentencing study, but sentencing was an important part of it.

B. Martin (p. 2): The Judicial Council's study is invalid because it mixed misdemeanor sentences with felony sentences.

Reply: Wrong. We did include cases where the original felony charge was reduced to a misdemeanor before conviction. Realistically, one must acknowledge that such misdemeanor convictions are treated differently than those where the original charge was a misdemeanor. The Judicial Council took the final offense of conviction into account by controlling for it statistically. This was done in multiple regression by treating a number of specific conviction offenses as "dummy variables", and in the separate cluster analysis by controlling for a two-category seriousness of conviction offense, which distinguished misdemeanors from felonies. Thus, race effects were measured independently of the effect of the specific offense of conviction, and over all categories of such offenses.

C. Martin (p.2): The Judicial Council study is defective because it did not distinguish between consecutive and concurrent sentences where multiple charges were involved.

Reply: Wrong. It is true that we did not attempt to analyze the total sentence length where the defendant was convicted of multiple charges, nor did we attempt to analyze

the decision to make sentences run consecutively. (Neither did Martin.) However, this does not make our analysis defective. Our analysis dealt with the effect of race (and other factors) on the sentence received for individual crimes. We did not have the time to make a separate study of the total sentence or the decision to impose consecutive sentences. This may be a good subject for further research.

D. Martin (p.2): The Judicial Council left variables out of its study.

Reply: We could not include data on every possible factor; there were limitations on our time and resources. We did include a number of demographic factors, such as income, sex, marital status, length of residence in Alaska, family ties, occupation, employment, etc., along with variables such as offense, record, and the like. It is worth noting that Martin included very few of these in his own analysis. Contrary to what Martin says (p. 9), we found a number of correlations between demographic factors and sentencing. We did not include pre-sentence report data in our study, because we knew it would be available routinely only for cases where felony convictions occurred, and also because I regarded pre-sentence report information as more a result than a cause and as somewhat unreliable because of its subjective nature.

E. Martin (p. 2): The Judicial Council study relied primarily on multiple regression, and "there appeared to be some question" as to its validity.

Reply: Martin seems to have been unaware of our separate cluster analysis, described above, which confirmed what the multiple regression showed and is not subject to the same weaknesses as that method. His statement (p. 9) that "the

primary technique used was Stepwise Multiple Regression" is false. Martin correctly notes that multicollinearity can distort multiple regression results; however, our cluster analysis strengthens our conclusion that it was not any distortion due to multicollinearity that caused race to show up as a factor related to sentencing.

F. Martin (p. 7): The Judicial Council's analysis of the race effect is invalid because blacks and natives had somewhat more convicted charges than whites.

Reply: Wrong. We considered each sentence for each conviction of an offense separately, and the effect on that sentence of the defendant's race. We controlled statistically for (a) the number of companion felony charges filed initially, and (b) in multiple regression, the number of companion charges resulting in conviction. (We found that the existence of companion convictions meant a higher sentence for each conviction, but only in Class 5 (drug) cases; see Table VII-7 of draft report.)

G. Martin's Own Analysis of Sentencing

1. Unit.

Martin (p. 7) chose the defendant rather than the charge as his unit of analysis. We do not disagree that it is worthwhile doing a sentencing study on a defendant level; this may bring out facts that a charge-focussed analysis misses. However, there is a problem with Martin's approach. In a multiple-charge situation, Martin simply selects the charge receiving the highest active sentence and ignores the others. In so doing, he throws away the data on all but one charge; this may have the effect of obscuring the relationship of race to sentencing.

2. Separation of felony from misdemeanor sentences (p. 7)

I see nothing wrong with this. Bear in mind that the Judicial Council's analysis looked for independent effects of race entirely apart from whether the initial felony was reduced to a misdemeanor.

3. Grouping of all offense classes together (p. 13)

Rather than analyzing sentencing separately according to the type of the felony originally charged, as the Judicial Council's study did, Martin groups all types of offenses together, and distinguishes only between felony convictions and misdemeanor convictions. His reason for this is that the three race groups differ little (p. 13) in the proportion of their cases in the various offense classes. He says that race disparity, if it exists, "should be a rather consistent phenomenon rather than being isolated to specific offense classes."

The obvious reply to this is that there may be good reasons why race will have an effect on sentencing in one type of offense and not in another. We found no race effect where the initial charge was a violent felony; the reason may be that such charges are so serious that whites cease to receive preferential treatment in sentencing. Our findings were not "isolated to specific offense classes", as Martin implies; we found race effects in three out of four major offense classes.

4. Martin's data (p. 14)

Martin has done his study based on a rearrangement of the Judicial Council's data. I cannot vouch for this because I do not know how it was done. On p. 14, his counts of

felony and misdemeanor convicted charges add up to 1,445.

There is an error here; the correct count is 1,455.

5. Choice of control variables (pp. 14, 15)

Martin selected, without justification, prior felony convictions and companion felony charges as control variables. I do not disagree with this choice, but I do believe it is important to consider the type of offense to a greater extent than he does.

6. Martin's results with regard to felony convictions (pp. 24, 25)

Controlling for companion felony charges and prior felony convictions, and looking at all defendants convicted of felonies without distinguishing between types of felonies, Martin finds that mean sentence lengths for natives were not higher than those for whites, and that black sentences were higher but that the black-white differences were more pronounced among defendants with no companion felonies and prior convictions. This of course disagrees with our multiple regression analysis of sentence length. I have more confidence in our analysis, for two reasons: (a) it took into consideration a number of important factors simultaneously, which Martin did not, including the type of offense charged and the type of which the defendant was convicted; and (b) it was based on more data than Martin's, including all the cases he in effect threw away when a defendant was convicted of more than one offense.

Martin concludes blacks and natives had lower overall probation rates. Here he agrees with the Judicial Council study.

Martin attempts to explain away the lower probation rate for natives by showing that natives have a higher unemployment rate. Here his logic is flawed. He presents tables on pp. 20 and 21 showing that whether or not they received probation, natives had higher unemployment rates than whites (which is no doubt true). This does not, however, prove that the higher unemployment caused the less frequent probation; to prove this, Martin would do better to compare the probation rates of employed natives and employed whites. In our multiple regression analysis of sentence length we controlled for unemployment and a great many other factors and still found that natives received longer sentences.

Martin concludes that the lower probation rate for blacks and natives with no felony record and no companion felony charges is "largely isolated to Fairbanks" (p. 25). This may be true but I do not think he has proven it. He does not compare probation rates in Anchorage and Fairbanks for the other defendants--those who had prior convictions or companion felonies or both. Also, of course, he does not take into account a great many other factors that may explain the apparent differences between the two cities.

Martin also concludes that the higher active sentence length for blacks is more pronounced in Anchorage than in Fairbanks. Again, this may be true, but for the reasons just mentioned, I do not think he has proven it.

7. Martin's results with regard to misdemeanor convictions (pp. 25, 29).

Martin finds disparities in misdemeanor sentences between nonwhites and whites, both in terms of the percent receiving "no jail time" (probation?) and mean active sentences.

Even though his conclusions agree with ours here, I think his conclusions are not well supported, for reasons mentioned in connection with his felony analysis.

Table A. Relationship of Race to Probability of Receiving Active Sentence of 30 Days or More: Class 2 Convicted Cases (Ns in Parentheses)

Companion Felonies	Offense Seriousness	Prior Convictions	Percent Receiving 30 Days or More				
			Black	Native	Black Plus Native	Other	Total
0	Low**	0	33.3% (3)	20.0% (10)	23.1% (13)	19.5% (41)	20.4% (54)
0	Low	1+	0.0 (4)	36.4 (33)	32.4 (37)	12.9 (31)	23.5 (68)
0	High	0	90.9 (11)	66.7 (8)	82.4 (17)	58.8 (34)	66.7 (51)
0	High	1+	100.0 (6)	70.6 (17)	78.3 (13)	61.5 (27)	80.0 (50)
1-	Low	0	0.0 (4)	33.3 (3)	14.3 (7)	14.3 (14)	14.3 (21)
1-	Low	1+	75.0 (4)	0.0 (5)	33.3 (9)	41.7 (12)	38.1 (21)
1-	High	0	44.4 (9)	80.0 (5)	57.1 (14)	80.0 (40)	74.1 (54)
1+	High	1+	83.3 (8)	81.0 (21)	81.5 (27)	83.3 (80)	86.2 (87)
<u>Total</u>			61.7 (47)	52.0 (100)	55.1 (147)	55.8 (287)	54.8 (414)

Mantel-Haenszel Statistic = 0.31 (DF = 2) (Not sig.)

= 0.22 (DF = 1) (Not sig.)

