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STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1982

SUBJECT: Amendment of Rules of Court in relation to
CSHB 553

TO: Representative Ramona L. Barnes
Chairman, House Judiciary Committee *JHL*

FROM: James H. Lear
Legislative Counsel

You have requested an opinion as to whether a two-thirds vote of each house, per Article IV, Sec. 15, Constitution of the State of Alaska, is necessary to pass Section 24 of CSHB 553. In preparation by this office of the work draft for CSHB 553, I preliminarily advised Bill Cook that the answer to this question was a close one, and that, therefore, the issue ought to be resolved by presenting the change in the Court Rules before the legislature for the required two-thirds vote in order to preclude a subsequent court challenge to the validity of the legislative modification of the Rules of Court.

Sec. 24 of CSHB 553 indicates that "AS 12.55.088(a), amended by Sec. 14 of CSHB 553, has the effect of changing Rule 35(a) and (b), Rules of Criminal Procedure, by deleting the provisions for modification or reduction of sentence as a result of changed circumstances and by decreasing from 120 to 60 days the period of time in which a sentence otherwise may be modified or reduced."

The Constitution of the State of Alaska empowers the Supreme Court to make and promulgate rules governing practice and procedure in civil and criminal cases in all courts but authorizes the legislature to change those rules by two-thirds vote of the members elected to each house. A two-thirds vote is not required for legislation which modifies substantive law, even though the substantive law may be incorporated into a Supreme Court rule.

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Jurisdictions differ in their decisions to classify provisions for the correction of criminal sentences as either substantive or procedural. However, the State of New Jersey, who like Alaska, placed the full rule making power in the Supreme Court by constitutional provision, has determined that the manner of sentence and correction of criminal sentences are procedural in nature and solely within the prerogative of the Supreme Court. (State v. Culver, 23 N.J. 495, 129 A.2d 715 (1957)). The New Jersey decision is founded on the theory that the Supreme Court has the inherent power to alter a criminal sentence at any time prior to completion of the term of imprisonment in order to protect society and ensure that society's criminal classes understand that the penalty follows the crime.

Since there is authority for the proposition that the Supreme Court retains the power to adopt rules pertaining to the correction or modification of criminal sentences, it is advisable to require a two-thirds vote on Sec. 14 of CSHB 553 rather than risk a declaration by the Supreme Court that the attempted modification of Rule 35(a) and (b) is invalid. This is especially true in light of the Alaska Supreme Court's reluctance to relinquish its rule making authority.

JHL:ljb

* AS 11.46.200 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of this section, it is lawful for a person to intercept satellite telecommunications if the interception is not for commercial advantage or is not done with the intent to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

* AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) he sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other telecommunications service, with intent to defraud another of the lawful charges for the service.

* AS 11.46.482 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of (a) of this section, it is lawful for a person to sell a device for the interception of satellite telecommunications if the interception is not for commercial advantage or is not intended to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

* AS 11.81.900(b)(50) is amended to read:

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment including cable, microwave, subscription, or pay television or any other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admissions to exhibitions, and the supplying of equipment for use.

ANALYSIS OF THE DECISION IN
JUNEBY V. STATE, Opinion No. 72
(Alaska Court of Appeals, March 11, 1982)

In this sentence appeal case, Juneby had plead no contest to burglary in the First Degree, a class B felony and Sexual Assault in the First Degree [HEREAFTER REFERRED TO AS RAPE], a class A felony. The maximum penalties provided by statutes were 10 years for Burglary and 20 years for Rape. However, the presumptive sentence for the Rape was 10 years, since this was considered a "second felony conviction" on Juneby. He had been convicted earlier of Grand Larceny.

The Superior Court Judge sentenced Juneby to 8 years for the Burglary and 20 years for Rape. The two sentences were made concurrent, leaving Juneby with one 20 year sentence, which would interpret to 15 year under the "good time" statutes.

The pertinent factors for the actual sentencing were:

1. Even though Juneby was convicted of both burglary and rape, the two crimes were considered to have arisen "out of a single continuous criminal episode during which there was no substantial change in the nature of the criminal objective..." AS 12.55.145(a)(3). Accordingly, the conviction for the burglary could not be considered as a second felony, subjecting Juneby to treatment as a third felony for the rape. The Court of Appeals at footnote 3, page 3, indicates that the judge could have sentenced consecutively for the burglary and rape, under provisions of AS 12.55.025(a). However, this is subject to question, upon a careful reading of both 025 and 125. In any event, the trial judge having already made those sentences concurrent, can not go back and change that upon the reman from the Court of Appeals.

2. The Superior Court Judge increased the rape sentence from the 10 year presumptive to the 20 year maximum on the basis of "aggravating factors" presented by the District Attorney. These were under attack in the sentence appeal by the defense, and ultimately the Court of Appeals reversed on the basis of the findings as to some of the aggravating factors.

Page 21 of the Opinion give the statement of the victim as to the details of the rape:

V.W. [THE VICTIM]'s statements indicated that Juneby had knocked at her door and asked about a former girlfriend of his who lived next door. When V.W. told him that she had seen a moving van there recently, Juneby asked to use V.W.'s phone; V.W. allowed him to enter. After an unsuccessful attempt to call a moving company, Juneby abruptly attacked V.W. He beat her repeatedly about the face and ribs with his fist, then he twisted her arm and dragged her down a corridor into a bathroom. There, Juneby forced V.W. into submission by choking her. He forcibly pressed her throat against a clothes dryer, causing V.W. to lose her breath for a short time. At this point, V.W. did not know why Juneby was attacking her. She thought that he was trying to kill her. Suddenly, Juneby ceased choking his victim; he commanded her to undress and then proceeded to rape her. The photographs of V.W. show that her face was bruised and swollen following this incident. In addition, V.W. stated that her ribs were badly bruised. These injuries were treated by a physician after the incident, but V.W. was not hospitalized. Although V.W. experienced considerable pain and discomfort for several weeks, she suffered no permanent disfigurement or physical impairment.

Juneby does not contest the fact that V.W. sustained physical injury within the definition of AS 12.55.155(c)(1); he does, however, question the amount of weight that should properly be assigned to this aggravating factor in adjusting the presumptive sentence of 10 years called for by AS 12.55.125(c)(2).

Following that summary of the facts of the rape, the Court of Appeals stated that increases of presumptive terms should not be an "automatic consequence" when the aggravating factor is proved. The court points out, at page 22, that subsections (c)(d) of 125 state that the aggravating mitigating

factors "shall be considered by the sentencing court and may aggravate [or mitigate] the presumptive terms" established by law. [Emphasis added in the opinion].

On the next several pages the court discusses the fact that injury is a common element of rape, and that less weight should be given to relatively minor injuries. Specifically, the court stated at page 24 that

We would be blinding ourselves to reality if we did not recognize that, in most cases involving rape, or sexual assault in the First Degree under AS 11.41.410(a)(1) actual or threatened and violence will be involved and the victim will suffer at least some level of physical injury or discomfort. The use of force in the affliction of at least some physical injury to the victim are, realistically, characteristic of the crime of rape. Indeed, it is the prevailing view that rape is primarily a crime of violence, as distinguished from a sexual offense...as with all other presumptive sentences, the 10-year presumptive term for first degree sexual assault was meant by the legislature to be appropriate in the majority of cases -- those cases involving conduct that is characteristic of the offense of rape and it falls into the middle-ground between the most serious and least serious extremes for the offense. It must therefore be recognized that this presumptive term takes into account the high potential for the use of violence and the likelihood of some physical injury and first degree sexual assaults falling within the definition of AS 11.41.410(a)(1).

Where, as here, violence and injury are characteristic of the offense defined by statute, the mere fact that of some physical injury to the victim as a result of defendant's conduct, though technically an aggravating factor under AS 12.55.155(c)(1), will not justify a significant increase in the presumptive term. Thus, when a charge of sexual assault in the first degree is based upon

the theory of rape under sub-section (a)(1) of AS 11.41.410, in order to justify a substantial increase to presumptive terms, the prosecution must bear the burden making it clear convincing showing the injuries were unusual and uncharacteristically severe.

On page 25, the Court of Appeals notes that it does not believe that the physical injuries inflicted by Juneby could approach the definition of "serious physical injury at AS 11.81.900(49)." Also they state that "Nor do we think that these injuries -- though perhaps more severe than those in many cases -- are highly uncharacteristic of injuries all too frequently suffered by rape victims. Accordingly, we do not believe that these injuries, standing alone, would justify a substantial increase in Juneby's presumptive term."

On page 27 the Court of Appeals considers the aggravating factor of "manifested deliberate cruelty" that was considered by the Superior Court Judge. Specifically, the court stated that "deliberate cruelty," as used in AS 12.55.155(c)(2) "...must be restricted to instances in which pain -- whether physical, psychological or emotional -- is inflicted gratuitously or as an end in itself." ...When this definition is applied to the present case, we believe that it is questionable whether the evidence considered by the sentencing judge would properly lead to the conclusion that the injuries suffered by V.W. resulted from deliberate cruelty on Juneby's part." On that matter, they remanded the case to the sentencing judge for a decision as to whether deliberate cruelty had been shown, although he had apparently found it was there in the original sentencing.

At page 28, the court considers the question as to whether this particular rape was "among the most serious conduct involved in the definition of rape." If this were the case, this would fall in aggravating factor (10) under 12.55.155(c). The court concluded that the evidence showed that this rape was not among the most serious for rape. The Superior Court Judge had concluded that, since this was rape under (a)(1) of AS 11.41.410, that this was the most serious of the four types listed under 410. The others are basically (1) attempted sexual penetration with serious resulting injury, (2) statutory rape, and (3) a form of incest. The Court of Appeals found that

...the grouping of these four separate acts of conduct together under the same criminal heading [Sexual Assault in the First Degree], with identical classifications as class A felonies is a forceful indication of the legislature's conclusion that all four sub-paragraphs were meant to be viewed as involving equally serious conduct." [emphasis added].

The Court of Appeals noted that the Superior Court Judge said that he would still find this rape to be within the most serious if his interpretation of the statute was incorrect. He had emphasized that there was no prior contact with the victim, the rape was committed in V.W.'s own home; that he found deliberate cruelty in the injuries inflicted upon V.W.; Juneby did not terminate his rape of V.W. voluntarily, but fled when he heard another person knock on the door. In response to this, the Court of Appeals said that

We believe that the various factors articulated by Judge Van Hoomissen are not sufficient to support a finding, by clear and convincing evidence, that Juneby's conduct was among the most serious included in the definition of the offense with which he was charged." [Emphasis added].

On pages 31 and 33 the Court of Appeals whisks away the Superior Court's emphasis on the fact that the rape was committed in V.W.'s own home by noting that Juneby was separately charged with and convicted of burglary, and that the court imposed a separate sentence for the burglary. Oddly enough, the Court of Appeals ignored the fact that that sentence was made concurrent by the Superior Court Judge, (possibly because of his concern over the "single, continuous criminal episode" factor). In fact, the Court of Appeals even went so far as to state:

Juneby had thus been separately punished for his act of violating V.W.'s privacy by entering her home. [Emphasis added]. Page 32.

Thus, the Court of Appeals considers that this rape was "punished" by being separately convicted for burglary, although even a sixth grader could tell by the words concurrent sentencing that there was no additional punishment for the burglary.

On page 35, the court stated:

On balance, consideration of the totality of the circumstances of this offense leaves us with the a firm impression that, but for the injuries inflicted upon

Juneby's victim, this crime may reasonably be considered to fall far closer to the middle ground, or norm, of conduct for the offense charged than to either the most serious or least serious extreme [setting the stage for the 10 year presumptive sentence].

Considering the factors briefly summarized here, and others stated more specifically in the opinion, the sentence was vacated and the case remanded to the Superior Court for resentencing. In addition to the factors noted above, The Court of Appeals on page 39 comments on the "mitigating factor" in the sentencing that Juneby's prior felony conviction was for "an offense [grand larceny] of a less serious class than his present offense," per AS 12.55.155(d)(8). In reference to that factor, as well as others covered, the Court made it clear that upon the remand, Judge Van Hoomission should make findings on the factors and aggravation in mitigation "with specificity." This may mean that, indeed, it would be a factor to mitigate, or reduce the presumptive term for Juneby that his prior felony was for a less serious crime. Some persons have referred to this factor of mitigation as a "reward for moving up from one level of felony to another."

and other recommended criteria, *Whitton* adopted a more flexible standard than either. The different statutes are to be compared as applied to the facts of the case in order to ascertain whether they involve differences in *intent or conduct*. If such differences exist, they are to be judged in light of the basic interests of society to be vindicated or protected. A decision must then be made as to whether those differences are substantial enough to warrant multiple punishments.¹³

[2] The initial inquiry under *Whitton* is thus directed at a comparison of the different statutes violated as applied to the facts of the case in order to ascertain whether there are differences in intent or conduct. But in the subject case, only one statute is involved. We can compare one count with another and still apply the test. The sole difference between each count was the name of the victim involved. Thessen's intent and conduct¹⁴ were identical as to each count. Since there is an absence of any difference in intent and conduct, we do not reach the other considerations set forth in *Whitton*—the judging of the differences "in light of the basic interests of society to be vindicated or protected". The *Whitton* test for ascertainment of double jeopardy when applied to the multiple counts charged against Thessen dictates the conclusion that but one offense was committed.¹⁵ Where there has been but one statute violated by a single

act, without intent to harm multiple victims, the Alaskan constitutional prohibition against placing a person in jeopardy twice for the same offense prevents imposition of multiple punishments.

A different question would be presented if the Legislature had seen fit to increase the punishment for a single act of manslaughter by means of arson of a multiple-family dwelling. Although the jury's verdict absolved Thessen of any intent to kill, they did find that he intended to burn the Lane Hotel, and his conduct was such that he did so. Setting fire to a hotel where numerous people sleep does not involve the same conduct or intent as setting fire to a single family dwelling or an abandoned shed. The most grave of societal interests, preservation of the sanctity of life, is involved. If the Legislature so desired, it could recognize this interest by increasing the penalties for this offense. The Legislature has not seen fit to make this distinction. While the statutes do recognize and distinguish between setting fire to (1) a dwelling, (2) other types of buildings, (3) personal property, and (4) attempts at arson;¹⁶ there is no distinction between manslaughter by arson in a dwelling house and arson in a multiple-person dwelling house. We have no power to read this distinction into the statute so as to increase the punishment for a single act beyond the maximum authorized by the Legislature.

of separate statutory violations arise out of a single criminal act or transaction. Under this test, Thessen could be held to have committed but one offense.

13. *Whitton v. State*, 470 P.2d at 312.

14. The state requests that we include "the consequences of an act" in the definition of the term, "conduct". "Conduct" is defined as "Personal behavior; deportment; mode of action; any positive or negative act". *Black's Law Dictionary* 367 (4th ed. 1957). We have found no definition of the term either in a case or dictionary broadening it to include the consequences of one's act.

15. Utilizing the criteria for retroactivity set forth in *Judd v. State*, 482 P.2d 273,

277-278 (Alaska 1971), we have concluded that the *Whitton* standard should be applied to this appeal. The purpose to be served by application of that standard is the prevention of unconstitutional punishment. *Whitton* does not involve a change of an old standard on which law enforcement authorities have relied. Moreover, retroactive application of the *Whitton* standard will have little effect on the administration of justice, as we do not anticipate many past cases will be affected.

16. There are four degrees of arson with different punishments established for each: AS 11.20.010, 11.20.020, 11.20.030 and 11.20.050.

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The United States Supreme Court has recognized that the judiciary should be loath to impute to the Legislature an intent to impose multiple sentences for a single act that has multiple victims. In *Bell v. United States*,¹⁷ the defendant had been found guilty of transporting two women across state lines in one truck for the purpose of having them engage in prostitution, a violation of the Mann Act. He was sentenced to consecutive terms on each of the two counts. The court stated:

The punishment appropriate for the diverse federal offenses is a matter for the discretion of Congress, subject only to constitutional limitations, more particularly the Eighth Amendment. Congress could no doubt make the simultaneous transportation of more than one woman in violation of the Mann Act liable to cumulative punishment for each woman so transported. The question is: did it do so?¹⁸

The court answered this question as follows:

. . . When Congress has the will it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a faggot a single criminal unit. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. And this not out of any sentimental consideration, or for want of sympathy with the purpose of Congress in proscribing evil or anti-social conduct. It may fairly be said to be a presupposition of our law to resolve doubts in the enforcement of a

penal code against the imposition of a harsher punishment. This in no wise implies that language used in criminal statutes should not be read with the saving grace of common sense with which other enactments, not cast in technical language, are to be read. Nor does it assume that offenders against the law carefully read the penal code before they embark on crime. It merely means that if Congress does not fix the punishment for a federal offense clearly and without ambiguity, doubt will be resolved against turning a single transaction into multiple offenses, when we have no more to go on than the present case furnishes.¹⁹

A similar result was reached by court in the *Ladner v. United States*²⁰ case involving the wounding of two federal officers by a single shot from a shotgun. The court found that but a single violation of the statute had occurred and that only one penalty could be imposed:

"When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity." (Citations omitted.) This policy of lenity means that the Court will not interpret a federal criminal statute so as to increase the penalty that it places on an individual when such an interpretation can be based on no more than a guess as to what Congress intended. If Congress desires to create multiple offenses from a single act affecting more than one federal officer, Congress can make that meaning clear. We thus hold that the single discharge of a shotgun alleged by the petitioner in this case would constitute only a single violation of § 254.²¹

17. 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed. 905 (1955).