*Six cases missing in this table due to unclassified specific offenses of conviction.

**Offense seriousness: "Low" includes felony hit & run, misd. assault, misd. careless use of firearms, and misd. disorderly conduct; "high" includes req. homicide, rape, robbery, armed robbery, attempted robbery, assault with intent to kill, assault with deadly weapon, and felonious escape.

ANALYSIS OF JUDICIAL COUNCIL'S
INTERIM REPORT

ALASKA COURT SYSTEM
OFFICE OF THE ADMINISTRATIVE DIRECTOR

October 1978

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A. Summary and Conclusions

1. Objectives of this Study: At the direction of the Alaska Supreme Court, we analyzed the findings of potential race disparity in sentencing included in the Alaska Judicial Council's interim report on the abolition of plea bargaining in Alaska. The specific pages of that report pertaining to the race/sentence issue are included in Appendix one. The objectives of our analysis were to:

- a. assess the appropriateness of the research methodology used to report potential racial disparity in sentencing;
- b. assess the validity of such findings;
- c. if such racial disparity appeared to exist, determine in more detail just where in the judicial process it was prevalent; and
- d. increase our understanding of the study in order to better explain it to those less conversant with statistical methodology.

2. Approach: We obtained a copy of the Judicial Council's data in a medium compatible with computer processing. We put the data on the State of Alaska's IBM 370 computer in Anchorage, and using in-house programming resources, produced a series of computer listings with which to perform the ensuing analysis. We received considerable assistance from Judicial Council personnel in learning just what the study was about and how it was designed.

3. Summary of Findings:

- a. Study Design (Section B). Our most pertinent finding was that the plea bargaining study was not initially designed to analyze disparity in sentencing. It looks at charges rather than defendants. Given

this, it is not surprising that we discovered several problems in the design of the study to include:

(1) Misdemeanor sentences were mixed with felony sentences. This caused apparent sentence disparities to be exaggerated for Blacks and understated for Natives.

(2) No data was collected as to whether sentences on multiple charges were to be served consecutively or concurrently. Thus 'real' prison time cannot be determined. The Judicial Council's study was equivalent to assuming that all sentences on multiple charges were served consecutively.

(3) Variables intuitively related to sentence length (and particularly to the probation decision) lacked specificity.

(4) There appeared to be some question as to the interpretation of the statistical techniques used in the Judicial Council study.

We adjusted the data base so as to minimize the above design problems and subsequently arrived at the remainder of the findings.

b. Felony Convictions (Section C).

(1) In no instance is the sentence for Natives greater than in the Other (predominately Caucasian) race group.

(2) In every instance, the Black sentence is higher than Other, but it is the Black defendant with no companion felony charges and no prior felony convictions that receives the most significant disparity in sentence length.

(3) The Black and Native race groups have significantly lower probation rates.

(4) For those defendants in the Native and Other race groups, there is a significant relationship between employment status and the probation decision. For those receiving probation there is a significantly lower unemployment rate than for those not receiving probation.

(5) For the group receiving probation Natives have significantly higher unemployment rates than those in the Other race group. Thus the lower Native probation rate can be at least partly explained by higher unemployment rates.

(6) There are so few defendants in Juneau that we can summarily exclude that location from any significant contribution to sentencing disparity.

(7) The significantly lower probation rate for Blacks and Natives with no companion or felony charges and no prior felony convictions seems largely isolated to Fairbanks.

(8) For those defendants with no companion felony charges and no prior felony conviction, Fairbanks Native defendants receive a significantly lower sentence length than do those in the Other group.

(9) There is disparity in sentence length between Black and Other race groups for those defendants with no companion felony charges and no prior convictions for both Anchorage and Fairbanks. However, the disparity is significantly greater in Anchorage.

c. Sentences for Defendants Whose Felony Charges Were Reduced to a Misdemeanor (Section D).

(a) There appears to be some disparity in misdemeanor sentences between race groups. Natives receive higher sentences across the board while the higher sentences for Blacks are restricted to those defendants with no companion felony charges and no prior felony convictions.

(b) Natives have a lower percent of defendants sentenced to no jail time in almost every category, but the difference is only statistically significant for those defendants with no companion felony charges and no prior felony convictions.

(c) Blacks have a significantly lower percent sentenced to no jail time for those defendants with no companion felony charges and no prior felony convictions.

(d) Even when those receiving no jail time are eliminated from the calculation, the sentencing disparity described above remains.

4. Conclusions:

a. Despite problems in the design of the Judicial Council's (as pertains to sentencing) the finding of potential racial disparity appears probable for Natives on misdemeanor sentences or for Blacks on both misdemeanor and felony sentences. However, this disparity may be due to other factors that accompany the fact that the defendant is Black or Native. As State University of New York's Professor Leslie Wilkins points out in his letter included as Appendix 2, "it is probable that 'race' is a proxy variable for others which are not included in the analysis. I can think of no proxies which would not reveal an equally

undesirable state of affairs with regard to the dispositions of offenders."

b. Given our ensuing analysis, we cannot accept the finding of felony sentencing disparity between Natives and Caucasians (Other) without a more careful study. Indeed our data indicates that, if disparity does exist in felonies, it is to the benefit of Natives.

c. The probation decision keeps surfacing as a major contributor to any racial disparity in sentencing that may appear. We suggest that unquestioning acceptance of racial disparity in the probation decision is premature until further study is conducted on the probation decision.

d. If racial disparity in sentencing does indeed exist in Alaska, the Judicial Council study has not proven it to what we would consider an acceptable degree. Nor has our study rejected its existence. This appears too crucial an area to be evaluated by anything but the most comprehensive and carefully planned study.

5. Recommendation: We suggest that the interested parties to this issue meet to determine what more comprehensive study would be required to ascertain whether or not there is racial disparity in sentencing in Alaska, where such disparity may exist, and, if found, how to correct it. While the delay inherent in such an approach may be bothersome, we believe it to be absolutely necessary given the design problems of the Judicial Council study and the importance of the potential problems.

B. Methodology

1. Problems with Judicial Council Study: The study was not originally intended to be used as a sentencing study. As a result, it has numerous problems to include the following:

a. Mix of felonies and misdemeanors. Sentences for felonies reduced to misdemeanors were averaged with sentences for felony convictions. This only would have been proper had the percent of felonies reduced to misdemeanor charges been relatively even between race classes. As we can see in Table 1, the percent of reduced charges varied considerably among races.

Table 1

Percent Defendants Whose Cases Were Reduced to Misdemeanors - All Offense Categories

Category	Black	Native	Other
1. No Companion Charges and no Prior Felony Convictions	53%	38%	46%
2. No Companion Felony Charges and One or More Prior Felony Convictions	0% (1)	65% (2)	35%
3. One or More Companion Felony Charges and No Prior Felony Convictions	17%	26%	21%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	5%	3%	16%

(1) Black significantly lower than Native or Other

(2) Native significantly higher than Black or Other

Overall, Natives had a higher percentage of felony charges reduced to misdemeanors. Blacks had a lower percentage. Mixing felony and misdemeanor sentences

tended to understate any sentence disparity between the Native and Other categories and to overstate any sentence disparity between the Black and Other categories.

b. Concurrent or consecutive charges. The Judicial Counsel study evaluated charges rather than defendants. Sentencing data was gathered on each convicted charge, but data was not gathered as to whether the sentence was to be served concurrently or consecutively with other charges. Computing sentences on all charges was equivalent to assuming that a defendant's sentences on multiple charges were all to be served consecutively. I shall cite two of numerous examples where this lack of distinction appears.

- Offense category two (violent crimes), 'Other' defendant number 1110; nine convicted charges for which he was sentenced to 120 months on eight of the charges and 60 months on the other. If these were to be served concurrently the defendant would have spent 120 months in prison (a little over 13 months per charge). If these were to be served consecutively, the defendant would have spent 1020 months (85 years) in prison (a little over 111 months per charge).

- Offense category four (burglary), 'Other' defendant number 888; 14 charges to which the defendant was sentenced to zero months (probation) on each charge. All fourteen 'zeroes' were used to compute average sentence length for category four, 'Other' race category.

This design omission would not have been fatal had the ratio of charges to defendants been insignificantly different. However, as seen in Table 2, this ratio is different between the race groups.

Table 2

Ratio of Convicted Charges to
Convicted Defendants

<u>Race Group</u>	<u>Ratio</u>
Black	1.49
Native	1.37
Other	1.29

The result of this fault is that any sentence disparity between 'Black' and 'Other' or 'Native' and 'Other' was exaggerated because sentences were counted more times.

c. Missing Variables: There does not appear to have been enough detailed demographic variables collected to effectively correlate such variables to sentence length (particularly the probation decision). For example, the Judicial Council study collected two variables: Marital Status in which the categories were single, divorced and married; and Family Ties, in which the categories were parents, other relatives, and none. Appendix 2 contains sentencing recommendation guidelines published by the Vera Institute of Justice Bronx Sentencing Project. The section dealing with family ties is reproduced below:

SENTENCING GUIDELINES

FAMILY TIES

- +3 Lives with spouse
- +2 Lives with children, with or without another family member.
- +2 Supports spouse or children, with or without supporting another family member.
- +2 Supports one or more family members voluntarily.
- +1 Supports a non-family person voluntarily.
- +1 Has been living with a family member other than spouse or children.
- +1 Has been living with a non-family person for the past six months.
- 0 None of the above.

NOTE: "Spouse" includes a legal spouse, or any person of the opposite sex with whom the defendant has lived in a conjugal relationship continuously for at least six months.

"Family member" includes any person related to the defendant by blood or adoption, including half and step relatives.

Note that the Vera Variables related to sentencing are much more detailed than those in the Judicial Council study. In addition, note that Vera guidelines rely upon combinations of factors. A defendant's marital status taken alone may not show a significant relationship to sentencing length and whether or not he receives probation. But that status taken in combination with employment status and other demographic variables may well be highly correlated. Thus, the general lack of correlation of demographic variables in the Judicial Council study may well result from a lack of specificity of these variables. This is an extremely important point. As State University of New York's Professor Leslie Wilkins points out in his

letter included as Appendix 2, "it is probable that 'race' is a proxy variable for others which are not included in the analysis. I can think of no proxies which would not reveal an equally undesirable state of affairs with regard to the dispositions of offenders."

d. Statistical Interpretation: Aside from the above problems, there are certain statistical points to be made about the Judicial Council study. To begin with, the primary technique used was Stepwise Multiple Regression. There are many documented problems with this technique, but the most bothersome is called multicollinearity. This occurs when one or more variables used to explain the dependent variable (e.g., sentence length), are highly correlated with each other. Thus if there is a strong relationship between race and, for example, prior felony convictions or number of companion felony charges, multicollinearity problems may occur. (Table 2 above suggests just such a positive relationship between race and the number of companion charges.)

Multicollinearity will not only affect the variable coefficients (in this case, for example, the percent sentence increase associated with being Black) but may well change the sign of the variable. In other words, a variable may be shown to be positively correlated to sentence length (e.g., being Black increases sentence length) when it is in fact negatively correlated.

The most common method for addressing multicollinearity problems is to eliminate one of the related variables from the study. For example, if companion felony charges are highly correlated to race, then one of the two variables should be eliminated. The dilemma is in deciding which one should go.

Multicollinearity considerations aside, the Judicial Council data reveals a statistic which has not been sufficiently emphasized. This statistic is called

the Coefficient of Determination (often referred to as r squared). This statistic states what percent of the variation in the dependent variable (in this case sentence length) can be explained by variation of the independent variables (prior felony convictions, race, number of companion felonies, etc.). Table 3 shows coefficients of determination from the Judicial Council study.

Table 3
Coefficients of Determination

Offense Class	Proportion of Total Variance in Sentencing Length Explained by Study
3	51%
4	27%
5	49%
1,2 and 6	less than 27%

For category two, for example, 27 percent of the variations in sentencing length could be explained by variations among the variables included in the study. Seventy-three percent of the variations in sentencing length were the result of factors not included in the study. One may well question whether the percent variation explained by the study is sufficiently high to conclude with comfort the existence of racial disparity in sentencing.

We do not believe that all of the design problems discussed above taken in combination 'disprove' study results. However, these problems do suggest that no prima facie evidence of racial disparity in sentencing has yet been shown.

2. Our Methodology: Given any less volatile conclusions presented in the Judicial Council study, we would be tempted to halt here. However, we considered the subject of such importance that we attempted to alleviate the design flaws and seek patterns in the data. Our methodology for doing so includes:

- a. Separating misdemeanors from felony sentences.
- b. For defendants with multiple charges, including only the one charge with the highest sentence. This is equivalent to assuming that sentences on multiple charges were to be served concurrently. While this assumption may be bothersome to some, it seems intuitively closer to reality than assuming all sentences were to be served consecutively. Those bothered by our approach may well wish to gather additional data to ascertain "real prison time".
- c. Rather than looking at individual offense categories, computing statistics on total defendants. This would seem to be mixing apples and oranges, but it is no less so than the study's mix of specific offenses within offense category. For example, in the Fraud category sentences for Issuing a Check With Insufficient Funds (10 year maximum sentence) were averaged with sentences for Forgery (20 year maximum sentence).¹ In addition, it appeals to our intuition that racial disparity in sentencing, if it exists, should be a rather consistent phenomenon rather than being isolated to specific offense classes. Let us test our consolidation with the data in Table 4.

¹ We suggest in future studies that each sentence be divided by the maximum sentence, thereby producing a 'normalized' variable (percent of maximum sentence served?) In this way, all offenses (including misdemeanors) could be studied as a group. Since 'maximum sentence' is one of the variables included in the Judicial Council data base, this may have been done but we have no knowledge that it was.

Table 4
Percent Felony Defendants by Offense Category

Offense Class	Black	Native	Other
1	4	4	3
2	34	43 (1)	28
3	29	31	33
4	12	9	11
5	2 (1)	8 (2)	22
<u>6</u>	<u>1</u>	<u>5</u>	<u>2</u>
Total	100	100	100

- (1) significantly higher than Other
 (2) significantly lower than Black or Other

There is no statistically significant difference in the percent of those in the Black and Other categories receiving sentences in the six offense categories. Thus combining these categories would not bias any sentence disparities that may exist between these two groups. The Native category has a significantly higher percentage of defendants sentenced in offense category 2 (violent crimes) and a significantly lower percentage of defendants sentenced in offense category 5 (drugs). Since violent crime sentences are generally higher than drug crime sentences, this means that Native sentences in our combined computations will tend to be overstated. But it will be seen that this bias will not affect the ensuing analysis.

d. Differences in the figures shown in the ensuing charts were tested for statistical significance using

the Chi Square statistic. The use of the terms 'significance' or 'significant' applies to the results of those tests./2

3. Study Numbers: Since there has been some confusion as to the relevant numbers involved in the Judicial Council study, we have prepared Table 5 to clarify this issue:

Table 5
Fallout of Felony Defendants (Charges)

Race Category	Original Charges *(1)		Indictments		Felony Convictions		Misdemeanors Convictions (2)	
	Defts	Charges	Defts	Charges	Defts	Charges	Defts	Charges
Black	338	520	202	334	94	140	35	37
Native	466	628	271	362	123	147	127	129
Other	1665	2438	1055	1613	518	691	234	301
Total	2469	3586	1528	2209	735	978	446	467

(1) Arrest, Complaint, or Indictment with Arrest or Complaint

(2) Including some with no indictments

Thus while there were 3586 original charges in the study, we will only be looking at 735 (20%) convicted felony defendants in Section C and 446 (12%) convicted misdemeanor defendants in Section D of our analysis. Finally, most of the data we subsequently analyze will be stratified into the following defendant control groups.

/2 In tests of statistical significance, the relative amount of the difference between two values is tested to see if it is large enough to be significant. For example, in Table 4 in offense category 1, there were 34 percent of Blacks and 29 percent of the 'Other' category. The difference of 5 percent is not significant given the magnitude of the numbers '34' and '29'.

- a. Those with no companion felony charges and no prior felony convictions.
- b. Those with no companion felony charges and one or more prior felony convictions.
- c. Those with one or more companion felony charges and no prior felony convictions.
- d. Those with one or more companion felony charges and one or more prior felony convictions.

You will remember from the Judicial Council study that the number of companion felony charges and number of prior felony convictions were both significantly correlated to sentence length. The above four categories represent the four possible combinations of these two factors.

C. Felony Sentence

1. Sentence Length

Average felony sentence lengths, controlled by companion felony charges and prior felony conviction, are shown in Table 6.

Table 6

Average Felony Sentence Length - All Offense Categories
(in months)

Category	Black (#)	Native (#)	Other (#)
1. No Companion Felony Charges and No Prior Felony Convictions	40.5 (23)	13.7 (43)	13.7 (229)
2. No Companion Felony Charges and One or More Prior Felony Convictions	56.3 (3)	22.7 (17)	34.7 (50)
3. One or More Companion Felony Charges and No Prior Felony Convictions	17.7 (44)	15.9 (45)	17.2 (165)
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	54.7 (18)	44.7 (16)	52.5 (74)
Total	34.9 (94)	19.6 (123)	22.4 (518)

In no category is the sentence length for Native higher than that for Other. In every case the Black sentence is higher than Other, but the disparity is quite small when the defendant has one or more companion felony charges. It is the Black defendant with no companion charges who appears to receive higher sentences, particularly those with no prior felony convictions.