18. *Id.* at 82-83, 75 S.Ct. at 622, 99 L.Ed. at 910.

19. *Id.* at 83-84, 75 S.Ct. at 622, 99 L.Ed. at 910-11.

20. 358 U.S. at 169, 79 S.Ct. 209, 3 L.Ed. 2d 199 (1958).

21. *Id.* at 178, 79 S.Ct. at 214, 3 L.Ed.2d at 205. 18 U.S.C. § 111, the recodification of § 254, provides:

Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated . . . while engaged in or on account of the performance of his official duties, shall be fined not more than \$5,000 or imprisoned not more than three years, or both.

It is to be noted that in *Beli* and *Ladner*, there was an apparent intent to affect more than one victim. Utilizing the *Whitton* test, it would thus be conceivable to conclude that different intents were involved as to each victim, so that the Constitutional prohibition against double jeopardy would not be violated by multiple punishments. We would thus agree with the result reached by the California Supreme Court in the case of *Neal v. State*, 55 Cal.2d 11, 9 Cal.Rptr. 607, 357 P.2d 839 (1960) (referred to in the dissent filed to this opinion), since in that case Neal intended to murder two persons by burning down a dwelling with the intended victims inside. As pointed out in the *Neal* opinion, there was an "intent to harm more than one person." In the subject case, however, there was no intent to harm anyone and consequently, no intent to harm more than one person. Under these circumstances, it would be a violation of the Alaska double jeopardy prohibition to impose multiple punishments for Thessen's single act, despite its horrendous consequences.

[3] The primary purpose of criminal law is to inhibit antisocial conduct by assigning appropriate punishment. As parodied by Gilbert and Sullivan in the *Mikado*, the object is "[t]o let the punishment fit the crime." To achieve this purpose the focus must be on the intent and conduct of the perpetrator rather than on fortuitous results.

[4] Within constitutional limits,²² the Legislature has the power to impose whatever punishments it deems appropriate for

specific crimes. In fact, it has had little difficulty in expressing distinctions where it has seen fit to do so.²³ If the Legislature so desired, it could authorize a more stringent punishment for manslaughter resulting from acts of arson. To date, however, it has not done so.

Accordingly, but one sentence for the maximum period prescribed by the Legislature is permissible for Thessen's offense. The judgment denying Thessen's application for post-conviction relief is reversed and the case is remanded for further proceedings consistent with this opinion.

ERWIN and FITZGERALD, JJ., not participating.

RABINOWITZ, Chief Justice (dissenting).

The majority today concludes that

[w]here there has been but one statute violated by a single act, without intent to harm multiple victims, the Alaskan constitutional prohibition against placing a person in jeopardy twice for the same offense prevents [the] imposition of multiple punishments.¹

I must respectfully dissent from that holding.

The majority relies heavily on our decision in *Whitton v. State*, 479 P.2d 302 (Alaska 1970) in reaching its conclusion.² In *Whitton* the trial court convicted the defendant of both robbery³ and the use of firearms during the commission of the

22. In addition to the double jeopardy provision, the Constitution of the State of Alaska provides in article I, section 12:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Penal administration shall be based on the principle of reformation and upon the need for protecting the public.

23. See *supra* note 16.

1. *Thessen v. State*, Supreme Court Opinion, at 1195.

2. I agree that *Whitton* should be applied retroactively in appropriate cases. *Robinson v. Neil*, 409 U.S. 505, 93 S.Ct. 876, 35 L.Ed.2d 20 (January 10, 1973).

3. AS 11.15.240 provides:

A person who, by force or violence, or by putting in fear, steals and takes anything of value from the person of another is guilty of robbery, and is punishable by imprisonment in the penitentiary for not more than 15 years nor less than one year.

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In the case at bar, the court focuses on what it characterizes as a singular physical act, and concludes that there can be one "allowable unit of prosecution."⁹ Alaska's relevant statute provides that:

. . . a person who unlawfully kills another is guilty of manslaughter, and is punishable by imprisonment in the penitentiary for not less than one year nor more than 20 years.¹⁰

The controlling language defining the offense of manslaughter is "unlawfully kills another." In my view this language reflects the legislature's intent to have the offense depend on the consequences of the defendant's act and not the means by which those consequences were achieved. The majority would apparently uphold separate manslaughter convictions had Thessen burned down 14 houses, each containing one of his victims. Under that analy-

sis a person convicted of 14 counts of manslaughter under those circumstances is more culpable than a defendant who causes the death of one person by burning down one house. The majority thus seems to reward the defendant for the efficiency of his criminal behavior, by defining the offense in terms of the number of physical acts which produced the unlawful killings. AS 11.15.040, however, requires no such inquiry. In my view this manslaughter statute measures the wrongfulness of the defendant's behavior by the number of victims.

Each unlawful killing under AS 11.15.040 is an offense under the statute. To read the statute as the majority has done violence to its plain language.¹¹ I would therefore affirm Thessen's 14 separate convictions of manslaughter.¹²

(1937) (separate third degree murder prosecutions permitted where two victims killed in single automobile accident); *State v. Gratz*, 254 Or. 474, 401 P.2d 829 (1969) (armed robbery of two persons at same time and place held to constitute two separate crimes).

9. The term "allowable unit of prosecution" was coined in *United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221, 73 S.Ct. 227, 97 L.Ed. 260, 264 (1952).
10. AS 11.15.040.
11. Under a different statute, the number of victims may, of course, have no bearing on the defendant's culpability. Thus in *Ladner v. United States*, 358 U.S. 169, 70 S.Ct. 209, 3 L.Ed.2d 199 (1958), the United States Supreme Court held that in light of the lenity doctrine, a single shotgun blast directed at two federal officers could result in only one assault conviction under 18 U.S.C. § 254. And in *Bell v. United States*, 349 U.S. 81, 75 S.Ct. 620, 99 L.Ed. 905 (1955), the Court expressed a legitimate doubt as to whether the appropriate unit of offense under the Mann Act should depend on the number of women transported across state lines.

The majority thought that it did not. Justice Minton, in dissent, thought that the statute protected individual women and girls from exploitation, and as he succinctly put it:

Surely [Congress] did not intend to make it easier if one transported females by the bus load. 349 U.S. 81, 84, 75 S.Ct. 620, 623, 99 L.Ed. 908, 911.

12. On the other hand I would remand the case to the sentencing court for a hearing to determine whether imposition of the three consecutive twenty year terms of imprisonment was an appropriate sentence in the case at bar. *State v. Pete*, 420 P.2d 338 (Alaska 1968). AS 11.05.050 does not furnish any guidelines as to when consecutive sentences should be imposed. Minimally, I think the trial judge should be required to state his reasons why consecutive sentences were appropriate in this case. See, Johnson, *Multiple Punishment and Consecutive Sentences: Reflections on the Neal Doctrine*, 58 Cal.L.Rev. 357, 367-69 (1970); American Bar Association Standards Relating to Sentencing Alternatives and Procedures § 3.4, at 171-172, 176-178 (Approved Draft, 1968).

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same robbery.⁴ On appeal we held that the convictions for robbery and for the use of firearms during the commission of the same robbery amounted to conviction twice for the same offense. The inquiry in *Whitton* was thus essentially whether the distinct statutes under which Whitton was convicted mutually proscribed the same criminal behavior and therefore whether punishments for violating both statutes could be imposed consistently with our double jeopardy proscriptions. The court explained that:

The problem we are faced with has arisen by reason of legislative division or refinement of what may be a unitary criminal episode into a number of statutory offenses, with differences based upon intent or means or method of perpetration.⁵

We determined that the legislature defined two different forms of the same offense and that under the facts of that case double jeopardy prohibited punishment for both.⁶ In my view, *Whitton* is distinguishable from the case at bar and is not controlling.

In the case before us, we are concerned not with whether several distinct but overlapping statutes have been applied to exact multiple punishment for what is essentially a "unitary criminal episode," but rather whether Thessen's conduct violated a single statute several times over.

4. AS 11.15.205 provides:

A person who uses or carries a firearm during the commission of a robbery, assault, murder, rape, burglary, or kidnapping is guilty of a felony and upon conviction for a first offense is punishable by imprisonment for not less than 10 years. Upon conviction for a second or subsequent offense in violation of this section, the offender shall be imprisoned for not less than 25 years.

5. 470 P.2d 302, 312.

6. The Supreme Court in *Ex Parte Lange*, 85 U.S. (18 Wall.) 103, 173, 21 L.Ed. 872, 878 (1874) condemned as a violation of double jeopardy multiple punishment for the same offense. See also *United States v. Benz*, 282 U.S. 304, 307-309,

The majority seems to hold that since the 14 victims lost their lives as a result of Thessen's single act of arson, only a single conviction for manslaughter may be sustained. In *Neal v. State*, 55 Cal.2d 11, 9 Cal.Rptr. 607, 357 P.2d 839 (1960), the California Supreme Court faced a similar case. The defendant Neal was accused of attempting to murder two persons by burning down a dwelling with the intended victims inside. Neal was convicted on two counts of attempted murder. The Supreme Court of California allowed the separate convictions for attempted murder to stand. Speaking for the court Justice Traynor said:

The purpose of the protection against multiple punishment is to insure that the defendant's punishment will be commensurate with his criminal liability. A defendant who commits an act of violence with the intent to harm more than one person or by a means likely to cause harm to several persons is more culpable than a defendant who harms only one person.⁷

As Justice Traynor later commented in his dissent in *In Re Hayes*, 70 Cal.2d 604, 75 Cal.Rptr. 790, 451 P.2d 430 (1969), the defendant's culpability must be assessed in light of the expressed legislative purpose, and that therefore it is of little consequence that several victims died as a result of a single muscular contraction.⁸

51 S.Ct. 113, 75 L.Ed. 354, 356-357 (1931).

7. 55 Cal.2d 11, 9 Cal.Rptr. 607, 612, 357 P.2d 839, 844.

8. 70 Cal.2d 604, 75 Cal.Rptr. 790, 451 P.2d 430, 438. Other courts have adopted the same basic position. *Accord* *United States v. Tarrant*, 400 F.2d 701 (5th Cir. 1972) (possession of five unregistered firearms held to constitute five separate offenses); *United States v. Hodges*, 430 F.2d 676 (10th Cir. 1971) (assault on several penal officers during jail house altercation held to constitute multiple offenses); *State v. Miranda*, 3 Ariz.App. 550, 416 P.2d 444 (1966) (separate manslaughter convictions for each victim of a single traffic accident upheld); *State v. Fredlund*, 200 Minn. 44, 273 N.W. 353

Original sponsor: Judiciary Committee
by request

"Double
Vespady"

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 553 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act revising certain criminal laws of the state; an
7 changing Rule 35(a) and (b), Rules of Criminal Pro-
8 cedure."

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

10 * Section 1. AS 11.41.120 is amended by adding a new subsection to read:

11 (c) If more than one person dies as a result of a person committin
12 manslaughter, each death constitutes a separately punishable offense.

13 * Sec. 2. AS 11.41.130 is amended by adding a new subsection to read:

14 (c) If more than one person dies as a result of a person committin
15 criminally negligent homicide, each death constitutes a separately
16 punishable offense.

17 * Sec. 3. AS 11.41.210 is repealed and reenacted to read:

18 2 Sec. 11.41.210. ASSAULT IN THE SECOND DEGREE. (a) A person
19 commits the crime of assault in the second degree if

20 (1) with intent to cause physical injury to another person,
21 he causes physical injury to any person by means of a dangerous instru-
22 ment;

23 (2) with intent to cause physical injury to a peace officer,
24 he causes physical injury to the peace officer and has reasonable notice
25 that the victim is a peace officer; or

26 (3) he recklessly causes serious physical injury to another
27 person.

28 (b) Assault in the second degree is a class B felony.

29 * Sec. 4. AS 11.46.484(a) is amended by adding a new paragraph to read:

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Seeing eye dog

(5)

(5) he intentionally strikes a police dog while the dog is on official police duty.

* Sec. 5. AS 11.46.484(b) is amended to read:

(b) Except as provided in (c) of this section, criminal [CRIMINAL] mischief in the third degree is a class A misdemeanor.

* Sec. 6. AS 11.46.484 is amended by adding a new subsection to read:

(c) A person convicted under (a)(2) of this section who has been previously convicted under that paragraph or under AS 28.35.010 is guilty of a class C felony.

* Sec. 7. AS 11.81.320 is amended by adding a new subsection to read:

(b) The justification allowed in (a) of this section is an affirmative defense.

* Sec. 8. AS 11.81 is amended by adding a new section to read:

Sec. 11.81.650. MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY.

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he lacked substantial capacity, as a result of a mental disease or defect, either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish an affirmative defense under (a) of this section.

* Sec. 9. AS 11.81.900(a)(1) is amended to read:

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when his conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

* Sec. 10. AS 11.81.900(b)(37) is amended to read:

1 (37) "organization" means a legal entity, including a corpora-
2 tion, company, association, firm, partnership, joint stock company,
3 foundation, institution, government, society, union, club, church, or
4 any other group of persons organized for any purpose;

5 * Sec. 11. AS 11.81.900(b)(44) is amended to read:

6 (44) "property" means a domestic pet or livestock regardless
7 of value, an article, substance, or thing of value, including money,
8 tangible and intangible personal property including data or information
9 stored in a computer program, system, or network, real property, a
10 credit card, choses-in-action, and evidence of debt or of contract; [,]
11 a commodity of a public utility such as gas, electricity, steam, or
12 water constitutes property but the supplying of such a commodity to
13 premises from an outside source by means of wires, pipes, conduits, or
14 other equipment is considered a rendition of a service rather than a sale
15 or delivery of property;

16 * Sec. 12. AS 11.81.900(b)(49) is amended to read:

17 (49) "serious physical injury" means

18 (A) physical injury caused by an act performed under
19 circumstances that create [WHICH CREATES] a substantial risk of
20 death; or

21 (B) physical injury that [WHICH] causes serious and
22 protracted disfigurement, protracted impairment of health, [OR]
23 protracted loss or impairment of the function of a body member or
24 organ, or that [PHYSICAL INJURY WHICH] unlawfully terminates a
25 pregnancy;

26 * Sec. 13. AS 12.55.025 is amended by adding new subsections to read:

27 (g) Except as provided in (h) of this section, if the defendant
28 has been convicted of a crime other than the one for which he is pre-
29 sently being sentenced, the sentences of imprisonment for the two con-

1 victions shall be served consecutively, regardless of whether either
2 judgment specifies that the sentences shall be consecutive.

3 (h) The court may specify that sentences of imprisonment for
4 multiple crimes charged in a single charging document are to be served
5 concurrently if the court finds that the crimes violate similar societal
6 interests or are part of a single continuous criminal episode, unless

7 (1) there was a substantial change in the nature of the
8 criminal objective, including but not limited to a change in the parties
9 to the crimes, the property or type of property right offended, or the
10 persons offended;

11 (2) the crimes were committed while the defendant attempted
12 to escape or avoid detection or apprehension after the commission of
13 another crime; or

14 (3) the sentence is for violation of AS 11.41.100 - 11.41.140
15 or AS 11.41.200 - 11.41.250 or for a violation of AS 11.41.300 - 11.41.-
16 530 that results in injury to one or more persons.

17 * Sec. 14. AS 12.55.088(a) is amended to read:

18 *Supp. to 12.55.088(a)*
19 *Stevenson* (a) The court may modify or reduce a sentence by entering a written
20 order within 60 days of the original sentencing [AT ANY TIME DURING A
21 TERM OF IMPRISONMENT IF IT FINDS THAT CONDITIONS OR CIRCUMSTANCES HAVE
22 CHANGED SINCE THE ORIGINAL SENTENCING HEARING SUCH THAT THE PURPOSE OF
23 THE ORIGINAL SENTENCE IS NOT BEING FULFILLED].

23 * Sec. 15. AS 12.55.125(c)(1) is amended to read:

24 (1) if the offense is a first felony conviction [, OTHER THAN
25 FOR MANSLAUGHTER,] and, during the commission of the offense, the defen-
26 dant possessed or used a firearm or used a dangerous instrument or
27 caused serious physical injury, eight [DURING THE COMMISSION OF THE
28 OFFENSE, SIX] years;

29 * Sec. 16. AS 12.55.135(c) is amended to read:

Domestic Violence
Crossed out
check to put in to last year's legislation

1 (c) A defendant convicted of assault in the fourth [THIRD]
2 degree committed in violation of the provisions of an order issued under
3 AS 09.55.600 or 09.55.610 shall be sentenced to a minimum term of impris-
4 sonment of 20 [10] days. The execution of sentence may not be suspended
5 and probation or parole may not be granted until the minimum term of
6 imprisonment has been served. Imposition of sentence may not be sus-
7 pended, except upon condition that the defendant be [BY] imprisoned for
8 no less than the minimum term of imprisonment provided in this section,
9 and the minimum sentence provided for in this section may not be other-
10 wise reduced.

11 * Sec. 17. AS 12.55.145(a) is repealed and reenacted to read:

12 (a) For purposes of considering prior convictions in imposing
13 sentence under this chapter

14 (1) a prior conviction may not be considered if a period of
15 10 or more years has elapsed between the date of the defendant's uncon-
16 ditional discharge on the immediately preceding offense and commission
17 of the present offense unless the prior conviction was for an unclassi-
18 fied or class 1 felony;

19 (2) a conviction in this or another jurisdiction of an offense
20 having elements substantially identical to those of a felony defined as
21 such under Alaska law is considered a prior felony conviction;

22 (3) two or more convictions for crimes violating similar
23 societal interests or arising out of a single, continuous criminal
24 episode are considered a single conviction unless

25 (A) there was a substantial change in the nature of the
26 criminal objective, including but not limited to a change in the
27 parties to the crimes, the property or type of property right
28 offended, or the persons offended;

29 (B) the crimes were committed while the defendant

1 attempted to escape or avoid detection or apprehension after the
2 commission of another crime; or

3 (C) the sentence is for violation of AS 11.41.100 -
4 11.41.140 or AS 11.41.200 - 11.41.250 or for a violation of AS 11.-
5 41.300 - 11.41.530 that results in injury to one or more persons.

6 * Sec. 18. AS 12.55.145(b) is amended to read:

7 *Minor* (b) When sentence is imposed under this chapter, prior convictions
8 *Amendments* not expressly admitted by the defendant must be proved by authenticated
9 copies of court records served on the defendant or his counsel at least
10 20 [10] days before the date set for imposition of sentence.

11 * Sec. 19. AS 12.55.145(c) is amended to read:

12 (c) If the defendant denies the authenticity of a prior judgment
13 of conviction, that he is the person named in the judgment, that the
14 elements of a prior offense committed in another jurisdiction are sub-
15 stantially identical to those of a felony defined as such under Alaska
16 law, or that a prior conviction occurred within the period specified in
17 (a)(1) of this section or if he alleges that two or more purportedly
18 separate prior convictions should be considered a single conviction
19 under (a)(3) of this section, the defendant shall file with the court
20 and serve on the prosecuting attorney notice of denial no later than 10
21 [FIVE] days before the date set for imposition of sentence. The notice
22 of denial shall include a concise statement of the grounds relied upon
23 and may be supported by affidavit or other documentary evidence.

24 * Sec. 20. AS 12.55.145 is amended by adding a new subsection to read:

25 *Minor* (f) When a defendant is convicted of a felony by a court of this
26 *Amendments* state he shall place his fingerprints on the judgment of conviction in
27 open court, on the record, at the time of sentencing. The defendant and
28 the person administering the fingerprinting shall sign their names under
29 the fingerprints.

1 * Sec. 21. AS 12.55.155(c)(8) is repealed and reenacted to read:
2 *Minor* (8) the defendant's prior criminal history includes conduct
3 *Changes* involving aggravated or repeated instances of assaultive behavior;

4 * Sec. 22. AS 12.55.155(c) is amended by adding new paragraphs to read:
5 *Minor* (19) the defendant's prior criminal history includes an adjudi
6 *Changes* cation as a delinquent for conduct that would have been a felony if
7 committed by an adult;

8 (20) the defendant was on furlough under AS 33.30 or on parole
9 or probation for another felony charge or conviction.

10 * Sec. 23. AS 12.45.083; AS 12.55.025(e) and 12.55.155(d)(8) are repealed

11 * Sec. 24. AS 12.55.088(a), amended by sec. 14 of this Act, has the
12 effect of changing Rule 35(a) and (b), Rules of Criminal Procedure, by de-
13 leting the provisions for modification or reduction of sentence as a result o
14 f changed circumstances and by decreasing from 120 to 60 days the period of
15 time in which a sentence otherwise may be modified or reduced.

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FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 553
 Title "An Act relating to the criminal laws of the state."
 Requested by Repr. Barnes, House Judiciary Date March 21, 1982

II. FISCAL DETAIL

Agency Affected Department of Law
 Program Category Affected Administration of Justice
 BRU, Program, Or Subprogram(s) Affected Prosecution
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

This bill will facilitate the prosecution of these sorts of cases making the department's efforts more effective, without causing any additional costs. The department, therefore, endorses enactment of this bill.

IV. DATE March 23, 1982

PREPARED BY Richard I. Pequo, Director, Admin. Svc

AGENCY Department of Law

Original: Legislative Finance

PHONE 465-3672

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

Richard I. Pequo

* AS 11.46.200 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of this section, it is lawful for a person to intercept satellite telecommunications if the interception is not for commercial advantage or is not done with the intent to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

* AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) he sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other telecommunications service, with intent to defraud another of the lawful charges for the service.

* AS 11.46.482 is amended by adding a new subsection to read:

(c) Notwithstanding the provisions of (a) of this section, it is lawful for a person to sell a device for the interception of satellite telecommunications if the interception is not for commercial advantage or is not intended to defraud a commercial provider of a service listed in AS 11.81.900(b)(50).

* AS 11.81.900(b)(50) is amended to read:

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment including cable, microwave, subscription, or pay television or any other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admissions to exhibitions, and the supplying of equipment for use.

February 24, 1982

Gordon Evans, Esquire
ELY, GUESS & RUDD
Menden Hall Building, Suite A
Juneau, Alaska 99801

Dear Gordon:

In connection with your theft-of-service lobbying efforts on our behalf, let me respond to Senator Parr's concerns over theft of service language presently included in S.B. 535.

First of all, let me assure that theft of service is a significant problem to all subscription television operators nationwide. The issue is not one of technology but rather of opportunists taking illegal advantage of outmoded legislation that provides totally inadequate remedies for legitimate operators such as ourselves. The enclosed trade journal articles illustrate the current situation very graphically.

Here in Anchorage, VISIONS offers a single channel, 24-hour per day selection of proprietary programming via a microwave frequency not receivable on any television set without the benefit of specialized operator supplied receiving equipment (i.e., antenna plus electronic components). Our service is intended for and available to only those individuals desiring it. They sign a subscription agreement with us, pay an installation charge and thereafter a monthly fee to cover the costs of programming and antenna equipment rental and maintenance. (Our receiving equipment always remains our property and we are responsible for repairing it at all times without additional cost to our subscriber).

MDS receiving equipment is single purpose in nature. That is, it is capable of receiving only the single microwave frequency authorized by the FCC for our service in Anchorage and, in turn, converts that microwave frequency to a signal watchable on a normal television set. (Here in Anchorage we convert to Channel 6.)

Our problem, in the main, stems from out-of-state individuals or companies who illegally manufacture receiving equipment capable of receiving our service and then sell it in Alaska and elsewhere on the pretext of saving money by avoiding paying the monthly fee. Typically, these out-of-state manufacturers solicit in-state TV repair shops, electronic stores or the like to be their local distributors. While many local

Gordon Evans, Esquire
February 24, 1982
Page 2

firms refuse to participate in offering a product whose sale they know will harm us, some of the less scrupulous ones take advantage of the opportunity to make some extra, easy profits. In almost all cases, such sales are made surreptitiously either by word-of-mouth, obscure classified ads in Penny-Saver type publications or the like. In the rare case when such sales are advertised overtly, specific mention of our service is avoided. (See samples enclosed.)

Our ability to combat such sales is limited. While during the past two years we have been successful in one civil litigation against a local dealer selling pirate antennas, we have been unable to get similar results from either the District Attorney's or U.S. Attorney's office as far as a criminal action is concerned. While there is federal theft of service legislation on the books, the local U.S. Attorney has, to date, been reluctant to allocate the manpower to pursue this type of offense. While the District Attorney's office has been more sympathetic to our problem, it has grave concerns about the broadness of the existing state statute (A.S. 11.46.482). In its one effort to date at a criminal prosecution, the State's case was dismissed prior to ever reaching trial on the merits. At this stage, the District Attorney is only willing to make another attempt if they can rely on a more adequately worded statute: to wit, the language presently proposed in S.B. 535 (and which was drafted in cooperation with the Attorney General's office).

The bottom line for us is that after more than two years worth of effort in combatting theft of service and the expenditure of a substantial amount of money on attorney fees, lobbying costs, etc., we have very little to show for it. I recognize that simply having a stronger criminal statute will not by itself solve our problem. More to the point, we really don't want to pursue the individual pirate antenna purchaser who, in many cases, may not fully realize he is doing something wrong. But the benefit to us of a criminal conviction against a dealer is the ability to publicize that event and, thereby, educate the public that it is not only immoral but also illegal to receive our service without paying for it. Most citizens will, I believe, once they understand this fact ignore enticements for illegal purchases. And for those who don't, at least we will have a viable means for pursuing our remedies. It should be obvious that in this case there is no substitute for criminal sanction. Civil litigation is not only time consuming and expensive, but if successful, it normally results in nothing more than an injunction against further sales, which injunction may or may not be enforceable.

Gordon Evans, Esquire
February 24, 1982
Page 3

Typical arguments against the legislation we are supporting are, in my opinion, totally without merit. One argument suggests that the proper solution to our problem isn't better criminal legislation but rather the "scrambling" of our signal; i.e., making it harder to steal. Putting aside the enormous cost and difficulty for us to scramble (we have 11,500 receiving units already installed in Anchorage, all of which would have to be changed out if we were to "scramble" our signal), it is my my feeling that our signal is already "scrambled". As
* noted above we transmit on a microwave frequency not receivable on a normal television set. Furthermore, I fail to understand why the cost of scrambling should be borne by our legitimate subscribers (as it would, of course, have to be) to defeat the illegal efforts of a few.
* } In addition, what level of sophistication in scrambling does one implement? If pirate manufacturers can duplicate our microwave technology, why might they not also duplicate (and thereby defeat) any scrambling/-de-scrambling capability we employ?

Another argument often voiced against legislation is that innocent individuals may be unintentionally harmed. In other words, while our microwave frequency is not intended for unauthorized public use, others are (e.g., ham radio frequencies). Therefore, an individual might inadvertently tune to our frequency and violate the law. While this is in part accurate, it belies reality. There are audio services transmitted on microwave frequencies intended for the use of the general public, but there are no video services intended for such use. (Broadcast television operates on non-microwave frequencies.) Therefore, an innocent user would normally be incapable of receiving our video signal. More significantly, all of the illicit microwave receivers we have ever encountered are capable of receiving only our microwave frequency. (See enclosed technical report on pirate antennas sold in Spokane, Washington.) The reason for this is simple: it costs less to manufacture them this way and the only potential customers are those desiring to get pay-TV for free.

One legitimate concern that has been voiced is the impact S.B. 535 as presently worded would have on private earth station owners. While many satellite signals are not intended for the public, some are and, therefore, use of an earth station which has a multi-purpose function (and is, therefore, different from MDS receiving equipment) should not be labeled as inherently illegal. I believe by now you have, in cooperation with our FCC counsel, drafted alternative language that exempts private earth station usage from any criminal liability.

In closing, let me emphasize what should be obvious. Theft of service threatens the very life blood of our business. Through physical audits that we have conducted in Anchorage, we estimate that we are currently losing \$40,000 per month in revenue from use of illegal antennas. Left

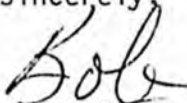
Gordon Evans, Esquire
February 24, 1982
Page 4

unchecked, it would be only a matter of time before such loss of revenue could put us completely out of business to the detriment of our legal and illegal viewers alike.

More to the point, there is a significant moral issue involved that is sometimes overlooked. We are a legitimate business and good corporate citizen. Our business is no different from any other in that to the extent we incur costs in fighting or lose revenue to sellers and users of pirate equipment, we are harmed and our subscribers are harmed. This is neither fair nor right.

We will continue to mobilize all of our resources against service theft because we have no other choice. Our continued existence depends upon it. All we are seeking in the enactment of S.B. 535 is the opportunity to make use of a very effective weapon in the battle.

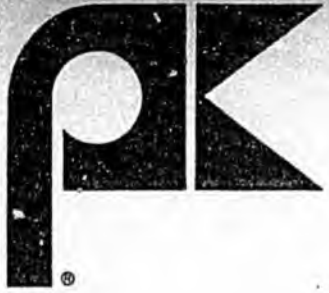
Sincerely,



Robert J. Gould

RJG/kj

Encs.



MULTICAST

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 Laramie, WY launch....p.5
 Recent FCC action.....p.

Editor: George Eagle (202) 547-4050
 Associate Editor: Alan Cole-Ford (213) 454-0639
 NEWSLETTER ON MULTIPOINT DISTRIBUTION SERVICE

No. 223
 November 13, 1981

PAUL KAGAN ASSOCIATES, INC.
 26386 CARMEL RANCHO LANE
 CARMEL, CALIFORNIA 93923
 (408) 624-1536

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 JL LW
 SRD
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In an unusual interview with MULTICAST editors, a self-admitted pirate distributor made it easy to see why bootleg manufacturers and middlemen pose such a persistent and elusive threat to MDS operators, and why they take the risks they do.

Identifying himself as a principal in Microtronics, a NY-based distributor of microwave equipment, this man conceded that his tactics are typical. "Come in quickly, make a bundle, and keep moving," he said.

Until several months ago, he reports, he was content with a cash-and-carry business that saw him sell 350-400 units per week to dozens of retailers in New York City.

But, he said, last month seemed like a good time to make a more aggressive attack, "so I started advertising full-bore in newspapers. Retailers love it, since I pay for all the ads, and include their store names, with phone numbers and addresses."

Identifying up to eight stores in each recent *New York Post* display ad, Microtronics reportedly boosted its volume by 200%. Antennas were "sale priced" at \$144.95. The retailers paid approximately \$130/unit.

Now, six weeks later, all but two of the participating stores claim to have ceased all sales of pirate gear, citing legal reprisals from EBC soon after the ads appeared. Each businessman insists he was unaware his actions were illegal, having received repeated assurances from Microtronics that the deal was above-board.

"Of course we tell them it's not illegal," the distributor admits. "We explain that as long as HBO's name isn't used anywhere in the ad, they're not suggesting anything improper. Whatever the customer wants to do with his antenna is his business."

And the pirate indicated that he wouldn't be around to see what the customer did with his antenna. "Newspaper advertising is often a sign that a pirate is preparing to pull out of a market. The ads draw attention to the retailers, but they also move goods quickly," he said. "Once legal hassles start, the store owner can only complain. I've already made my profit, and I'll move if I have to.

"At some point," the pirate continued, "the retailer simply becomes expendable. It usually occurs when a city is reaching saturation, and selling more units begins to present more risk. New York is a good example. There must be 20,000-25,000 illegal antennas in the city already, but the pace won't continue. It makes more sense to find an easier city.

(continued on next page)

PIRATE INTERVIEW (continued from P. 1)

"Any pirate must operate with a simple strategy," he added. "We keep our profile low and our liquidity high.

"Each market requires a different approach, and it's best to operate simultaneously in several cities, so inventory can be moved quickly and easily. I don't like to keep more than 150-200 units on hand at a time."

When asked about his motives, the pirate points to profit. "The margins are just too good to pass up," he said. "I can buy equipment at \$75-\$80 per unit, and sell it at nearly double, without any tax worries."