Disparity in sentence length can occur in both the probation decision or, for those not receiving probation, in the sentence length decision. Table 7 shows that, in at least two categories, the Black and Native race groups have significantly lower probation rates than the Other group.

Table 7

Percent probation - All Offense Categories

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	22% (1)	34% (1)	57%
2. No Companion Felony Charges and One or More Prior Felony Convictions	11% (2)	41%	34%
3. One or More Companion Felony Charges and No Prior Felony Convictions	27% (1)	31% (1)	45%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	17%	13%	15%

(1) significantly lower than Other

(2) not enough numbers to compute significance

Only in the most cases (where the defendant has one or more companion felony charges and one or more prior convictions) is the probation rate equivalent. The largest disparity (from a statistical point of view) is for those defendants with no companion felony charges and no prior felony convictions. You will recall from Table 7 above that it was in this category that the greatest sentencing disparity occurred between Black and Other.

The question then is, if we eliminate those defendants who received probation, what is the resulting sentence length for those who were sentenced? Or, more pertinently, does disparity in probation rates account for all the disparity in sentencing length. Table 8 (derived from only those defendants who did not receive probation) shows that the disparity does not entirely disappear.

Table 8

Average Sentence Length for Those Who Were Sentenced
(Those Given Probation Excluded) - All Offense Categories
(in months)

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	51.7	20.7	32.3
2. No Companion Felony Charges and One or More Prior Felony Convictions	63.4	38.5	52.5
3. One or More Companion Felony Charges and No Prior Felony Convictions	24.3	23.1	31.2
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	65.6	51.1	61.7

Two points surface. Natives receive significantly smaller sentences than those in the Other group in every category. Thus the disparity shown in the Judicial Council study is reversed here. The second point is that, after eliminating the probation decision, sentencing disparity between the Black and Other categories still exists, but it is generally isolated to those defendants with no companion felony charges and no prior felony convictions.

A further illustration of this finding is shown in Table 9.

Table 9

Percent of Defendants with Sentences More Than One Year For Those Who Wwere Sentenced - All Offense Categories

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	61% (1)	24%	36%
2. No Companion Felony Charges and One or More Prior Felony Convictions	63%	60%	73%
3. One or More Companion Felony Charges and No Prior Felony Convictions	50%	39%	38%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	87%	79%	63%

(1) significantly higher than Native and Other

Here again, the only relationship of statistical significance is that Blacks with no companion felonies and no prior felony convictions have a higher percent of sentences over one year. This is the same pattern as seen in Tables 7 and 8.

2. The Probation Decision: We saw from Table 7 that Blacks and Natives had significantly lower probation rates than did those in the Other category. We found a relationship between unemployment and probation that partially explained this disparity for Natives, but not for Blacks. Tables 10 and 11 show that, for some of the categories of companion felony charges and prior felony convictions, those given probation in the Native and Other classes had significantly lower unemployment rates than those not receiving probation.

Table 10

Percent of Natives Who Were Unemployed (1)

Category	Given Probation	Not Given Probation
1. No Companion Felony Charges and No Prior Felony Convictions	80%	79%
2. No Companion Felony Charges and One or More Prior Felony Convictions	29% (2)	100%
3. One or More Companion Felony Charges and No Prior Felony Convictions	37% (2)	77%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	50%*(2)	79%

* only two defendants

(1) Native significantly higher probation rate than Other for those receiving and those not receiving probation

(2) Significantly lower unemployment rate for those given probation for categories two through four combined

Table 11

Percent of Other Category Defendants Who Were Unemployed

Category	Given Probation	Not Given Probation
1. No Companion Felony Charges and No Prior Felony Convictions	34% (1)	53%
2. No Companion Felony Charges and One or More Prior Felony Convictions	18%	42%
3. One or More Companion Felony Charges and No Prior Felony Convictions	31% (1)	53%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	55%	59%

(1) significantly lower unemployment rate for those given probation

In addition, for both those receiving and those not receiving probation, Natives had a significantly higher unemployment rate than did those in the Other group. We discovered above that, probation aside, Natives received lower sentences than those in the Other group. Only in the probation decision did there appear to be racial disparity. Now we find one plausible reason for that disparity - unemployment. One may argue that disparity based upon unemployment is just another form of bias, but we have only to look at the Vera sentencing guidelines (Appendix 1) to see that employment status is a nationally accepted criterion for sentencing. Therefore we suggest that, given the above findings, the Judicial Council's findings of alleging disparity in sentencing in favor of Whites over Natives cannot be supported with the evidence of this study. This same evidence does support the Judicial Council's findings that disparity in sentencing may exist in disfavor of Blacks

3. Analysis by Location: We have seen above that Blacks and Natives receive a significantly lower probation rate than those in the Other race category. This is particularly so for those defendants with no prior felony convictions and no companion felony charges. In addition, Blacks in this same category receive significantly higher sentences than those in the Other race group. Let us focus our attention on those defendants with no companion felony charges and no prior felony convictions to see if we can find differences between the court locations included in the study.

To begin with, there are so few defendants in Juneau that we can summarily exclude that location from any significant contribution to sentencing disparity. Table 12 compares average sentence length for Anchorage and Fairbanks.

Table 12

Average Sentence Length (in months)

Those Defendants with No Companion Felony Charges
and No Prior Felony Convictions

Location	Black	Native	Other
Anchorage	39.5	19.5	14.6
Fairbanks	41.2	11.7	14.2

Except for somewhat higher sentence length for Natives in Anchorage, the figures are remarkably similar for both locations. However, this similarity disappears when we look at the percent of defendants receiving probation (Table 13).

Table 13

Percent of Defendants Receiving Probation

(Those Defendants with No Companion Felony Charges
and No Prior Felony Convictions)

Location	Black	Native	Other
Anchorage	40	35	54
Fairbanks	8	17	64

The disparity in Anchorage is not significant; that in Fairbanks is. Thus, the significantly lower probation rate for Blacks and Natives with no companion felony charges and no prior felony convictions seems largely isolated to Fairbanks.

Now let us eliminate those receiving probation and see what the average sentence length is for those receiving some sentence (Table 14).

Table 14

Average Sentence Length for Those Defendants
Not Receiving Probation

(Those Defendants with No Companion Felony Charges
and No prior Felony Convictions)

Location	Black	Native	Other
Anchorage	65.8	30.0	31.5
Fairbanks	44.7	14.1	38.8

In Anchorage, Natives receive about the same length of sentence as those in the Other group. However, in Fairbanks Natives receive a significantly lower sentence length than do those in the Other group. There is disparity in sentence length between Blacks and "Other", but this disparity is greater in Anchorage than in Fairbanks.

4. Summary: The major findings of the section follows:
- a. In no category of companion felony charges and prior felony convictions is the sentence for Natives greater than for those in the Other race group.
 - b. In every category, the Black sentence is higher than Other, but it is the Black defendant with no companion felony charge and no prior felony convictions that receives the most significant disparity in sentence length.
 - c. The Black and Native race groups have significantly lower probation rates.
 - d. A significantly greater proportion of those defendants not given probation were unemployed. This was only true for the Native and Other race groups.
 - e. For the group receiving probation Natives have a significantly higher unemployment rate than those in the Other race group. Thus, the lower Native probation rate can be at least partly explained by their higher unemployment rate.
 - f. There are so few defendants in Juneau that we can summarily exclude that location from any significant contributions to sentencing disparity.
 - g. The significantly lower probation rate for Blacks and Natives with no companion felony charges and no prior felony convictions seems largely isolated to Fairbanks.
 - h. Fairbanks Native defendants receive a significantly lower sentence length than do those in the Other group for those defendants with no companion felony charges and no prior felony convictions.
 - i. There is disparity in sentence length between Black and Other race groups for those defendants with no companion felony charges and no prior felony convictions for both Anchorage and Fairbanks. However, the disparity is significantly greater in Anchorage.

D. Misdemeanors

1. Sentence Length: There appears to be some disparity in sentencing between race groups for those convicted defendants whose original felony was reduced to a misdemeanors (Table 15).

Table 15

Average Misdemeanor Sentence Length
All Offense Categories (In Months)

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	0.6	0.8	0.2
2. No Companion Felony Charges and One or More Prior Felony Convictions	-	1.4	0.8
3. One or more Companion Felony Charges and No Prior Felony Convictions	0.9	2.5	0.9
4. One or More Companion Felony Charges and One or More Felony Convictions	0.2*	2.7	1.7

* Only one defendant.