"I didn't create the market, I just give it what it wants," the pirate argues. "As long as customers think they're being clever instead of criminal by buying illegal hardware, I'll have a business."

ANTI-PIRACY LEGISLATION MOVES FORWARD

In Washington, efforts to stop operations such as Microtronics looked as though they might run off the track toward early consideration last week.

Now, the anti-piracy bill is apparently back on the rails.

The bill, of vital importance to the pirate-beleaguered pay TV users of MDS, would set civil and criminal penalties for violating Section 605 of the Communications Act, which forbids unauthorized signal interception.

Things were chugging along toward a hearing scheduled for 11/12 when the Sony Betamax decision came down from San Francisco in late October.

That ruling by the U.S. Court of Appeals for the Ninth Circuit held makers—and technically even users—of home videorecorders liable for copy-right payments when recording movies and other shows off TV.

The decision, a victory for program producers, will be appealed, but it stirred concern at the Motion Picture Assn. of America about a possible "Betamax amendment" to allow a home-use exemption to the anti-piracy bill.

The hearing was postponed, but the National Assn. of MDS Service Cos., fearing the bill could become hostage to a final outcome of the Betamax case, mounted a rescue mission to Capitol Hill.

NAMSCO operatives met with bill cosponsors Rep. Timothy Wirth (D-CO) and Rep. Henry Waxman (D-CA), pointing out that while NAMSCO didn't downplay MPAA's concern, it didn't seem to belong with pay TV legislation.

A key staffer later said Betamax was a separate matter that probably should go before the House Judiciary Committee, and that there was "no way" it would be included in the anti-piracy bill (H.R. 4727).

After that the Communications Subcommittee, chaired by Wirth, re-scheduled the hearing for 11/17.

A session to mark up (put in final recommended form) the bill and send it to the Full Commerce Committee is expected to follow soon afterward.

The bill provides for criminal penalties up to \$25,000 and a year in prison for the first offense, plus damages from civil suit up to \$50,000.

The Communications Subcommittee's majority staff also submitted its report last week on competition in the telecommunications industry.

The report found that although new technologies, including MDS, had emerged and made some mark, "there is still unequivocal dominance by broadcast television over other video technologies."

(continued on next page)

Cable television has a dirty little secret. Why pay for what you can see for free?

Video pirates

By Jonathan Greenberg

EVEN THE WELL-OFF LIKE getting something for nothing, and well-to-do dentist Sam Williams is no exception. Williams installed his own microwave antenna on top of his St. Louis home to pick

up Showtime, a pay television service that costs subscribers \$19 a month in his area, free of charge. Williams, whose name has been changed to protect his small act of piracy, made his antenna by soldering a coffee can filled with some simple circuitry into a sawed-off funnel.

Sam's rooftop, however, is a drop in the bucket. Experts estimate that some 10% of the 26 million U.S. homes currently receiving cable or pay television are freeloading (*see box*). Pirates hijack signals with homemade antennas that can be jerry-built with everything from aluminum snow sleds to barbecue grills. They buy bootlegged converters and bypass in-home decoder boxes, and they climb telephone poles to knock out security "traps."

Most signal thieves are probably otherwise law-abiding viewers who don't like to pay up to \$30 a month for their home entertainment. Some are also electronics buffs. For the latter, getting cable television for free is as much fun as picking up Timbuktu on a ham radio. In January *Radio Electronics* published a story about wiring up a cable decoder, and its newsstand sales jumped by 40%, to 93,000.

Like most crime, cable piracy is more widespread in urban areas. Industry insiders say that unauthorized taps account for as much as 25% of all viewing in New York City neighbor-

Beating the system

Video addicts willing to invest \$5,000 in a satellite-receiving station get access to virtually unlimited programming. Low-budget thievery is possible too. The simplest piracy technique involves buying an antenna in areas where pay television is distributed through multipoint distribution systems. Franchisees in these MDS areas install antennas in subscribers' homes, transmit the signal and collect monthly service fees. Local electronics stores, however, often sell the same antenna for \$150 or so—less than the cost of an installation and six months' service.

In Phoenix, for example, now-famous Pirate Electronics sold over \$1 million worth of illegal cable antennas before local MDS operators forced it to close. Now, an industry executive estimates that one out of six viewers there owns his own antenna. But that might be conservative. "Half the homes in my neighborhood are getting cable, and I'm the only fool who's paying for it," says one local resident.

Not surprisingly, MDS systems aren't attracting large-scale investor attention. Cable franchise operators, as opposed to MDS operators, now have two basic approaches to security: They filter out services such as HBO and Showtime with "traps," or they scramble signals, providing descrambler boxes for a monthly fee.

Trapping is the more popular control method—but not always the most effective. Franchise operators send all signals over the same cable and then place 4-inch cylindrical traps on telephone poles out-

side subscribers' homes to filter out premium service. Such so-called negative security costs roughly \$15 per household per trap for parts and labor. Each premium service requires its own trap, and systems offering three or four add-ons typically color-code their traps. That means utility poles can look like Christmas trees.

For subscribers who aren't scared of heights, it can also mean a free gift is easy to reach. Just climb the pole, remove the trap and presto: HBO is on your screen, but not on your bill. System managers say that aggravated homeowners who have had trouble removing the traps have attacked them with drills, hammers and even blowtorches. In some areas there are organized thieves to do the pole-climbing. The pros often provide replacement "dummy" traps that fool audit teams who do spot checks for piracy.

Then there are descramblers. These in-home boxes,

roughly the size of a cigar box, are prevalent in urban areas where there are no telephone poles. Such suppliers as Oak Industries and Scientific-Atlanta provide this equipment at a cost of about \$70 per unit. Even with tight distribution, however, there are leaks, and bootleg black boxes trade for as much as \$100. Not a bad price, considering that HBO now costs \$15 a month in some markets. Cable executives report other problems, too: Subscribers with a flair for electronics can override the scrambling by fine-tuning spare television sets or rewiring basic cable units to get extra service for free.



*Microwave antenna on sale in New York
Prestol Free HBO.*

"This thing is like an information war, with lots of room to escalate. How can the cable industry constantly keep ahead of people's ability to steal, especially as the value of the services increase?"

hoods where building superintendents "sell" cable hookups. High mobility brings added difficulties. If new occupants move into a home with a live cable tap and don't notify the company, they can often receive service without charge. Then there's the problem of cable gear left in vacant homes or apartments: It often disappears quickly.

Cable operators are ambivalent about small-time living room larceny. "We pursue organized thieves aggressively, but if it's just an individual customer stealing, we slap him on the wrist," says Dave MacDonald, group director for cable at the New York Times Co., which runs cable services in southern New Jersey serving 80,000 customers. "What we really want is not to prosecute, but to get them to pay for service," explains John Lockton, president of Warner Amex Cable.

However, certain abuses have the industry worried. In some areas, pole-climbing specialists such as telephone repairmen and former cable system employees travel door-to-door selling "lifetime free service," for between \$50 and \$150. Such offenders can be prosecuted under section 605 of the Communications Act, which prohibits the theft of a cable signal. "It's kind of like dope—they want to get the supplier," says one communications attorney. The penalty is usually a fine, and court cases are being filed at the rate of one every two weeks. In addition, HBO won an important battle last month against a manufacturer of private antennas in New York, a decision that could have broad anti-theft implications.

Many cable executives believe that

new technology, through the use of two-way addressable converters, will lessen the problem of piracy. Such units, similar to those Warner now uses at its Qube installation in Columbus, allow the operator periodically to monitor system use. Instead of sending linemen to find freeloaders, a control center detects them directly.

The problem is that such addressable converters don't come cheap. They cost roughly twice as much as the \$60 or \$70 that conventional descramblers sell for. And, like every electronic security system ever invented, they still can be beaten by a smart thief. System operators, meanwhile, are slow to lay out money for today's antipiracy systems. "Everyone is anxiously waiting for better addressable technology," says Jim Cottingham, vice president in charge of the 1.2 million Time Inc. cable subscribers. "This thing is like an information war, with lots of room to escalate," adds Cliff Roth, a writer for *Video* magazine. "How can the cable industry constantly keep ahead of people's ability to steal its information, especially as the value of the services increases?"

By and large, cable operators prefer not to talk about the problem. Why publicize the possibilities? In an industry growing by about 20% a year, who cares if a little cash slips between the cracks? And the day may be coming when cable carries lots of advertising. When that day comes, even the non-paying cableviewer becomes attractive to advertisers and thus a source of income. Still, the future is full of unknowns for this lusty young industry, and piracy is one of those unknowns. ■



Cable operator Dave MacDonald with neutralized cable "traps"

Homeowners attacked the devices with drills, hammers and blowtorches.

January 11, 1982

REPORT TO:

STERLING RECREATION ORGANIZATION
ON PURCHASED 2 GHZ RECEIVING EQUIPMENT TESTING AND CONCLUSIONS

GENERAL

A 2 GHz microwave receiving equipment was tested by HARTECH, INC. for reception of Multipoint Distribution Service (MDS) common carrier (2150-2156 MHz) and 2300-2450 MHz Amateur Radio band signals.

CONCLUSIONS

Tests performed with input signals at the MDS and Amateur Radio frequencies indicated:

- (1) The receiving system tuned the MDS signal in on a standard television set from Channel 2 to Channel 6 by using the tuning control on the unit. This was proven in laboratory tests and by watching "off-the-air" MDS.
- (2) In laboratory tests, HARTECH was able to tune in signals between 2300 and 2334 MHz for output frequencies between Channels 2 and 6. No reception was possible from 2334 MHz to 2450 MHz for output on a standard TV set. Therefore only 34 MHz of the total 150 MHz Amateur Band could be tuned in.
- (3) The receiving equipment [local oscillator] tuning range was measured to be 40 MHz (from 2206-2246 MHz) so that the total 150 MHz wide amateur radio band could not be tuned in on any single TV channel, a reasonable design requirement of an amateur radio receiver for reception in this band.

HARTECH concludes that the 2 GHz (2000 MHz) microwave receiving equipment was designed for reception of the MDS band for output on a standard television set on channels 2 through 6.

UNIT IDENTIFICATION

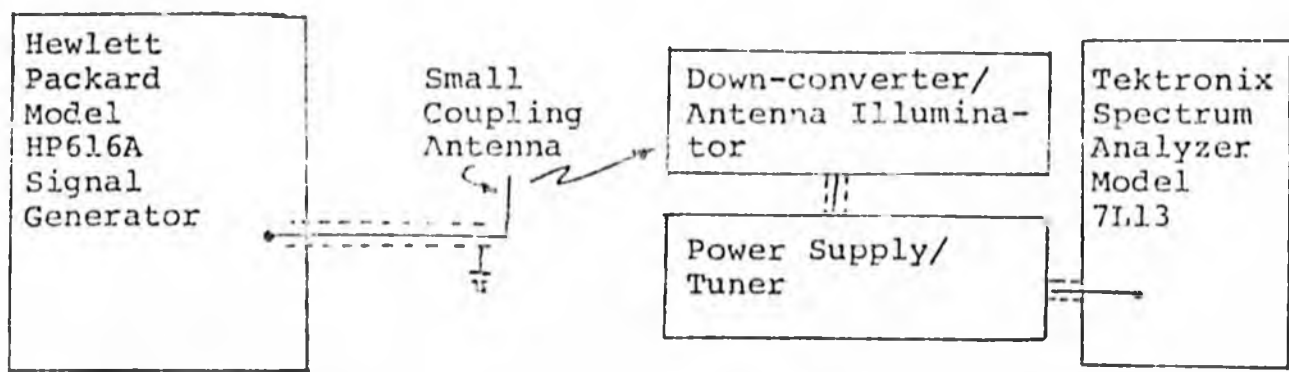
The unit tested had the following components and markings:

Components	Markings
Power Supply/Tuner	Jan. 6, 1982 Case #81-130
Down-converter/Antenna-Illuminator	Western Techtronics Colo. Spgs.
Parabolic Antenna	D.M.W.

HARTECH added the initials J.W.H. In addition to the above components, there were two cables supplied, one which connected the down-converter/antenna-illuminator to the power supply/tuner, and the other to connect the power supply/tuner to a television set. It should be noted that the cable to the TV set was terminated in a transformer from 75 ohms to a standard 300 ohm "twinlead" to connect to the antenna input.

TESTING SETUP

Because the down-converter and the antenna-illuminator (primary feed to receive the focused signal from the parabolic reflector) were fabricated into a sealed fiberglass tube, no direct connection could be made between a laboratory signal generator and the receiver input. Coupling from the signal generator was accomplished by using a small antenna at the signal generator. The test setup is shown below.



The spectrum analyzer frequency counter was calibrated in November, 1981. Quantitative amplitude data could not be taken because direct connection could not be made to the down-converter. A strong signal could be obtained on the HP signal generator, up to zero dBm. A received signal from a typical MDS station is -50 dBm. The amplitude was varied to extremes in all testing.

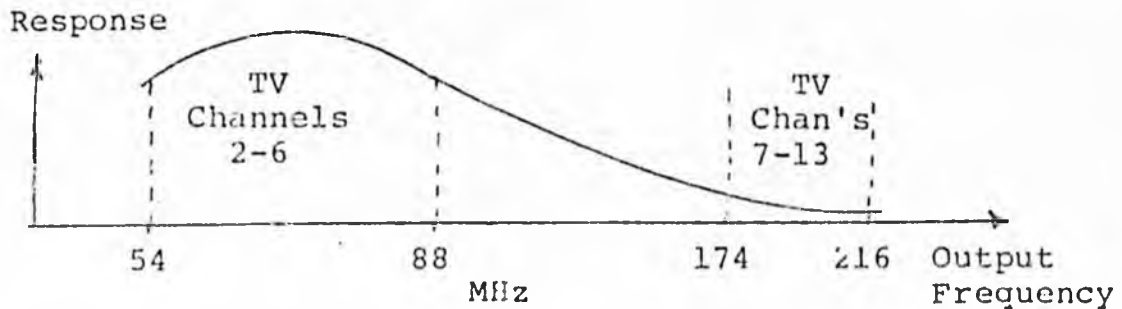
Before making conversion tests, the local oscillator frequency range was checked by using the calibrated frequency meter in the spectrum analyzer. This was done by checking the radiation from the down-converter detected at the fiberglass tube enclosure. The oscillator tuned from 2206 to 2246 MHz.

With the signal generator tuned to 2150 MHz, the MDS frequency, the output of the down-converter (the resulting frequency from the mixing of the input frequency and the local oscillator) could be tuned from 56 to 96 MHz. These frequencies cover Channels 2 to 6 (see Appendix) on a standard television set.

With the signal generator tuned to 2300 MHz, the bottom of the amateur radio band, the output could be seen from 54 to 94 MHz as the tuning control was varied. The down-converter could convert a 2300 MHz signal to any channel between 2 and 6. As the signal generator frequency was raised to 2334 MHz, the converter output was at the top of Channel 6, 88 MHz. As the frequency of the signal generator was raised toward 2450 MHz, the top of the band, no output was detected.

Theoretically, amateur radio signals between 2380 and 2450 MHz could be tuned in on Channels 7 to 13, 174 to 214 MHz; however,

the output could not be detected. This was probably caused by tuned circuits at the output of the down-converter (usually tuned to channels 3 through 5). The response "roll-off" is usually quite great at the Channel 7 frequency of 174 MHz. The figure below shows a typical response curve at the output of a down-converter.



The conclusion reached in laboratory testing is that the receiving system will receive MDS signals and the bottom 34 MHz of the 2300 to 2450 MHz Amateur Radio band with output on channels 2 to 6 of a standard television set.

OFF-THE-AIR TESTS

The receiving equipment was connected as specified in the instruction sheet and an excellent MDS signal was picked up which could be tuned in on channels 2 to 6 on a standard television receiver.

TESTING PERFORMED AND REPORT WRITTEN BY:

James W. Hart
JAMES W. HART, P.E.