The disparity between Blacks and Other is restricted to those defendants with no companion felony charges and no prior felony convictions. The disparity between Native and Other is across all categories. Table 16 shows the percent of defendants sentenced to no jail.

Table 16

Percent of Misdemeanor Defendants Sentenced
to No Jail Time

All Offense Categories

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	50%	39%(1)	72%
2. No Companion Felony Charges and One or More Prior Felony Convictions	-	22%	50%
3. One or More Companion Felony Charges and No Prior Felony Convictions	57%	25%	49%
4. One or More Companion Felony Charges and One or More Prior Felony Convictions	0%*	38%	29%

* Only one defendant

(1) Significantly lower than Other.

Natives show a lower rate in three of the four categories, but in only the first category is this lower rate statistically significant. While differences show up in other categories, the Chi Square statistic shows that there is not enough data to label those differences statistically significant. In the same category, the percent of Blacks receiving no jail time is also significantly lower than for those defendants in the Other race category. But even if we eliminate those defendants who received no jail time and compute sentences for those sentenced to jail time, the disparity in sentence length shown in Table 15 remains (Table 17).

Table 17

Average Misdemeanor Sentence Length for
Those Defendants Sentenced to Some Jail Time

All Offense Categories

Category	Black	Native	Other
1. No Companion Felony Charges and No Prior Felony Convictions	1.2	1.3	0.5
2. No Companion Felony Charges and One or More Prior Felony Convictions	-	1.7	1.7
3. One or More Companion Felony Charges and No Prior Felony Convictions	2.0	3.3	1.8
4. One or More Companion Felony Charges and One or More Prior Convictions	2.0*	4.2	2.7

* Only one defendant.

2. Summary:

a. There appears to be some disparity in misdemeanor sentences between race groups. Natives receive higher sentences across the board while the higher sentences for Blacks was restricted to those defendants with no companion felony charges and no prior felony convictions.

b. Natives have a lower percent of defendants sentenced to no jail time in almost every category, but the difference is only statistically significant for those defendants with no companion felony charges and no prior felony convictions.

c. Blacks have a significantly lower percent of defendants sentenced to no jail time for those defendants with no companion felony charges and no prior felony convictions.

d. Even when those receiving no jail time are eliminated from the calculation, the sentencing disparity described in D2a above remains.

APPENDIX I

EXTRACTED CHARTS FROM JUDICIAL
COUNSEL'S INTERIM REPORT

Table VII-1. Class 2 Felonies¹ (Violent Felonies Other Than Murder and Kidnapping): Estimated Effect on Prison Sentence Length² of Various Factors

<u>Factor</u>	<u>Effect: Presence of Factor Estimated to Increase (-) or Reduce (-) Sentence Length by Percentage Shown</u>	
1. <u>Specific Offense of Conviction³</u>		
Rape	+452%	
Robbery	+67%	
Assault with intent to kill, etc.	+138%	
Use of firearms to commit robbery, etc.	+166%	
Attempted robbery	+48%	
Careless use of firearms (misc.)	-8%	
Disorderly conduct (misc.)	-9%	
Assault & battery (misc.)	-7%	
Felony hit and run	-8%	
2. <u>Defendant's Criminal Record</u>		
For each prior felony conviction	+1%	
3. <u>Defendant's Characteristics</u>		
Age: if age is 17 to 20	-6%	
Marital status: if divorced or separated	-1%	
Estimated monthly income: for each additional \$200 per month	-6.3%	<u>Number of cases: 620</u>
4. <u>Victim-Offender Relationship</u>		<u>Proportion of total variance explained (R²): 51%</u>
If offender is spouse, relative, acquaintance, or employee or employer of victim	-5%	
5. <u>Type of Counsel</u>		
If private or pre-paid	-5%	
6. <u>New Plus Bargaining Policy (1974-75 compared with 1975-76)</u>	(None)	

1. Cases in which defendant initially charged with Class 2 felony; offense of conviction may have been misdemeanor.
2. Length of probation sentence treated as zero if no active prison imposed.
3. Increase or decrease for offenses listed is in comparison with sentence for other Class 2 offenses not listed, including assault with deadly weapon, escape, and negligent homicide; the combined mean sentence of the unlisted offenses was 12.9 months.

Table VII-4. Class 3 Felonies ¹ (Burglary, Larceny, and Receiving): Estimated Effect on Prison Sentence Length ² of Various Factors

<u>Factor</u>	<u>Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by Percentage Shown</u>	
<u>1. Specific Offense of Conviction</u> ³		
Burglary in occupied dwelling	+523%	
Unauthorized entry (misd.)	-52	
<u>2. Companion Felony Case</u>		
For each companion case	+34	
<u>3. Defendant's Criminal Record</u>		
For each prior felony conviction	+57	
If on probation or parole at time of offense	+159	
<u>4. Defendant's Characteristics</u>		<u>Number of cases (N): 439</u>
If unemployed	+53	<u>Proportion of total variance explained (R²): 27%</u>
If black	+277	
If native	+94	
<u>5. Type of Counsel</u>		
If private or pre-paid	-44	
<u>6. Sentencing Judge</u>		
If "lenient"	-59	
<u>7. New Plea Bargaining Policy</u>		
(1974-75 compared with 1973-75)	(None)	

1. Cases in which defendant initially charged with Class 3 felony; offense of conviction may have been misdemeanor.
2. Probation treated as zero if no active imprisonment imposed.
3. Increase or decrease is in comparison with sentence for other Class 3 offenses not listed, including other burglary, larceny, receiving stolen property, and malicious mischief, whose combined mean sentence was 3.7 months.
4. Effects are as compared with "white" (non-native, non-black) defendants.

Table VII-3. Class 4 Felonies ¹ (Fraud, Forgery, Embezzlement):
Estimated Effect on Prison Sentence Length ² of
Various Factors

<u>Factor</u>	<u>Effect: Presence of Factor</u> <u>Estimated to Increase (+) or</u> <u>Reduce (-) Sentence Length by</u> <u>Percentage Shown</u>	
1. <u>Specific Offense of Conviction</u> ³		
Felonious bad check	-65%	
2. <u>Companion Conviction</u>		
For each companion conviction	-11	
3. <u>Defendant's Criminal Record</u>		
For each prior felony conviction	+27	
If on probation or parole at time of offense	+132	
4. <u>Defendant's Characteristics</u>		
If female	-76	
If age 21 to 26 (as compared with older and younger)	+136	<u>Number of cases (N):</u> 194
If black	+432	<u>Proportion of total</u>
If native ⁴	+441	<u>variance explained (R²):</u> 55%
5. <u>Type of Counsel</u>		
If appointed	+633	
6. <u>Sentencing Judge</u>		
If "lenient"	-90	
If "strict"	+1336	
7. <u>New Plea Bargaining Policy</u>		
(1974-75 compared with 1973-76)	+117	

-
1. Cases in which defendant initially charged with Class 4 felony; offense of conviction may have been misdemeanor.
 2. Probation granted as zero if no active imprisonment imposed.
 3. Increase or decrease is in comparison with sentence for other Class 4 offenses listed, including forgery, false pretenses, embezzlement, credit card fraud, and related misdemeanors, which sentences were developed and set in 1973.
 4. Effects are as compared with "white" defendants.

Table VII-6. Class 5 Felonies ¹ (Drug Offenses): Estimated Effect on Prison Sentence Length ² of Various Factors

<u>Factor</u>	Effect: Presence of Factor Estimated to Increase (+) or Reduce (-) Sentence Length by <u>Percentage Shown</u>	
1. <u>Specific Offense of Conviction</u> ³		
Sale of narcotics to person age 21 or older	+130%	
2. <u>Companion Felony Cases</u>		
For each companion felony <u>case</u>	+51	
For each companion <u>conviction</u>	+76	
For each companion conviction of a <u>co-defendant</u>	+57	
3. <u>Defendant's Criminal Record</u>		
For each prior felony conviction	+134	<u>Number of cases (N):</u> 255
If on probation or parole at time of offense	+183	
		<u>Proportion of total variance explained (R²):</u> 49%
4. <u>Defendant's Characteristics</u>		
If black	+267	
5. <u>City Where Court Located</u>		
If Fairbanks (as compared with Anchorage and Juneau)	-49	
6. <u>New Plea Bargaining Policy</u>		
(1974-75 compared with 1975-76)	+233	

1. Cases in which defendant initially charged with Class 5 felony; offense of conviction may have been misdemeanor.

2. Probation treated as zero if no active imprisonment imposed.

3. Increase is in comparison with sentence for other Class 5 offenses not listed, including possession of narcotics, sale and possession of "NCS" drugs, and related misdemeanors, whose combined mean sentence was 3.9 months.