SELECTED EXPERIENCE

MICROWAVE AND TWO-WAY RADIO SYSTEMS

1. 26 hops of multichannel common carrier microwave within one state in the 6 GHz common carrier band. Included completed technical portions and exhibits as required on the FCC Form 401's.
2. Upgraded a problem CATV hop in the 6 GHz band for a client using improved antenna characteristics and a GaAs FET amplifier.
3. The design, FCC forms, and supervision of a 12 GHz commercial microwave system used by the banking industry.
4. The design, FCC documentation preparation, and installation supervision of a video television security system in a large company.
5. Designed and documented (FCC Forms 401 and 402) numerous common carrier and commercial microwave systems in the 2, 6, & 12 GHz bands.
6. Feasibility study and design of a 12 hop 960 MHz system for security purposes, voice and data channels for a state department of corrections including economic/breakeven analysis utilizing LEAA matching funds.
7. Feasibility study and design of a 12 GHz microwave system for a hospital to communicate with outreach clinics including B/W and color TV, voice channels, and EMS data communications. The job included feasibility, design, and detailed specifications for procurement.
8. 150 MHz two-way radio interference study for a county which had five repeaters colocated. The study showed calculations and recommended equipments required to minimize the interference being experienced.
9. A Translator feasibility study for a resort area to import major TV stations from an urban community 100 miles away. The study included a survey, design generation, and cost estimate.
10. Measurements and a recommendation report at potential microwave radio sites within a half mile of a 1 megawatt radar. This was performed for a major common carrier company.
11. Designed and performed trouble-shooting on a coaxial TV security system at a high level nuclear plant. Studied feasibility and reliability of a microwave radio replacement system.
12. Design and FCC documentation, Form 346's, for a TV multi-translator system for a western state county. This included coverage patterns for some 13 translators.
13. Aided in the analysis of a military data communications system to solve high error rates in the communications link for transmitting remote batch data at 4800 and 9600 baud.
14. Generated requirements and wrote specifications for data relaying radio equipments for a power company used for 300 sensor points.

APPENDIX

TELEVISION CHANNELS

TELEVISION CHANNEL NUMBER	CHANNEL FREQUENCY (MHZ)	VIDEO CARRIER FREQUENCY
2	54-60	55.25 MHZ
3	60-66	61.25 MHZ
4	66-72	67.25 MHZ
5	76-82	77.25 MHZ
6	82-88	83.25 MHZ
7	174-180	175.25 MHZ
8	180-186	181.25 MHZ
9	186-192	187.25 MHZ
10	192-198	193.25 MHZ
11	198-204	199.25 MHZ
12	204-210	205.25 MHZ
13	210-216	211.25 MHZ
14	470-476	471.25 MHZ
15	476-482	477.25 MHZ

[NOTE: (1) FREQUENCY BREAK BETWEEN CHANNELS 6 AND 7 WHERE THE BROADCAST FM BAND, AND TWO-WAY FREQUENCIES FOR MANY SERVICES ARE LOCATED: AND (2) FREQUENCY BREAK BETWEEN CHANNELS 13 AND 14 WHERE MANY TWO-WAY RADIO & GOVERNMENT RADIO FREQUENCIES ARE LOCATED.]

JAMES W. HART, P.E.

- education MBA, University of Chicago, 1963
 BSEE, M.I.T., Cambridge, MA, 1951
- licenses,
societies,
patents &
teaching Registered Professional Engineer. Member of the American Consulting Engineers Council. First Class FCC Radio Telephony and Amateur Radio Licenses. Senior Member of IEEE; Member, Denver Section Executive Committee; IEEE representative to and Director of the Colorado Engineering Council ('79&'80); Past Chairperson Denver APS Section. Chairman of the Judging Committee of the Colorado State Science Fair ('79&'80) and State Representative to the International Science and Engineering Fair ('79). Holder of two U.S. Patents. Taught accounting at local community college (State Credential '74).
- business
experience
11-71 to
present HARTECH, INC., Littleton, CO. President. Consulting Engineering Company. In charge of: Feasibility Studies - Engineering/Economics Options, Microwave and Two-Way Radio System Planning, Antenna and Waveguide Design and Prototypes, and Government Policy Studies. Clients are the Federal Government, Local and County Governments, Universities, CATV Companies, Hospitals, a Radio/TV Network, Manufacturing Companies, and Other Consulting Companies. From 2-74 to 2-76, Hart was on leave of absence from HARTECH working on OTP policy research within the U.S. Government. His technical and business analyses impacted U.S. policy in the areas of CATV, Translators, VANS, Common Carriers, Data Transmission, and Satellite Carriers.
- 12-69 to
10-71 MSC, Golden, CO. Vice President. Successfully performed microwave system planning for Specialized Common Carrier and CATV clients.
- 10-66 to
12-69 ANDREW CORPORATION, Orland Park, IL. Director of Projects and Administration. Directed a \$1.2 million budget for the development of profitable antenna and cable products. Was also responsible for Corporate O.C., Product Service, Proposal Preparation, and Technical Publications. Served as Secretary of the New Products Committee.
- 7-61 to
10-66 DENASCAN CORPORATION, Chicago, IL. General Manager of the MARK PRODUCTS DIVISION ('65&'66). Successfully directed all design, production, and marketing activities of a highly profitable line of antenna and communications products. Generated SOP's for new product selection, development, pre-production processes while Director of Engineering of the B&K DIVISION ('64). Manager of MARK microwave products ('63).
- 7-51 to
6-61 MOTOROLA, INC., Chicago, IL. In charge of design and administration of many military communications, radar and ECM equipment programs. On leave of absence from Motorola from 1954-6 to serve as a radar and ECM instructor in the Army.

LIST OF TELECOMMUNICATIONS POLICY WORK PERFORMED BY J.W. HART, P.E.

1.0 Studies Performed at HARTECH, INC:

- a. "Marketing Studies - An Economic Analysis of MDS Transmission; and State of the Art of Millimeter Microwave Transmission", for a major national broadcasting network, July, 1980.
- b. "Report - Direct Broadcast Satellites, Service, Economic, and Marketing Factors" prepared with Browne, Bortz, and Coddington, for the National Association of Broadcasters, January, 1981.
- c. "Broadband Communications in Rural Areas", Denver Research Institute (DRI), 11-73, under OTP Contract. HARTECH performed all microwave technical and economic analyses.
- d. "Microwave Transmission Handbook", 12-77. Made primary input contributions on DoC Contract.
- e. "Utilization of Electronic Message Systems (EMS) Outside and Within the U.S. Postal System", 5-76, OT/DoC Contract.
- f. "Wrote Technology Section of "Design Issues for Demonstration of Rural Special Delivery Projects Incorporating Telecommunications Technologies" under subcontract to DRI, 6-78. NSF Grant.
- g. Made Technical Contributions to "Satellite Based Delivery of Continuing Education and Training Programs in Five User Communities", 3-78, DRI. Performed under NIE Contract.
- h. Continuation of U.S.P.S. study program on EMS in paragraph (e) above expanding the competition in the public domain, 8-78. NTIA/DoC Contract.

2.0 Studies performed while employed by OT/PRD (DoC) Boulder, CO (2-74 to 2-75) [PRE = Policy Research Estimate]:

- a. "An Initial Look at VANS Breakeven Data", PRE, 6-74.
- b. "A Survey of Non-Tariff Trade Barriers for Microwave and Two-Way Radio Equipment", PRE, 1-75.
- c. "Value Added Network Services, Marketing Characteristics", PRE, 5-74.
- d. "Comparison of Long Haul Microwave and Cable Facility Costs of A.T.&T. Long Lines", PRE, 8-75.
- e. "Urban CATV Distribution Plant - Part I: Current Cost and Technology, PRE (Coauthored by Hart, Gray, Miller, & Ax), 4-76. Later Published as an OT Report.
- f. "A.T.&T. Microwave and Cable Designations, PRE (Coauthored by Hart and Bolter), 6-74.

SELECTED EXPERIENCE

1. MICROWAVE ANTENNAS

- 1.1 10 foot Cassagrain dish design for 4 GHz Earth Station.
- 1.2 Scalar Feed Design and Prototype for illuminating a 4/6 GHz Earth Station with equal E&H plane patterns over the frequency range. Design of specially shaped subreflector for improved antenna efficiency of Cassagrain type antenna.

- 1.3 Dual polarized, wide bandwidth feedhorn designs and prototypes including testing per the table below:

<u>Frequency (GHz)</u>	<u>Maximum VSWR at Each Port</u>	<u>Minimum Iso- lation - Ports</u>	<u>Waveguide or Input Flange</u>
1.700-2.100	1.07	33 Db	7/8" EIA
1.900-2.300	1.07	33 Db	7/8" EIA
5.925-6.425	1.05	35 Db	WR-137
7.125-7.750	1.05	35 Db	WR-137
12.20-13.20	1.07	35 Db	WR-75

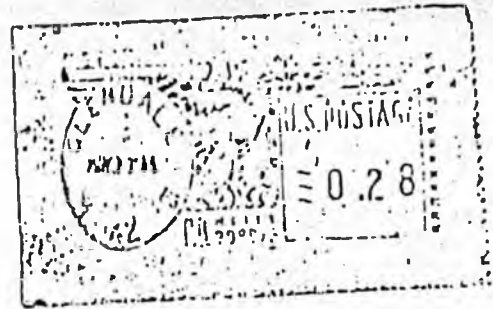
- 1.4 Single polarized 5.925-6.425 GHz feed horn design and prototype for parabolic dishes with maximum VSWR of 1.02.
- 1.5 12/14 GHz Earth Station feed horn design and prototype used as mobile ground station for CTS satellite. Transmit was 14.0 - 14.5 GHz, 500 watts, and maximum VSWR of 1.20; receive port was 11.7-12.2 GHz with a maximum VSWR of 1.10.

2. WAVEGUIDE COMPONENTS

- 2.1 Circular waveguide designs including waveguide, single and dual polarized launcher sections, brackets, connectors/flanges, etc. for WC166 and WC109.
- 2.2 TM_{01} mode filter for use in oversized guide used in TE_{11} mode. TM_{01} filter was minimum of 25 db with an insertion loss of 0.5 db maximum in TE_{11} mode. Prototypes were constructed and tested.
- 2.3 12.2-13.2 GHz high mode rejection TE_{11} taper design from 1.09" to 0.75" circular waveguide. Design was for 65 Db RML (reconverted mode level).

HARTECH HAS HP AND ALFRED SWEEP EQUIPMENT FOR THE DESIGN AND TESTING OF MICROWAVE COMPONENTS AND PARTIAL ANECHOIC CHAMBERS FOR TESTING TO 1700 MHZ WITH A MAXIMUM REFLECTION OF -40 DB.

 **PIRATE ELECTRONICS INC.**
P.O. Box 811, Glendale, Arizona 85311



Harold Whillie
c/o The Toker's Den
417 "D" Street
Anchorage, Alaska 99501

Ace
EX. 33

May

Harold;

Here's information regarding our phone conversation. To begin, as you can see by the enclosed card, I'm now President of Pirate Electronics. We manufacture an antenna which receives all the microwaves transmitted between 1.8 and 2.4 GigaHertz. You may know that Visions broadcasts at about 2.15 (or thereabouts) so this antenna, pointed toward the Visions broadcast antenna, will scoop the signal out of the air.

Included in the antenna body is a "down converter" which reduces the microwave to a frequency which your television can "see." There is also a fine tuning box, which will allow the user to get maximum clarity on his screen.

These are made with the idea that the customer can install the antenna, by climbing up on his roof, pointing it toward the broadcast antenna, and tightening the U bolt, running the enclosed coaxial cable to the fine tuning box, attaching the fine tuning box to the television set, and everything is go. This is the theory. In reality, we've found that if they have the antenna installed, they give us much less problems, because the great unwashed public is generally too stupid to do it, even with instructions. But, remember this, I'll refer to it later on (the part about installing, not how stupid the public is).

The legal end of this is: We make the Visions people crazy, because we can sell the antenna, and get their signal, but our subscribers (customers) don't have to pay the monthly charge (obviously).

Now, the cost of this antenna is explained in the enclosed price sheet, going from \$275. for buying 2-6, down to \$150. for buying in lots of 100 and up. The suggested retail here is \$350. but there, I expect you could get them out for \$400. or more.

If you were to install them, you could add another \$50. - \$100. to your profit structure, with some deduction for the labor involved. I don't expect that you are going to do the install yourself. Somehow, I can't quite picture your little, fat body on somebody's roof.

As you can see by the price structure, the more you buy, the higher your profit structure goes.

We're looking for someone to buy and install in both Anchorage and in Fairbanks. We've had some success with mail order there, but if your purchases were strong enough, you could have both cities, and really turn some cash while the weather is good.

My suggestion is that you get a couple of them, try them out on your own set (I'll send them C.O.D.), and if you can see the benefits, go for a little larger order.

Back to the legal: we are now being sued civilly by the local Visions group (here it's called Home Box Office, or HBO), but I don't think you will have to suffer that injustice, especially if we win. As I said earlier, they take a dim view of what we're doing, but there is no CRIMINAL wrongdoing, and we've got the word of an Arizona Superior Court Judge (which will carry lotsa weight in Alaska) to guarantee that we're doing nothing wrong.

There seems to be a question about the "wrong" in installing the antenna, though. According to a United States Code (USC 47 605) the installer may be aiding and abetting. That means that you should hire an electronically oriented kid to actually do the installing, who can vanish if there is a problem, but pay him well enough so that it's worth his while to split, or to lay low.

Now, you've got an overview of everything, and based on this and our conversation, you are at least better informed. Disregard the bullshit in the enclosed letter, it's just a cover for this. Also, this letter is very damaging for us, in our civil suit, so after you've digested the contents, get rid of it.

You can call me (collect) at (602) 247-9700 anytime during my working day (from 7:45 A.M. to about 4:30 P.M. if I can do anything to help you make a decision.

We expect that there is a market for 3 to 5 thousand of these in Anchorage, and probably 1 to 3 thousand in Fairbanks. I'd like to work with you, and if you decided that you wanted to move, I'd come there and help you get off the ground. If you elect not to go, I expect I'll have to come there anyway, to find someone.

Keep Susan under control as much as possible. I'll be in touch.

John

PIRATE ELECTRONICS

MANUFACTURERS & DISTRIBUTORS
MICROWAVE ANTENNAS

Dear Store Owner:

Now Available for Your Customers!
No Competition!

We are Mid-South Distributors for Pirate TV, manufacturers of micro-wave receiving equipment for personal home use (ruled legal). Perhaps you have seen us on NBC's Today Show (mid-may 1980) or heard of us in one of many other periodicals such as Newsweek, etc.

Our system for local use includes antenna and down converter, 75' coax and 1.8 to 2.4 GHz tuner complete with instructions and needed accessories for simple self-installation (need line of sight to broadcast tower 20-40 miles depending on strength of signal). Retail \$350.00 - 6 months guarantee.

Our Earth Station picks up from 11 satellites above the earth and gives the customer a fantastic crystal-clear world of entertainment no matter where they may live (need line of sight to Southern California).

Fantastic for rural or remote locations where little or no reception or cable is available. Base price \$9,995.00 plus travel and custom installation.

To get you acquainted with this lucrative market, we'll ship you one local system immediately to play with and give you a \$75.00 Dealer price break. Then you may purchase quantities of 10 at \$225.00 and a \$50.00 rebate credit making your initial antenna \$225.00 also. (We'll pay freight on first antenna.)

Order immediately to become a Dealer in your area. You will be briefed completely on how to market this product (word of mouth is sufficient for substantial sales).

Include your name and both work and home phone numbers please.

Note: Enclosed sample ad and all advertising describes product and its capabilities only. More details upon order.

Send Cashier's Check or Money Order for \$275 to:

Sincerely,
PIRATE TV
Fontana Center
7955 East 50th Street, 1085
Tulsa, Oklahoma 74145
(918) 665-3325

EXH
C

Jim Blake
0.0.

EVIDENT A PAGE 1



T.V. ANTENNA



HENRI SALES COMPANY
WHOLESALE DISTRIBUTOR

P.O. Box 35293
Phoenix, AZ 85069



MICROWAVE ANTENNAS • EARTH STATIONS • ACCESSORIES

PHONE : [602] 866-9243

GENTLEMEN:

WE ARE MANUFACTURER'S DISTRIBUTORS OF THE FINEST MICROWAVE ANTENNA AVAILABLE ON THE MARKET TODAY. IT IS CAPABLE OF RECEIVING MICROBAND TRANSMITTED SIGNALS WITH A CLARITY AND RANGE FAR SUPERIOR TO MOST OTHER ANTENNAS .

OUR PRODUCT IS COMPLETE WITH ALL HARDWARE AND ACCESSORIES NEEDED TO INSTALL IT.

THE ANTENNA IS PACKAGED AND CONTAINS AN INSTALLATION INSTRUCTION SHEET.

WE WILL SHIP YOU A SAMPLE UNIT UPON REQUEST [PRE-PAID BY U.P.S.].

ENCLOSED WITH THIS LETTER YOU WILL FIND A PRICE SHEET OF OUR PRODUCTS.

THIS A NEW AND VERY LUCRATIVE MARKET WITH A LOT OF MONEY TO BE MADE !!