Table VII-7. Factors Having Significant + Association + with Likelihood of Active Sentence of Thirty Days or More, in Offense Classes 2, 3, 4, and 5.

A. Class 2 Cases (Violent Felonies Other Than Murder and Kidnapping)

1. Companion felony case (+)
2. Specific offense of conviction was Rape, Robbery, Assault with Intent to Kill, Assault with Dangerous Weapon, or Felonious Escape (+)
3. Prior convictions (+)
Controlling for Factors 1, 2, and 3:
4. Companion convictions (+)
5. Defendant unemployed (+)
6. Defendant and victim had family, acquaintance, or employment relationship (-)
7. Defendant's counsel was appointed (+) or privately paid (-)

B. Class 3 Cases (Burglary, Larceny, and Receiving)

1. Companion felony case (-)
2. Specific offense of conviction was burglary or felonious larceny (-)
3. Prior convictions (-)
Controlling for Factors 1, 2, and 3:
4. Defendant was on probation or parole (+)
5. Defendant was black or native (+)
6. Defendant was unemployed (+)
7. Defendant's counsel was appointed (+), public defender (+), or private (-); defendant had no counsel (-)
8. Sentencing judge was "strict" (+) or "lenient" (-)
9. New plea bargaining policy (+) - only in "low risk" cases; see text of report

C. Class 4 Cases (Fraud, Forgery, Embezzlement, Bad Checks)

1. Prior convictions (+)
2. Specific offense was forgery of debt (-)
Controlling for Factors 1 and 2:
3. Defendant was black or native (+)
4. Defendant was female (-)
5. Defendant had no counsel (-)
6. Sentencing judge was "strict" (+) or "lenient" (-)
7. New plea bargaining policy (+)

-
1. All factors shown have association significant at .05 or less, unless otherwise indicated.
 2. If factor is associated with increased likelihood of active sentence, it is marked (+); association with decreased likelihood is shown by (-).

D. Class 3 Cases (Drug Offenses)

1. Companion felony case (+)
2. Specific offense was sale or possession of narcotics (+)
3. Prior convictions (+)
Controlling for Factors 1, 2, and 3:
4. Defendant was on probation or parole (+)
5. Defendant was black or native (+) [Significant at .07]
6. New plea bargaining policy (+) [Significant at .12]

APPENDIX II

SENTENCING RECOMMENDATION GUIDELINES
BY THE VERA INSTITUTE OF JUSTICE
BRONX SENTENCING PROJECT

APPENDIX H. SENTENCING RECOMMENDATION
GUIDELINES

VERMONT INSTITUTE OF JUSTICE

BRONX SENTENCING PROJECT

SENTENCING GUIDELINES

FAMILY TIES

- +3 Lives with spouse.
- +2 Lives with children, with or without another family member.
- +2 Supports spouse or children, with or without supporting another family member.
- +2 Supports one or more family members voluntarily.
- +1 Supports a non-family person voluntarily.
- +1 Has been living with a family member other than spouse or children.
- +1 Has been living with a non-family person for the past six months.
- 0 None of the above.

NOTE: "Spouse" includes a legal spouse, or any person of the opposite sex with whom the defendant has lived in a conjugal relationship continuously or at least six months.

"Family member" includes any person related to the defendant by blood or adoption, including half and step relatives.

EMPLOYMENT

- +4 Present job three months or more.
- +3 Present and prior jobs six months or more.
- +3 Person at home caring for children.
- +2 Present and prior jobs three months or more.
- +2 Present job less than three months.
- +2 Attending school, or receiving a pension or social security, or unemployed due to a medical disability.

- +2 Prior job three months or more which terminated upon arrest.
- +1 Receiving unemployment, or woman supported by husband.
- +1 Job commitment.
- 0 None of the above.

NOTE: In order to be able to add present and prior jobs, there must be no more than a two-week hiatus between each job.

"Present job" means one to which the defendant's employer has stated he can return if he is in custody during the pendency of the case.

PRIOR RECORD

- +4 No arrests ever.
- +2 No convictions within 3 years.

If at least one felony or misdemeanor conviction occurred within the last eight years, use the following chart:

Number of felonies in total prior record	<u>Number of misdemeanors in total prior record</u>					At least 4, all within 12 years
	0	1	2	3	4 or more	
0		0	-1	-2	-3	-4
1	-1	-1	-2	-3	-4	-4
2 or more	-3	-3	-4	-4	-4	-4
At least 2, both within 12 years	-4	-4	-4	-4	-4	-4

NOTE: If the arrest date of the last prior case occurred within 6 months of the conviction date of the present case, deduct 1 point from whatever score appears in the chart.

APPENDIX III

LETTERS FROM PROFESSOR LESLIE T. WILKINS,
SCHOOL OF CRIMINAL JUSTICE, STATE
UNIVERSITY OF NEW YORK AT ALBANY
RELATING SENTENCING DISPARITY

 THE UNIVERSITY AT ALBANY

18th September 1978

Dr. Mel Martin,
Alaska Court System,
303, K St.,
Anchorage,
Alaska 99501

Dear Mr. Martin,

As I remarked in our telephone discussion of this afternoon, I see no reason why I should not advise you of the views which I have expressed to the U.C.L.U. (Prison Project).

In my first letter to them I suggested that any attempt to seek "redress" in the courts might be ill-advised. While it seemed to me that the research was conducted quite carefully by people who knew what they were about, there were many difficulties. Furthermore, I noted that whoever had conducted the study seemed to be very honest and that they too were clearly seeking the same goals as the U.C.L.U. (or nearly so), thus the best move might be to seek cooperation rather than go for a court battle.

I moved further in this direction in my letter of the 15th September (copy enclosed). In this I specifically suggest negotiation between the "interested parties" and volunteer my services if this would seem helpful.

You will appreciate that this does not mean that under certain circumstances I would refuse to give "expert testimony" -- I do not reject litigation in principle. It is not usually my preferred strategy.

May I assume that you have disclosed to the U.C.L.U. the results of any further findings, and that there is "disclosure" on all main issues?

Sincerely yours

THE UNIVERSITY AT ALBANY

15th September 1978

Dr. Ralph I. Knowles Jr.,
National Prison Project,
1346, Connecticut Ave.,
Suite 1031,
Washington, D.C. 20036

Dear Mr. Knowles,
re: Alaska Sentencing Study

This is a follow-up of my letter of the 4th September and relates to discussions with you since that date and further information from your Alaska office.

I was requested to consider further information which I might require in order to be able to testify to the validity of the findings of the "study", and to suggest kinds of analyses which might be useful in court.

It would be helpful to see the correlation matrix, and to know the precise (n) values for the several analyses, as well as the levels of significance (or preferably "estimation") and the tests used.

In particular it would be helpful to know precisely what endeavours were made to test the power of the equations with "race" factors removed. Is it possible to take "race" (rather than sentence) as the "criterion", and to see what kinds of equations and what weights are required to predict "race" of the accused?

It is probable that "race" is a proxy variable for others which are not included in the analysis. I can think of no proxies which would not reveal an equally undesirable state of affairs with regard to dispositions of offenders. However, the point will have to be considered and perhaps argued. For example, the judge might well take into account the demeanour of the accused, particularly if he were to go into the witness box on his own behalf. If the judge thought that the accused was not a credible witness, he might give an added penalty for this -- rather like a consideration of perjury. Of course, I agree that a penalty should not be given in unproven offence, but this is, I believe, often done, often justified as a reasonable sentencing practice.

There are many other ways in which cultural background can influence behaviour in court, and it is, perhaps, the behaviour in court which is taken into consideration, not

the social background. However, no less an organization than the WPPA regard it as reasonable to take social factors into account in the granting of bail. Job and residence stability are argued as relevant factors. We know that detention may prejudice the obtaining of evidence by the accused, but this is not the point in this case. I would only note that being of a particular racial group is not independent of social class, income, education, job stability and many other social, economic and cultural factors. Thus "race" (as such) may not be the factor which influenced the decisions which seem biased when we take note of "race". Race is a good proxy for many factors.

As an example from another field of statistical analysis. It is well-known in medical research (particularly in epidemiological research) that the infant mortality rate is one of the better, if not the best, proxy for a whole collection of social class and cultural factors. For purposes of epidemiological research, this is a useful fact. No one would claim that the information was collected unethically, nor that infant mortality rates were influencing death from lung cancer -- but the rates correlate highly (or used to when I was working in this field). It is not possible to disentangle the different factors in such epidemiological research, and for similar statistical methodological reasons, it is equally difficult in this kind of research also.