GET IN ON THE GROUND FLOOR OPPORTUNITY BY ORDERING YOUR SAMPLE ANTENNA TODAY.

A LIST OF STATES THIS ANTENNA WORKS IN IS INCLUDED. IF YOU ARE INTERESTED IN

OUR PRODUCT, PLEASE CONTACT US AS SOON AS POSSIBLE.

SINCERELY,

HENRI SALES CO.
WHOLESALE DIST.

EXH
F

EXHIBIT F PAGE 1

Ace
Ex. T
1-

DRW. 940

AP612940-2x42
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Proofs to Advertiser
5330 Captains PL
Aptura

MONIQUE
Wednesday, May 7, 1980

O N Z - O N Z - O N Z - O N Z



Pirate TV

announces

two different systems whereby you can enjoy HOME ENTERTAINMENT without those monthly service charges or an initial deposit and installation fee. We now have movies for the movie buff and sports for the sports fan. Enjoy the PRIDE OF OWNERSHIP of a fully guaranteed system. All of this for as little as \$350 plus tax. Isn't it about time YOU got your television ON to this better way to have HOME ENTERTAINMENT!

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(213) 991-9125	(714) 527-2802

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or come by
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AT, \$2700; 24-6952
1971 DATSUN 510 sedan, auto.
runs fair, looks fair, \$895 or best
offer; 248-2020, 248-3051



Pirate

Microwave Antenna, Inc.

Susan Randall 276-5148
Myron Ace 243-3722
Harold Wills 276-5148

611 RASPBERRY ROAD
ANCHORAGE, ALASKA 99502

YANKEE INGENUITY DOES IT AGAIN!

If you own a Television Set or TV Monitor you will want to know more about this product.

We have a new product for use in the American Home that is so advanced and ingenious that we have been stopped from advertising the capabilities of this unbelievable device.

Big Corporations have tried to prevent us from bringing this product to you THE AMERICAN PUBLIC.

HOWEVER... in the tradition of the "FREE ENTERPRISE SYSTEM," it has been ruled in court that this product is Legal to Manufacture and sell.

PIRATE MICROWAVE ANTENNA, INC.

Ph. 276-9224

You Can Watch Those Secret TV Channels

— a complete MDS receiving system

Good-bye, commercials!

Jim Barber K8JB
Rt. 1, 22318-97th Ave. North
Rogers MN 55374

Jevon Lieberg K8FQA
Rt. 1, 12285 Geneva Place
Rogers MN 55374

Did you know that there are two secret TV channels? Nobody advertises them, and you can't even buy a TV set that has these channels.

How long have you been complaining about all the commercials while watching your favorite program

or a late night movie? Well, here is the answer to your prayers—these channels don't even have commercials!

The programming on these channels consists of movies (P-, PG-, and R-rated), nightclub acts, and sporting events. They

are allocated to Multipoint Distribution Service (MDS). The existence of these channels was written up in 73 last November!

If you have heard of MDS via other amateurs, friends, or magazine articles, your curiosity has probably urged you to be on the lookout for a receive system you could build yourself! If this is true, read on!

The MDS Receive System

In this article we will give complete construction details on how to build a cheap and simple MDS receive system. This system will include the antenna, mixer, local oscillator, i-f amplifier, power supply, and complete mechanical layout.

The frequencies of the two microwave MDS video channels are 2154.75 MHz for channel 1 and 2160.75 MHz for channel 2. The audio is 4.5 MHz below the video. For more detailed information about microwave TV, read *A Vidiot's Guide to Microwave TV* by Paul Shuch!

Locating the MDS Transmitter

If you have seen a

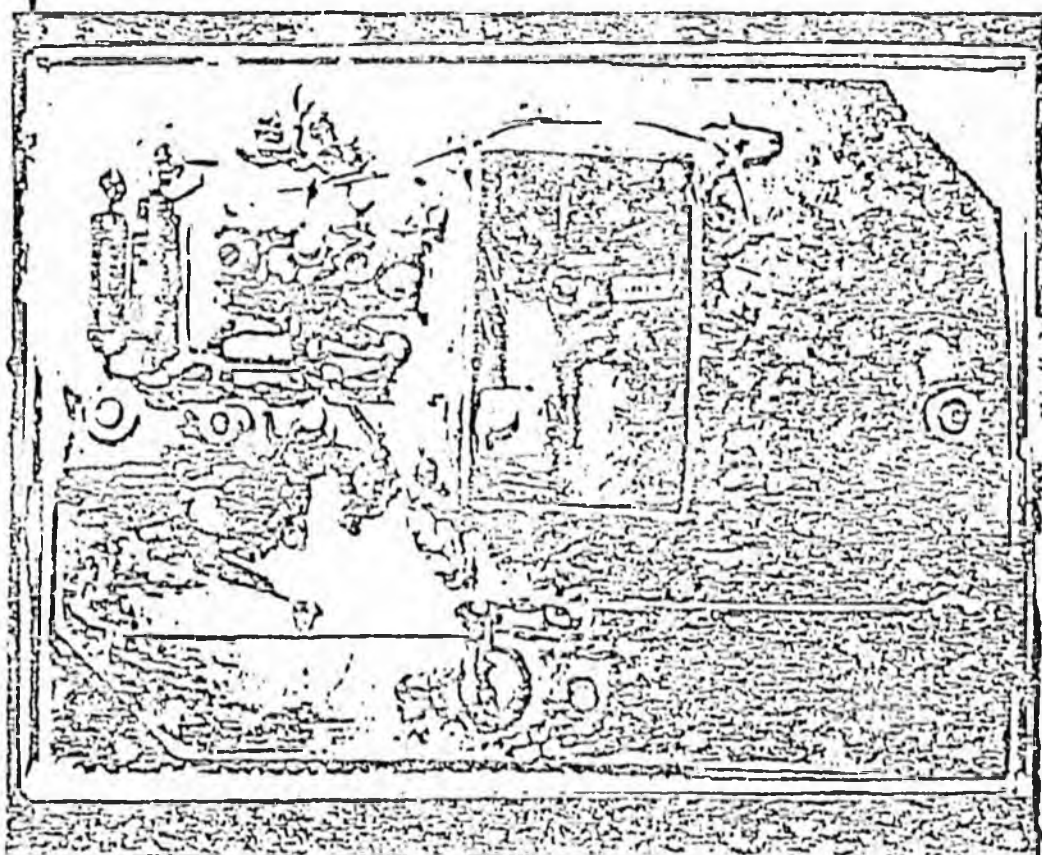


Photo A. This is a close-up of the downconverter showing i-f amplifier, mixer, and the local oscillator in its brass box with the cover removed. The piece of angle aluminum used to mount the box to the mast can also be seen.

Pirate Finds Unburied Treasure

Sells Devices to Catch Pay-TV Airwave Signals

By RICHARD WEST
Times Staff Writer

MacKenzie Davis and John Sampson are entrepreneurs as bold and swashbuckling as the names of their respective companies—Pirate TV and Pirate Electronics.

They make no bones about their businesses: Davis' company sells in Southern California devices that Sampson's concern manufactures in Phoenix for the pirating of pay-TV airwave signals.

There are many of this kind of buccaneer doing business in the Southland these days, but all except Davis operate covertly. Davis is the first to advertise the product that pay-TV companies say is illegal.

In last Sunday's Times, Davis ran an ad that included the name of his company, a picture of a bearded freebooter with eyepatch and telephone numbers in Los Angeles and Orange counties for ordering the devices.

"They come with six-month warranties," Davis said Wednesday. "That's probably 90 days longer than the warranties on most TV sets."

Sampson, a UCLA-educated historian and former teacher at Santa Monica City College, boasted in a telephone interview that his 10-month-old company is the largest in its field, selling the pirating devices all over the nation.

"We operate 48 hours a day and eight days a week," the 44-year-old manufacturer said, using the exaggeration to emphasize the demand for his product.

According to the latest Federal Communications Commission figures, Sampson said, there are 86 licensed

pay-TV signal broadcast stations in as many cities, most of them in the Midwest and the East, and permits have been issued for the construction of an additional 131 stations.

So the market for his product has barely been tapped, he indicated.

Davis, who has a "mutual agreement" with Sampson to sell the devices in California, Oregon, Washington, Alaska and Hawaii, said he has not had time to expand his operations out of the Southland yet because of the great demand for the devices here.

But he added that he hopes to open a Northern California outlet in Sacramento soon.

Davis said the box-device to bring

Suits have been filed to halt sale and manufacture of the boxes.

in the ON-TV system signal sells for \$450 and the microwave antenna to pull in the Theta Cable's Z Channel signal sells for \$350. The ON-TV device is more complicated, he explained.

Regular customers of ON-TV and Z Channel pay installation charges and monthly fees of about \$20.

ON-TV is suing 16 firms and individuals in Los Angeles—not Pirate TV, though—for selling pirating devices. And Tele-features, another subscription TV company in Phoenix, is suing Pirate Electronics there in an attempt to halt its operations.

Arthur Greenberg, one of the lawyers representing ON-TV in its Los Angeles suit, has described the legal action as one to "stamp out pirate procedures."

Sampson and Davis scoff at the suits, noting that FCC officials have said that the law is so ambiguous on this type of pirating operation that there is no way now to halt the use of such devices.

"These microwaves are being broadcast into my building, into my office . . . everywhere," Sampson said. "There is no way to shut them off. They penetrate into our very eyes 24 hours a day."

Sampson said these signals are part of the public domain and that there is no law to prevent people from using devices to pick them up.

The section of the Communications Act of 1934, which attorneys for the pay-TV companies contend is being violated by the pirates, was actually written to prevent wiretapping, Sampson said and has nothing to do with airwave signals.

Cable television, where the signal is carried by a line directly to the TV set, is something else, Sampson said.

"We feel that cable is sacred," Sampson said. "People who steal cable signals are stealing a signal that is the result of heavy investment, a lot of physical labor and long-term planning. Cable TV makes a contribution of income to the city where it operates."

But the "signal people," Sampson went on, "don't have that kind of commitment. No big capital investment is required. A station costs

Please Turn to Page 27, Col. 4

PIRATE OF PAY TV

Continued from Third Page
maybe \$30,000 more or less."

The "signal people" simply buy their movies, sporting events and other shows from a company like Home Box Office in New York, have them beamed to their areas by satellite and then pay a television station \$90 an hour to broadcast the signal to a multi-distribution station so that it "rains down on all of us."

Companies like his and Davis', Sampson said, are actually "performing a public service," as they are "putting a lid on what the pay-TV stations can charge."

Davis added to this argument: "Guys like us have kept (subscription TV) prices from going higher. They

want a monopoly on the market. We offer them a little competition."

Both Sampson and Davis emphasized that they are going after a particular market for their devices—affluent people who can afford to come up with \$350 to \$450 to buy the apparatus.

There will probably always be a bigger market for the people who can only afford to dole out \$20 or so a month to the subscription TV companies for their services, they said.

Sampson said that the quality of the devices his company makes is so high—it had only a 3% to 5% failure rate—that other electronic pirates are beginning to pirate his pirate product.

He may have to bring suit, too, to halt this pirating of his equipment.

By Stan Crock

Staff Reporter of THE WALL STREET JOURNAL

NESMITH, S.C.—Most television viewers here have slim pickings. Four of the five "local" stations are about 100 miles away, reception is lousy and the population is too sparse to attract cable television.

But John Wellman and his wife, Chotsie, can tune their seven TV sets to two dozen channels. They can watch everything from cable-TV movies and ice-skating specials to the offerings of commercial stations in Atlanta and San Francisco.

The difference is a big, round, white "dish" nestled on the lawn of the Wellmans' 19th Century plantation home. It is a receiver that plucks TV signals off a satellite orbiting 22,300 miles above the earth.

"We get a real clear picture," says Mr. Wellman, a textile manufacturer and hog raiser. "There's so much to choose from at any time, and on most channels there are no commercials." What's more, it's free.

The Wellmans are one of only a few hundred families in the U.S. who own such private earth stations, which generally are 10 feet to 16 feet in diameter. Their ranks could grow substantially, however, spurred in part by a Federal Communications Commission ruling last year that owners of the dishes don't need federal licenses. "It's a very embryonic industry that's just taking off," asserts John Bacon of Scientific-Atlanta Inc., a leading producer of satellite dishes.

Bouncing Around

Dialing with dishes works like this: TV signals from cable networks, religious networks and some commercial TV stations are beamed up to satellites, then bounced down to cable-TV companies that send them through cables to subscribers. But the satellite beams can be picked up anywhere in the country by a receiver aimed at the satellite.

Dishes, like cable TV, offer a wide variety of programs and improved reception. A Lake Barkley, Ky., man says he bought one so he can videotape movies and "complete my Humphrey Bogart series," which currently includes 31 of the actor's 75 films. A Riverton, Wyo., dish owner says he watches "just about all the sports." Laura Dabney of Ft. Mill, S.C., has a friend who is buying a dish, and she says she's eager to view cable-TV coverage of the U.S. House of Representatives. "At times," she says, "that ought to be exciting."

But TV addicts soon learn that a satellite fix is expensive. Just the basic dish runs \$10,000 or more. Neiman-Marcus Inc.'s most recent Christmas catalog offered shoppers one they could aim by remote control to bring in 100 channels—all for just \$36,500.

The buyer of a dish also risks running

afoul of a local landscaping committee or a zoning ordinance when he tries to mount the thing in his backyard. One owner in California found he had to file an environmental-impact statement before he could proceed. It was decided that he could put up the dish if he painted it green to blend with the lawn.

Equine Interference

A dish owner near Bozeman, Mont., didn't need government approval, but he had his own qualms about the aesthetics of his receiver. So he put it in a corral he had behind his house. But that created another problem: His horse ate a cable connected to the dish.

Birds also like to nest in the dishes. And some owners are annoyed by sightseers who stop to gawk.

The biggest hurdle for dish owners, though, may turn out to be legal. While it is perfectly legal to own a dish, it may be illegal to use it to snare cable-TV signals without paying for them.

Right now the legal picture is blurry. "I think it is illegal," declares Wallace Briscoe, executive vice president of Houston-based Gardiner Communications Inc., a Burnup & Sims Inc. subsidiary that makes and sells dishes. "Unauthorized use of the programming is just like you tapping my telephone line," says Mr. Briscoe, who alerts customers to the potential problem.

Who Will Know?

Fredric Hopengarten, another dish seller in Lincoln, Mass., disagrees. He likens someone who picks up cable-TV signals to a listener who legally picks up shortwave radio signals. Mr. Hopengarten, who runs Channel One Inc. out of his home, also questions how anyone could prove what programs dish owners are watching.

"Detection is the problem," concedes Linda Davis, a spokeswoman for Time Inc.'s Home Box Office Inc., a pay-cable operation. (Pay cable provides commercial-free programs, such as recent movies, for an extra charge above the monthly cable-TV fee.) Such companies say they can do little about satellite viewers at the moment. The courts haven't ruled on the issues yet, and the FCC is still studying them.

Meantime, most dish owners couldn't pay for the programming even if they wanted to. Although cable-TV companies that distribute some dishes are collecting fees from individuals, pay-cable companies say they are prevented by contract from leasing movies directly to individuals or accepting money from them.

If the problems can be worked out, the outlook for dish sales is bright. "People want entertainment," says Winston Hunsworth, a telecommunications analyst for Salomon Brothers. In addition, he says, to some people a dish is "viewed as a rather visible status symbol."

Expansion will depend to a large extent on the development of cheaper and smaller dishes. Japan is experimenting with a satellite system using dishes only two or three feet in diameter. Officials say the receivers, which currently are used primarily on a community-wide basis in remote areas, could be mass-produced to sell for as little as \$500. Such small dishes, however, generally can't receive signals from existing sat-

ellites, which aren't powerful enough. The Japanese launched their own satellite to transmit programs especially produced for the experiment.

Comsat Proposal

Future growth of satellite reception similarly is expected to depend heavily on the development of direct satellite-to-dish programming that offers dish owners attractive alternatives to their current TV fare.

Communications Satellite Corp. has proposed a satellite-to-home network in the U.S. It would launch a special, more powerful satellite, and subscribers would buy a three-foot-diameter dish, pay monthly fees and get a decoder to unscramble coded satellite signals. The network would carry first-run movies, sports, children's shows and other programs. A plan to market the system with Sears, Roebuck & Co. recently fell through, and Comsat currently is looking for another partner.

Until such systems become a reality, satellite dishes are likely to remain a luxury of the few. Atlanta TV entrepreneur Ted Turner, who has a dish at his home, plans to buy dishes for two Washington, D.C., residents—Daniel Schorr, senior correspondent of Mr. Turner's Cable News Network, and George Watson, who is vice president and managing editor. The newsmen currently can't watch the network at home because there isn't any cable TV in Washington.

Mr. Turner, anxious to have his 24-hour news network seen by political leaders, also has offered to buy dishes for the White House and Congress. The House of Representatives is exploring possible sites to install a receiver. But Peter Vesey, CNN's Washington bureau chief, says Carter administration officials have "a few aesthetic problems" with putting a big round dish on the White House grounds.

Pirate' Films Sell Antenna To Take 'Pay' Out Of Pay TV

FRANCE W. MCGARRY ANGELES (UPI) — The take no crossbones about "Pirate TV" is the name taking the "pay" out of pay TV is the game. by home entertainment those monthly ser- s," read the newspaper isements, decorated with ait of a grim buccaneer, epatch and bandanna ess.

Pirate TV offers is ent to receive pay TV, which usually carry e movies and special events, without the aster's knowledge — ess paying the company

TV broadcasters are sing their unhappiness his turn of events by lawsuits, but the pirate ss is booming, say John on and MacKenzie Davis. pson's Pirate Electronics enix, Ariz., manufactures ent that is sold in l states by Davis' Pirate the Los Angeles suburb ura.

"I see nothing unethical or in their business. subscription TV compa- oadcast on a microwave ncy "that our antenna ppend to receive," noted on, who calls the dispute ter of freedom of the us that cuts both ways. y're sending those waves hrough all of our bodies mes, right through our ough we can't see them t the right equipment. ey're free to broadcast hings right through us, uld be free to do what with them while they're g through." argument draws scorn b Robert Cahill, one of the rs of the National

Association of Subscription Television Operators.

"That's like saying it's legal for a burglar to break into my house if I can't protect myself," says Cahill, a vice president of ON-TV of Los Angeles.

"I was administrative assist- ant to three chairmen of the FCC, I helped write the subscription TV regulation and I know what they're doing. It's illegal.

"We have over \$40 million investe in this, and these pirates think they can steal our product and get a free ride. What they're doing is illegal and it's immoral and we'll pursue them down every legal avenue, in every community they appear in, until we drive them out of business.

"We believe the federal government will enter the picture and they will be prosecuted, and the people who buy these devices will be the losers."

Meanwhile, Pirate Electron- ics has grown in two years from a garage workshop to a \$900,000-a-year business with 15 employees and a factory on the east side of Phoenix.

"Business is very, very good," said Davis, who also has offices in New Orleans and Florida and sells equipment elsewhere too. He has a three week backlog of orders for the antennas and converters, "which anyone can install themselves."

The equipments costs about \$400 — a one time cost against the pay TV expense of an installation charge plus a monthly fee of \$15 to \$40.

"There's some 100 cities where this (microwave) system is in use and maybe I'll give it a go in all of them. If I'm going to get sued for selling antennas,



PHOENIX, Arizona — John Sampson's Pirate Electronics manufactures equipment that takes the "pay" out of pay TV by receiving signals without broadcaster's knowledge. Pay TV broadcasters are expressing their unhappiness over this turn of events by filing lawsuits, but business is booming, says Sampson. UPI

"I might as well get sued for selling a million of them."

Davis is not being sued. "But there's lots of lawsuits, against about 12 other guys here in L.A. alone, and I think everybody's just waiting to see what the judge's ruling is..."

Sampson's manufacturing company is currently involved in four suits, in California, Oklahoma, Florida and Arizona. He credits a court action with giving the company its buccaneer trademark.

"We were in court in Phoenix a year and a half ago when one of our people remarked that 'Everybody keeps calling us pirates, so we ought to name this company Pirate Electronics.'

"The name is almost as big an asset now as the good antenna we make. I have a dozen pirate t-shirts in my wardrobe."

Eventually, Davis said, "the FCC or the Supreme Court better sit down and clarify this, but as long as the ambiguity lasts, I'm going to capitalize on it."

A major problem, they complained, is with other dealers who set up shop "as Pirate something or other" and market shoddy equipment, damaging their reputation.

They wish those guys would stop pirating the pirate name. adv for July 27 or thereafter

Sampson and Davis maintain that the federal law cited by the pay-TV firms prohibits only wiretapping, not monitoring broadcast signals, and they religiously abstain from aiding those who would tap the line of a cable TV company.

"That cable is sacred," said Sampson. "Those cable companies put a lot of money and work into stringing those lines and it would be wrong to interfere with their use of their own property."

Both argue that by offering

competition to the companies, they are "providing a public service" by preventing establishment monopoly." The broad market will always have a rather make low payments than buy the ment outright for a price, they maintain.


"We've met with the Communications Commission and the Justice Department in Washington and they do any interest in us," Davis said. "If we're doing wrong, it's not wrong for them to bother with

Odds And Ends

DETECTIVE: It's not author who can celebrate ation of a book with some very characters it por- s, but that's what biogra- verly Linet managed to nday in New York. Shel- nters and Howard DaSil- oved up to help her ch her new paperback, "A Hollywood Tragedy," ostarred with Alan Ladd heyday as a matinee idol, g opposite him in the 1949 n of "The Great Gatsby," was screened at the pub- n party. Another Linet bi- hy — of Susan Hayward dy to roll. And who's

if I can ever solve the mys- ter y." Young apparently mur- dered his 31-year-old wife, Kim Schmidt, the ne committed suicide in Oct. 1974 in New York.

AMSTERDAM, Holland (UPI) — Some 1,000 old sailing ships from Holland and around the world are expected to take part in "Sail Amsterdam 1980" from Aug. 10 to Aug. 12. The ceremonies will include races on a va l displays and other special events including a mock seabattle between two fleets when, instead of cannon and musket fire, the entire port will



STEAK
LIFE

the eyelid bedskirt and a scattering of
A penny-bright brass
added twinkling w

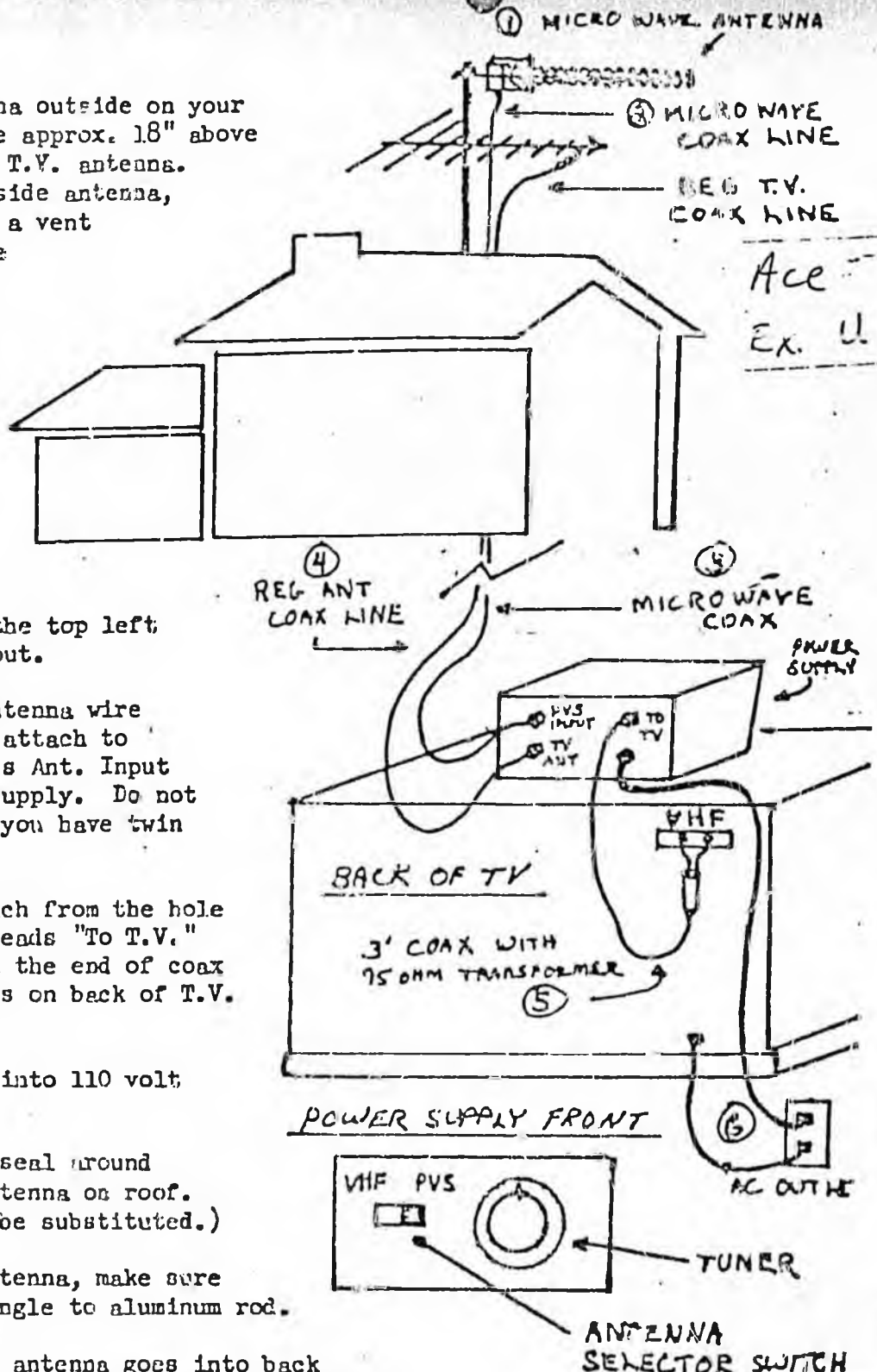
We
Lunch
Lounge.
Dinner

INSTALLATION INSTRUCTIONS

8

Mount the microwave antenna outside on your existing T.V. antenna pole approx. 18" above or 18" below your regular T.V. antenna. If you do not have an outside antenna, mount a pole on roof with a vent clamp and attach microwave antenna.

- 2) Attach long coax cable to microwave antenna.
- 3) Bring microwave coax down and into the house. Attach the microwave coax to the back of the little power supply box that came with the antenna. Attach microwave coax to the top left hole that reads P.V.S. Input.
- 4) Disconnect regular T.V. antenna wire from the back of T.V. and attach to bottom left hole that reads Ant. Input on the back of the power supply. Do not attach to back of T.V. if you have twin lead coax.
- 5) Use the 3 ft. coax to attach from the hole on the power supply that reads "To T.V." Put a 75ohm transformer on the end of coax if you have screw terminals on back of T.V. that read V.H.F.
- 6) Plug the power supply box into 110 volt outlet. Do this last.
- 7) Make sure you put silicon seal around coax where it goes into antenna on roof. (Clear bathtub sealer can be substituted.)
- 8) Check screen on back of antenna, make sure it is standing up at 90° angle to aluminum rod.
- 9) Make sure your existing TV antenna goes into back of power supply not onto back of TV. If you have flat lead coax, you will need a PVS-35A to connect it. (Available through your distributor.)
- 10) Antenna gets pointed like a rifle at the signal you want to receive (if you looked through the screen then all of the rings you receive would transmit theoretically).
- 11) If the aluminum rings are bent when you get your receiver, just gently bend them back into shape.
- 12) Some areas are vertical polarization, some are horizontal. 75% are vertical and this is the way the antenna was shipped to you. If it has snow, check by moving the "U" bolt on the mast to the other set of holes or check with your local distributor.



Ace
Ex. U

NOTE: FAILURE TO FOLLOW #7 OF THESE INSTRUCTIONS WILL VOID WARRANTY.

Dear Customer;
We believe that this microwave antenna is the best on the market today but to receive your 90 day warranty, please fill out this card and mail it today to the place of purchase.

month day year

Name _____

Address _____

AUTOMOTIVE

1977 FORD Granada, 3 Alaskan licenses otherwise a Jolt! Auto, PS (recently aligned), PB (newly relined) low book is \$2520, will sell next week only for \$2200 cash; eyes 277-9156

1984 TOYOTA, 24 mpg, needs paint job, \$650; 344-3815; **GOWLING AUTO SALES!**

1978 BuCamino SS AT, PB, PS, 350, custom paint, 2000, 2000s and runs good, 2000; 333-2201 C

1972 DUSTER, 66,000 miles, 6-cyl, 3-spd, 18 mpg, \$1200; 333-498 days

1970 CHEVY, 1973 Caprice, 1972 240Z, 1971 LTD, \$750, \$600, \$1500, \$250 or best; 338-3196

1984 OLDS DeMont 88, body sound, engine runs, best offer; 349-1363 evenings

PARTING OUT 1972 Pinto Sedan, parts or \$200 takes all; 272-5781

1971 and 1972 Vega, also parts one runs, one doesn't, make offer or both; 344-2853 after 3pm

1973 CHEVY 4x4, cabover camper, V8, AT, PS, PB, \$2650; 243-8846

1973 CHEVY Wagon, AT, radial tires, snow tires, winterized, nice dependable car, \$1450; 337-2833

1976 OLDSMOBILE Regency 98 fully loaded, exc cond, 35,000 miles, \$4500; 344-2040

1972 OLDS Toronado, 3900 or best offer; 279-2303

1975 FORD Granada, white with moonroof, great gas mileage, with 3 spd trans, 52,000 miles, 4 radial tires, looks sharp, a body garage, runs good, \$2000 or best offer; 274-4746 after 5:30pm

1970 CHEVELLE, good body, exc engine, good tires; 694-4083 after 5pm

1972 SAATCHI 1200, rebuilt engine, 5000; 279-9155

1978 3/4-ton pickup with 390, 6-cyl, 2550; 272-5639

1978 ROADRUNNER, perfect body, 31, 4-spd, wide tires, needs body work, \$1200; 243-2291

1978 MUSTANG, 4-cyl, 2300cc, 100,000 miles, all tune-up, 4924 Ext 43rd D3 home even, daytime

MISCELLANEOUS

1973 RIVIERA; 1979 Dodge Van, fair cond; antique phonograph; RCA color console, not working, make offer; after 5pm, Carl, 272-5662

GAZ BURNING boiler, used for residential heating by means of baseboard heat, make offer; Jon 272-6662, 277-0988

RECORD PLAYER with 8-track, \$50; 40-gal elec hot water heater, \$50; 6'x8'x24" door, \$20; 2 closet doors with rollers, \$10; four 1500 watt elec wall heaters, \$10 each; pair ice skates, \$15; pair roller skates, \$10; 744-9306 C

D.M.S.O. SOLVENT \$18 for 8-oz, prompt shipment! Send check or money order to: AK Outlet, P.O. Box 6628, Anchorage, AK 99502 C

DAN'S SECOND HAND, 3447 Mountain View Drive, 277-5442, furniture, appliances, televisions and more, open Tuesday through Saturday 9am-6pm B

BUYING A new camera? I'll buy your old one! Alaska Camera Exchange, 283 Muldoon; 338-2722 B

EXCESS FUTURE Liquidation, appare, store clearing excess items including: clothing racks, various sizes, in chrome and wood; metal and wood shelving; sturdy wood table with drawers and formica covering; various size chrome bars; trace steamer with steam boiler and motor much more; 279-6522 for appointment

WE BUY CAMERAS: Dan's Camera Repair: Headquarters for your photographic needs, has used cameras and equipment for sale. We buy cameras and equipment for resale and parts. 135 West Fourth Avenue, Anchorage, AK ZD

NORTH MT. VIEW, Cooks have you ever tried Watkins products? If not, you should! Come or call, 609 N. Price St. 277-3014 D

TOPSOIL. Shredded, screened, mixed, exc garden lawn soil. Clean fill sand and gravel. U-haul or delivered, reasonable rates! See our ad this issue.