However, this uncertainty does not, I think, mean that a case cannot be made out along the lines you have in mind. If it is claimed that the operative factor was not "race" but "something else", is it not up to those who claim that it is "something else" at least to come forward with half an idea as to what it might be? As I say, I cannot think of any factor which would be defensible and yet which could account for the observed correlations.

It would be necessary to try to meet possible suggestions as to factors for which "race" was acting as a proxy in order to be able to respond to such suggestions. Furthermore, it would seem essential for such analyses to be made from the statistical professional viewpoint.

If the additional analyses come up with the same patterns, then it should be possible to provide a demonstration for non-statisticians of the nature of the effects involved. A case disposed of by judge (a) should be carefully "profiled" and mapped against a case which modelled the same profile with judge (b); this should be done for a number of cases. The "national" sentence each offender would have received on the assumption that another judge had disposed of his case could be calculated. (In statistical terms, this would be the "expected value" of the sentence).

It is my understanding, however, that many offenders sentenced in Alaska are passed over to the Federal system after the hearings. If this is so, then the sentences given would be of no consequence, since the Federal Parole Board would use the guidelines (which were developed by a project under my direction), and any disparities would be ironed out. Certainly "race" (nor any surrogate factors for race) would not weigh in the two factors which are the basis of the guideline tables. (The two dimensions are "seriousness of offence" and "salient factor score", which is mainly prior record). It would be difficult to sustain the argument that prior criminal record is a "proxy" variable for "race", and that it should therefore be ignored. This is, of course, the extreme radical viewpoint, but the courts are unlikely to find this convincing.

It would seem unsatisfactory to attack "sentence" if it were purely notional, having no effect upon the punishment actually suffered. I am not aware of the proportions of offenders who are passed over to the Federal system. But if there are any, particularly, any among the cases which form the main stem of the current argument, then these should be examined separately.

Another factor may be the plea negotiation practice. Judges may be reflecting the prosecutorial patterns through plea bargaining rather than themselves the biasing agents. It would be interesting to examine the P.S.I. prepared by the probation officers, with special regard to their recommendations for disposition. We know from prior research (Carter and Wilkins) that judges tend to ratify the probation officer's recommendations for sentence. Perhaps it is the probation officers who do not wish to have certain "clients" allocated to them which is a major factor in the apparent bias of the judges. This thought cannot be dismissed -- social case workers have their prejudices too! So, who should be "in the dock?" -- the judge; the prosecutor; the probation officer; or who else? Of course, the judge is "responsible" for the determination of disposition, but the allocation of blame will not solve the problem, especially if the problem lies elsewhere!

I am much more interested in developing remedial measures for the disparity which I can accept as "a given", than I am at trying to place blame on any of the actors in the system.

Perhaps rather than act as "expert witness" for the prosecution (or other) I might be more useful as a mediator between the interested parties? Clearly something has to be done, but it may be that negotiation rather than litigation would pay off better?

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

STATE OF ALASKA

OFFICE OF THE GOVERNOR

CRIMINAL JUSTICE PLANNING AGENCY

JAY S. HAMMOND, GOVERNOR

POUCH AJ - JUNEAU 99811
PHONE 463 3530

March 20, 1979

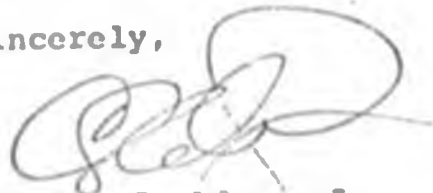
Senator John Sackett
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Sackett:

A member of your staff recently requested information concerning available funds for a project submitted by the Alaska Judicial Council to examine racial bias and discrimination in the justice system. The Governor's Commission on the Administration of Justice has tentatively allocated \$55,000 from supplemental funds to such a project. It will be necessary, however, for the Judicial Council to present the application in the proper form before it can be considered.

It is my understanding from the proposal submitted to our agency that more than \$55,000 would be necessary in order to carry out the project. If the Governor's Commission were to make additional monies available for the Judicial Council Study, such funds would have to come from other projects and programs which have been identified for funding.

Sincerely,



Charles C. Adams, Jr.
Executive Director

Introduced: 2/14/79
Referred: Judiciary and
Finance

BY ANDERSON, FULLER,
HURLBERT, MARTIN, MILLER,
MUNSON, OSTERBACK, PARR
AND SCHAEFFER

1 IN THE HOUSE

2 HOUSE BILL NO. 195 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for an advisory committee on judicial
7 sentencing practices; and providing for an effective
8 date."

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

10 * Section 1. ADVISORY COMMITTEE ON JUDICIAL SENTENCING PRACTICES. There
11 is established the Advisory Committee on Judicial Sentencing Practices as a
12 temporary committee to assist the Judicial Council in its review, investiga-
13 tion, and formulation of responses to problems and concerns arising out of
14 the Judicial Council's findings of apparent discrimination in the sentencing
15 of minority persons convicted of crimes in the courts of the state.

16 * Sec. 2. MEMBERSHIP. (a) The Advisory Committee on Judicial Sentencing
17 Practices is composed of nine members, selected as follows:

18 (1) three members, appointed by the Judicial Council, who shall be
19 broadly representative of criminal justice agencies;

20 (2) three Alaska Natives, one appointed by the governor, and one
21 by the presiding officer of each house of the legislature;

22 (3) two Blacks, one appointed by the presiding officer of each
23 house of the legislature; and

24 (4) one member from another minority, appointed by the governor.

25 (b) Appointments shall be made with due consideration to the availa-
26 bility and willingness of an appointee to devote the time and efforts neces-
27 sary to permit the committee to function effectively, and with regard to the
28 degree of commitment of an appointee to the principle of equal justice under
29 law for all people. Appointments shall be without regard to political affil-

1 iation, and shall be made, if possible, within 20 days of the effective date
2 of this Act, or of the effective date of any vacancy in the membership of the
3 committee.

4 (c) Vacancies in office shall be appointed in the manner provided in
5 (a) of this section.

6 * Sec. 3. COMPENSATION. The members of the Advisory Committee on Judi-
7 cial Sentencing Practices do not receive compensation for their services, but
8 they are entitled to the same travel pay and per diem as state officials and
9 employees.

10 * Sec. 4. CHAIRMAN AND VICE-CHAIRMAN. The members of the Advisory Com-
11 mittee on Judicial Sentencing Practices shall elect a chairman and vice-
12 chairman from the members of the committee.

13 * Sec. 5. MEETINGS. The Advisory Committee on Judicial Sentencing Prac-
14 tices shall meet at least once every two months to carry out its duties under
15 this Act. The first meeting of the committee shall be convened at the call
16 of the chairman of the Alaska Judicial Council not later than 20 days
17 following appointment of the nine members of the committee.

18 * Sec. 6. DUTIES. The Advisory Committee on Judicial Sentencing Prac-
19 tices shall

20 (1) receive and review reports concerning sentencing, correction,
21 probation, and parole practices and procedures, with particular regard to the
22 treatment of individuals who are members of racial or cultural minorities;

23 (2) hold public hearings and meetings to determine whether racial
24 or cultural minorities are being unfairly disadvantaged in their involvement
25 with the criminal justice system; and

26 (3) complete a report with recommendations for the correction of
27 abuses and violations of the civil rights of racial or cultural minorities
28 that may be found to exist in the criminal justice system, furnishing copies
29 to the Judicial Council, the governor and the presiding officer of each house
30

1 of the legislature not later than February 1, 1980.

2 * Sec. 7. TERMINATION. The Advisory Committee on Judicial Sentencing
3 Practices terminates February 29, 1980.

4 * Sec. 8. EFFECTIVE DATE. This Act takes effect immediately in accor-
5 dance with AS 01.10.070(c).

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STATE AFFAIRS COMMITTEE

April 2, 1979

SUMMARY

This legislation establishes a temporary advisory committee on the Judicial Council to review apparent discrimination in minority sentencing.

It terminates February 29, 1980.

RELATED LEGISLATION

HB 195 is one of three bills submitted as a package by Representative Anderson. The status of the other bills is: HCR 5 has passed the House and Senate; HB 196 is in the Senate Rules Committee.

STATE AFFAIRS COMMITTEE

April 2, 1979

SUMMARY

This legislation establishes a temporary advisory committee on the Judicial Council to review apparent discrimination in minority sentencing.

It terminates February 29, 1980.

RELATED LEGISLATION

HB 195 is one of three bills submitted as a package by Representative Anderson. The status of the other bills is: HCR 5 has passed the House and Senate; HB 196 is in the Senate Rules Committee.

funding for HB 195 has been

*? what good will it do to move 195 if there is
no funding for it.*

Introduced: 2/14/79
Referred: Judiciary and
Finance

Funding Information
General Fund \$90,000
Other Funds -0-
\$90,000

BY ANDERSON, FULLER, HURLBERT,
MARTIN, MILLER, MUNSON, OSTERBACK,
PARR AND SCHAEFFER

1 IN THE HOUSE

2 HOUSE BILL NO. 196

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Judicial
7 Council; and providing for an effective date."

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

9 * Section 1. The sum of \$85,000 is appropriated from the general fund to
10 the Judicial Council to provide for the expenses of persons temporarily
11 employed as statisticians and investigators in conjunction with review and
12 analysis of judicial sentencing practices.

13 * Sec. 2. The sum of \$5,000 is appropriated from the general fund to the
14 Judicial Council for transportation of the members of the Advisory Committee
15 on Judicial Sentencing Practices.

16 * Sec. 3. The unexpended and unobligated portion of the appropriations
17 made in this Act lapses into the general fund March 31, 1980.

18 * Sec. 4. This Act takes effect immediately in accordance with AS 01.10.-
19 070(c).
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SUBJECT: Alaska Judicial Council, Investigation of Judicial Sentencing Practices

February 13, 1979

I. Investigators

a)	Coders: 5, at \$937.50/month + 9% benefits, x 6.4 months	= \$32,700
b)	Evaluation Methodologist, part-time, \$958.40/mo. x 9 months + benefits	= 9,108
c)	Statistical Advisor, 50 hours at \$16.88/hr.	= 844
d)	Computer Programmer, \$500/month x 8 months	= 4,000
e)	Data Analyst, 5.5 months	= <u>8,053</u>
	Subtotal, Investigators	= \$56,955

II. Staff Travel

5 Coders, coding supervisor and evaluation methodologist based in Anchorage. Travel costs and per diem to Barrow, Bethel, Fairbanks, Juneau, Kenai, Ketchikan, Kodiak, Nome, and Sitka.

= \$15,850

III. Contractual and Other

a)	Key punch charges, estimated, for 1700 defendants, 3-4 cards per defendant	= \$ 1,500
b)	Computer charges, average per month, \$1166.67	= 10,500
c)	Supplies	= <u>195</u>
	Subtotal, Contractual	= \$12,195

Total, Investigative Expenses = \$85,000

Advisory Board Travel - 1103 1915

Transportation of members of the Advisory Committee on Judicial Sentencing Practices to meetings: = \$ 5,000

Total, State General Funds = \$90,000

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 196 - HB 196
 Title Special Appropriation to the Judicial Council
 Requested by House Judiciary Committee Date 2/23/79

II. FISCAL DETAIL

Agency Affected Judicial Council
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Judicial Council
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	57					
200 TRAVEL	21					
300 CONTRACTUAL	12					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	90,000					

FUNDING (Thousands of Dollars)

GENERAL FUND	90,000					
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	9					

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

IV. DATE 2/23/79 PREPARED BY Michael Rybenstein
 AGENCY Judicial Council
 PHONE 274-8942
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

① JUD: DP 3, UE-2

② RULES OTHER 4

Introduced: 2/14/79
Referred. Judiciary and
Finance

BY ANDERSON, FULLER, HURLBERT,
MARTIN, MILLER, MUNSON, OSTERBACK,
PARR AND SCHAEFFER

1 IN THE HOUSE

2 HOUSE CONCURRENT RESOLUTION NO. 5 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 Urging the Judicial Council to com-
6 plete its review and make recommenda-
7 tions in the matter of judicial
8 sentencing practices.

9 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 WHEREAS the Alaska Judicial Council conducted a study including 1,433
11 sentences in felony cases rendered in the Superior Courts at Anchorage,
12 Fairbanks and Juneau between 1974 and 1976; and

13 WHEREAS it was the conclusion of that report that Alaska Natives and
14 Blacks apparently received longer sentences and were denied probation more
15 often than other defendants who had been convicted of the same crimes under
16 similar circumstances, and who had substantially similar criminal records;

17 BE IT RESOLVED by the Alaska State Legislature that it respectfully
18 requests the Alaska Judicial Council to extend and complete its report on the
19 sentencing practices of Alaska courts by

20 (1) compiling and analyzing data on all felony sentences rendered
21 between August, 1976 and the present date, including sentences for convic-
22 tions in the superior courts sitting in communities which were not covered in
23 the earlier study, including rural Alaska, to determine whether the present
24 findings of apparent racial disparity of sentencing also obtain in other
25 locations and in the years since August, 1976;

26 (2) expanding the data collected and analyzed to include sentenc-
27 ing practices of the district courts;

28 (3) examining sentencing records of the superior and district
29 courts to determine whether there is a pattern to sentencing based on race;

1 (4) modifying and expanding upon the research methods, when neces-
2 sary, in order to determine whether the apparent disadvantages suffered by
3 Alaska Natives and Blacks as evidenced in the Judicial Council's findings may
4 be attributable, wholly or partially, to decisions of other criminal justice
5 agencies which advise or inform the courts and which may help shape the
6 ultimate sentence;

7 (5) identifying all points within the criminal justice system at
8 which a defendant may be disadvantaged on account of his race; and

9 (6) working closely with representatives of the minorities
10 affected as well as with criminal justice agency representatives and per-
11 sonnel, making recommendations for positive remedies to correct inequities
12 which may be suffered by Alaska Natives, Blacks and minority members in
13 the administration of criminal justice.
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10/11/57
HB 195 am - Providing for an Advisory Committee on Judicial Sentencing Practices.

Sec. 1 - ADVISORY COMMITTEE ON JUDICIAL SENTENCING PRACTICES

This section establishes an Advisory Committee on Judicial Sentencing Practices as a temporary committee to assist the Judicial Council in its review, investigation and formulation of responses to the alleged problems of sentencing discrimination of minority persons in the courts of the state.

Sec. 2 - MEMBERSHIP

- (a) Provides that the committee be composed of nine members: three representatives of criminal justice agencies, three Alaska Natives, 2 Blacks and one member of another minority.
- (b) Provides that members be chosen with consideration of their willingness to put in the time and effort necessary for the committee to function effectively. Provides members be appointed without regard to political affiliation and that they be appointed within 20 days of the effective date of this act or within 20 days of any vacancy on the committee.
- (c) Provides vacancies be filled in accordance with (a).

Sec. 3 - COMPENSATION

Provides that members receive no compensation but may receive per diem and travel compensation at the state rate.

Sec. 4 - CHAIRMAN AND VICE-CHAIRMAN

Provides that members elect a chairman and vice-chairman.

Sec. 5 - MEETINGS

This section provides that the committee meet at least once every two months. The first meeting shall be convened at a call of the chair of the Alaska Judicial Council not later than 20 days after appointment of committee members.

Sec. 6 - DUTIES

This section outlines the duties of the committee. They may review reports concerning sentencing, probation and parole practices with regard to treatment of members of minorities; hold public hearings to determine whether minorities are unfairly disadvantaged when involved with the criminal justice system; complete a report with recommendations for correction of minority civil rights violations that may be found to exist. Report must be submitted to the Judicial Council, Governor and legislature no later than February 1, 1980.

Sec. 7 - TERMINATION

This section provides for termination of the committee on February 29, 1980.

Sec. 8 - EFFECTIVE DATE

Provides for an immediate effective date.

HB 195 am is one of three bills submitted as a package by Representative Anderson et. al. The others are HCR 5 urging the Judicial Council to complete its review and make recommendations in the matter of judicial sentencing practices; and hB 196 which is a special appropriation to finance the implementation of HCR 5.

HB 195 am

An act providing for an advisory committee on judicial sentencing practices; and providing for an effective date.

Anderson,
Fuller
Hurlbert
Martin, etc

SUMMARY

Establishes the Advisory Committee on Judicial Sentencing Practices as a temporary committee to assist the Judicial Council in its review, investigation and formulation of responses to problems and concerns arising out of the Judicial Council's findings of apparent discrimination in the sentencing of minority persons convicted of crimes in the courts of the state. Membership consists of nine persons, including six minority members. Bill provides for compensation, election of chairman and vice-chairman, meetings. Outlines duties of the Adv'sory Committee. Provides recommendation report be submitted no later than 2/1/80. Provides Committee terminates 2/29/80.

STATE AFFAIRS COMMITTEE

April 2, 1979

SUMMARY

This legislation establishes a temporary advisory committee on the Judicial Council to review apparent discrimination in minority sentencing.

It terminates February 29, 1980.

RELATED LEGISLATION

HB 195 is one of three bills submitted as a package by Representative Anderson. The status of the other bills is: HCR 5 has passed the House and Senate; HB 196 is in the Senate Rules Committee.