A&A SERVICES 272-8711 277-3278

LEARN TO PAINT! Oils or acrylics, small class, individual at-

FURNITURE

THREE PIECE Danish modern furn, with matching glass end table and coffee table, plus traditional end tables and coffee table, dining room table with 2 leaves and 6 chairs, queen size waterbed frame and misc items; 349-7428

ROLL-TOP writing desk, \$125; almost new dining room set, \$195; humidifier, \$15; chest of drawers, \$75; rocking chair, new, in crate, \$65; bed frame and headboard, \$10; kitchen chairs, \$5; color TV, good picture, \$200; AC DC B&W TV, \$95; refrig-freezer, \$135; refrig, older style, \$60; Goodyear, \$45; elec range, \$95; pet kennel, \$7.50; dog house, large, \$20; box-springs and mattress, \$35; 3941 E. 9th (near Brazow) C

NOW REGISTERING FOR Fall and winter classes, Alaska School of the Arts, 36th and C, Plaza Mall, landscape painting, materials and techniques of the landscape artist in the studio and on location, weather permitting, 15-wk course instructed by 30 yr Alaskan landscape artist, Richard Orr; 274-ARTS, 243-3724 24 hour phone

SELL & BUY used furniture, living and bedroom sets, bunkbeds, other household furniture, TVs, antiques; 2603 Arctic Blvd, 274-5914 ZD

KITCHEN table with four chairs, \$20, 349-5019 after 5pm

DINING ROOM table with 6 upholstered chairs and matching hutch, \$550; executive office swivel chair, \$35; 333-2692

GREEN TWEED loveseat, \$40; 344-5997

ANTIQUES, smoke stand, \$75; cherry-wood gossip bench, 1920-30, \$350; carved wood clock, with porcelain, 1900, \$2150; black walnut maple top plant stand, \$120; marble top wash stand, \$250; German high chair, 4-1, \$100; will accept bids; 349-3283 C

WELL MADE, sturdy maple couch, like new, fabric brown and orange, \$200; 333-9731, eyes 343-7217

WALNUT BUNKBEDS, with mattresses, \$100; twin boxspring mattress, \$45; chest, \$25; Singer sewing machine, in walnut cabinet, like

SPORTING GOODS

REMINGTON 870 12-gauge mag, 30" VR, full choke, never used, \$300; 337-2500, leave message

6-WHEEL DRIVE Argo ATV, for hunting and fishing, good shape, \$1600 or trade; 349-5637 B

ATV Amphi-cat, \$1000; also Atlas ATV, \$1200 or best offer; 243-2307

8-MM MAUSER Model 1893 modified sniper rifle, \$150; 745-4767 B

OLIN Mark 4 s 150's and 175 Bazzards and size 8 Nordicas, good cond, best offer; 333-7724

TROPHY ALASKA Taxidermy, Mile 20 Old Glenn: shop for quality first; 688-3534 L

MODEL 97 12-gauge, 2 1/2", \$150; 333-7224 after 5pm

NEW RUGER 22 rifle with Weaver scope, \$100; Winchester single shot shotgun, like new, \$50; also gun rack, \$10; 337-6987 B

SMITH & WESSON pistol, 8"-3/8" barrel, 22 Winchester magnum, complete with 100 rounds of ammo, like new, \$230; Pete, 752-5173, or 5176 C

WEATHERBY Vanguard 300 Winchester mag with Weatherby 3x9 Premier wide angle scope, new in hard carrying case, \$475 or best offer; Ruger Blackhawk .357 mag, new cond, \$175 or best offer; 349-2722 after 6pm

PIZZA HUT HAS PENNYSAVERS!

AUTO PARTS

BRONCO

1979, parts only, 351 engine, AT, front and rear axles, 18,000 miles; 349-1382, 344-3605

4-57D TRANS, fits Ford pickup; tire and wheels, slotted mags for Chevy car; 4-spd close ratio trans rebuilt; 279-3658 B

SELLING AUTO PARTS for most cars, motor and body; also two flatbed trailers. Also have cars that run, 344-3000 D

TRANS. TROUBLE?

We will rebuild most U.S. transmissions for \$275 and up, exchange. A 3-month or 4000-mile guarantee with each rebuild; 349-1382, 344-3605

NEED PART for 1970 CJ-5 Jeep; Call Pat, 776-6286 C

1967 AUTO Plymouth transmission, \$70; 688-3216 C

1973 PLYMOUTH Fury, engine and transmission good, best offer; 333-8461

TWO 5-hole Jeep runs, both circle 5 1/2", center hole 4"; 237-4319 eyes, one weekend.

SUPARU WHEELS, tires and parts; Toyota wheels and parts; 349-1382, 344-3605

PARTING OUT

1965 Dodge van, side and rear window doors, 6-cyl, must sell this week, see at 3824 Jewel Lake Road after 5:30 or weekend, \$75 or best offer, you low!

MOTORCYCLES

1970 TRIUMPH Trophy 650, good cond, low mileage, \$800; 349-1610 B

1973 H-D Super Guide, completely rebuilt, many extras, \$3700 or best offer; 277-8038

1978 YAMAHA XS-400, 1700 miles, like new, \$800 or best offer; 348-0980 B

HAVING A BILLING PROBLEM? Call us and let us help. Pennysaver, 276-5555.

SNOWMOBILES

SCORPION 340, \$275; Yam 438, \$125; 344-2883 after 5pm

WANTED: Two snowmobiles trailer for my equity in 2-plus located north of Willow, good cess; 333-0535

LEAVING STATE: Pol snowmachine, 1978 440 Cobra trailer, exc cond, \$1500 or best offer; 279-5205

POLARIS Gemini snowmo; 344-0808

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SECTIONAL ANALYSIS OF CSHB553 AND
COMPARISON OF CSHB553 TO ORIGINAL HB553

I.

Explanation of Deletions from Original
HB553 by Bill Section.

Sections 1-4. These were deleted because they are already covered in HB575, which has passed the House of Representatives.

Section 5. This was deleted because it is understood that the question of criminalizing sale or use of microwave television interception devices is under consideration in other legislation at this time.

Section 6. This was covered in HB573, which has passed the House.

Section 7. This is exactly the same as Section 7 of the CS.

Section 8. This was covered in HB577, which has passed the House.

Section 9. This is exactly the same as Section 8 in the CS.

Section 10. This is exactly the same as Section 9 in the CS.

Section 11. This is exactly the same as Section 10 in the CS.

Section 12. This is substantially the same as Section 11 in the CS, including the language about computer programs, etc. The only change is to include domestic pets and livestock under the definition of "property." See the analysis of Section 9 of the CS in part II.

Section 13. This is exactly the same as Section 12 in the CS.

Section 14. This is deleted from the CS as it is understood that it is to be covered in other legislation at this time.

Section 15. This is deleted from the CS, as this amendment to the post conviction bail statute is covered in the following bills already:

SB190am H re-engrossed
HB578
SB545

Section 16. This appears as Section 15 of the CS, and has been rewritten to make it clear that the enhancement for

"possessing a firearm" only occurs if the possession is at the scene of the crime. Also, other changes are made to include manslaughter with the other class A felonies which will receive the presumed sentence of eight years. At the present time, manslaughter is not included in the six year presumptive term for the first offense, and as a consequence a number of persons convicted for manslaughter (for drunk driving) have not been covered under this Section, resulting in some Suspended Imposition of Sentence cases and other suspended sentences.

Section 17. This appears as Section 16 of the CS, and was rewritten to make it clear that the minimum term is for a Fourth Degree Assault for violating a Domestic Violence Order. Also, the change increases the minimum term from 10 days to 20 days.

Section 18. This appears as Section 20 of the CS and was only rewritten to specify "fingerprints" instead of "thumbprints."

Section 19. This is exactly the same as Section 21 in the CS.

Section 20. This appears as Section 22 in the CS and was rewritten to add a (20), the (19) not being changed. It is covered in the analysis of Section 21 of the CS in part II.

Section 21. This Section, referring to Title 28, is deleted because of the Separate Subject Matter Rule.

Section 22. This is repeated in Section 23 of the CS. In addition, AS 12.55.025(e) and AS 12.55.155(d)(a) are also repealed. That is discussed in the Analysis of the CS Section in part II.

II.

Section Analysis of CSHM553

Page & Line

Analysis

1;10 Sections 1 and 2. These Sections amend the manslaughter statute and criminally negligent homicide statute, respectively, to make it clear that the convicted killer will receive a sentence for each death for which he is responsible. This is necessary because of two Alaska Supreme Court decisions, Thessen v. State 508 P2d 1192 (Alaska Supreme Court 1973) and State v. Souter, 606 P2d 399 (Alaska Supreme Court 1980). Thessen held, notwithstanding that the defendant was convicted of killing 14 people in a hotel arson fire, he could only be sentenced for one of those deaths.

Some years later, in a multiple death from a D.W.I. case, the Supreme Court reaffirmed that single sentence rule. These amendments to the statutes would remedy that problem.

1;18 Section 3. This is a rewrite of the Assault in the Second Degree Statute, primarily to insert subsection (2), which would make it Assault in the Second Degree to cause physical injury to a peace officer if the defendant had reasonable notice that the victim was a peace officer. Otherwise, the rewrite conforms this statute to the previous rewrite in HB575, which has passed the House.

1;29 Section 4. This Section amends the Criminal Mischief in the Third Degree Statute, to include under this statute at (5) the striking of a police dog which at the time was on official police duties.

2;3 Section 5. Housekeeping.

2;6 Section 6. This section increases joyriding from a A misdemeanor to a C felony if the person was previously convicted of (a) (2) - Joyriding and had been previously convicted of Joyriding.

The enhancement factor would not apply to any other subsection of criminal mischief in the Third Degree.

2;10 Section 7. This amends the Justification by Necessity Statute, as specified by the Department of Law in original HB553, to make it an Affirmative Defense.

2;13 Section 8. This adds a section to the Criminal Code, establishing the Affirmative Defense of what is basically a "plea of insanity." Under present law, the prosecution must prove beyond a reasonable doubt that the defendant was either:

1. Not suffering from a mental disease or defect, or
2. If so, that he nevertheless had substantial capacity to both:
 - a. appreciate the wrongfulness of his act, and
 - b. conform his actions to law. This last part is sometimes described as the "policemen at the elbow" test -- whether he would still have pulled the trigger if the policemen at the elbow had warned him not to do so,

if the defendant had presented any evidence of insanity. The wording of this Section is exactly

as requested by the Department of Law in original HB553, and the CS includes the repeal of the present "insanity statute," AS 12.45.083.

- 2;23 Section 9. Exactly as in the original HB553, this alters the definition of "intentionally," as specified by the Department of Law.
- 2;29 Section 10. Exactly as in the original HB553, this alters the definition of "organization" to include "government" as requested by the Department of Law.
- 3;5 Section 11. As in the original HB553, this redefines "property" to include property "including data or information stored in the computer program, system or network." However, the CS definition also includes under property "domestic pets and livestock regardless of value" to remedy the present law where these are not strictly specified and must be interpreted into "property" by the court. The phrase "regardless of value" is included to avoid the necessity of proving the value of a domestic pet where one is accused of killing or damaging a pet belonging to another person. It would still be necessary to show the value of the pet if theft were charged and a degree of theft requiring a certain value were specified in the charge.
- 3;16 Section 12. This is exactly the same as the amendment to the definition of "serious physical injury" in the original HB553, as specified by the Department of Law.
- 3;26 Section 13. This Section significantly amends AS 12.55.025 (g) and (h).
- 3;27 1. At (g), specify that a convicted defendant must be sentenced consecutively for separate convictions. This presents concurrent or merged sentences, which are sometimes given even when the crimes were of a different character, occurred at different places and times, and different victims were involved.
- 4;3 2. At (h), allows the court to sentence concurrently for non-violent crimes which are part of "a single continuous criminal episode" or "violate similar societal interests," unless there was a substantial change in the nature of the

criminal objective or if the crime was during an escape [Present statutory law]. The "similar societal interests" test is from current Alaska case law.

4;17

Section 14. This Section amends AS 12.55.088(a). That part of the sentencing law was drastically amended in 1978 to allow a judge to reduce a sentence at any time during the term of imprisonment. Recent cases have occurred where this has been abused. E.g., one where four years after sentencing, after the sentencing judge had died, and just prior to time for the first Parole Board Application, the prisoner moved under this section for a reduction to be considered by another judge.

The abuse possible under Section 088 is obvious, and this amendment would restrict the judges to reducing their sentences within a 60 day period after the original sentencing. It is thought that, considering the detail "Presentence Reports" and great consideration put into an original sentencing hearing, that the courts in most instances give a "correct sentence" on the actual sentencing day, and prisoners should not be allowed to move for a reduction of a sentence after some considerable period of time has passed, the publicity on the original sentence has died down, and the judge may not recall all of the nuances of the crime as brought out during the trial.

Of course this does not restrict the court from reducing or altering any sentence that was "illegal" at the time given. That provision, constitutional in any event, is still found at Criminal Rule 35(a).

4;23

Section 15. Here, AS 12.55.05(c)(1) -- the statute setting the presumptive term for the first A felony is amended. As specified by the Department of Law and original HB553, the term is increased to eight years from the present six. However, the CS section makes these changes from the original bill:

1. Manslaughter is clearly covered, allowing this presumptive term to be used in D.W.I. -- manslaughter cases, which is not true under either present law or the original HB553.

2. The words "possessed or used" are used in the CS, instead of "possessed a firearm," and the terminology "dangerous instrument" is used, since that would include motor vehicles but the original language of "deadly weapon" would not.

3. The wording changes make it clear that the possession of the firearm must have occurred "during the commission of the offense," a distinction that was not clear in the original wording.

4;29

Section 16. As in the original bill, this section changes the present law from Assault in the Third Degree to Fourth Degree, and pertains to violation of Domestic Violence Orders. This is set out more clearly in the CS section and also the section in the CS increases the minimum term from 10 days to 20 days imprisonment for violation of such Domestic Violence Orders by committing Fourth Degree Assault.

5;11

Section 17. This is a considerable rewrite of present AS 12.55.145 and basically makes the following changes:

5:14

1. Under present Section 145, the court cannot consider a prior felony or misdemeanor conviction if "a period of seven or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense on commission of the present offense." This section at (a)(1) changes that to increase the period to 10 years and exclude the application to unclassified or class A felonies. In other words, the court would always be able to consider a previous conviction for an unclassified or class A felony, regardless of the time frame.

5;22

2. A "single continuous criminal episode" is re-stated at (3) to exclude crimes where persons are injured, assaulted, or killed. Incidents of escape are already excluded from the definition of present law, and this is not changed. However, there is the additional specification at A [line 25] that for criminal incidents to be considered a "single continuous criminal episode, there must have been no substantial changes in the nature of the criminal objective, including the specific property which was subject to the crimes or the particular person who ultimately suffered as a result of the crime."

This would make it quite clear that, for example, a person who committed kidnapping, rape and murder all within a short period of time and with one person as the object of those crimes, could not be consecutively sentenced. Also, it would make it more clear than under present law that, for example, a burglar or trespasser going from office to office or from apartment to apartment within one building and within a short period of time could not be given the benefit of consecutive sentencing.

- 6;17 Section 18. Amends AS 12.55.145(b) to increase the notice requirement from 10 days to 20 days, for the prosecutor to serve authenticated copies of court records on the defense attorney, if the defendant did not expressly admit to prior convictions.
- 6;11 Section 19. Amends AS 12.55.145(c) to increase the period from 5 days to 10 days prior to the sentencing for the defense attorney to put the prosecutor on notice of denial of the authenticity of the court document, or any other of the sentencing allegations which are presently in Section 145 and are repeated at Section 19 of the bill.
- 6;24 Section 20. Amends AS 12.55.145 to add a new subsection, (h) requiring the defendant in a felony conviction to place his fingerprints on the judgment of conviction open court, on the record, at the time of sentencing. This is the same as specified by the Department of Law in the original bill, except that "the thumbprints" is changed to "fingerprints." It is understood that the District Attorney from Fairbanks has suggested this procedure to avoid disputes about whether a particular defendant is the same one named in a previous judgment of conviction.
- 7;1 Section 21. As specified by the Department of Law in the original bill this reworded existing aggravating factor (8).
- 7;4 Section 22. As specified by the Department of Law in the original bill, this adds additional aggravating factor (19), pertaining to juvenile conduct.
- 7;8 Also, this Section adds another additional aggravating factor (20) that the defendant was on felony probation, felony parole, or furlough from prison at the time he committed the crime. Under present AS 12.55.155(a)(12) the court may at the time

of a felony sentencing consider the fact that a defendant was released on bail or a personal recognizance at the time he committed the felony. However, the court cannot consider as an aggravating factor the fact that the defendant was on parole, probation, or furlough at the time he committed the felony.

7;10

Section 23. As indicated previously, this repeals the present "insanity" statute, AS 12.45.083, as in the original bill.

Also, this section of the CS would repeal AS 12.55.155(d)(8), a mitigating factor that states that the court shall consider mitigating the sentence down if "a prior felony considered for the purpose of invoking the presumptive terms this chapter was of a less serious class of offense in the present offense." In effect, that wording rewards a criminal for "moving up" in crime, committing more serious crimes each time, so that the previous ones would be considered as mitigation.

7;11

Section 24. Notes that the change in AS 12.55.088(a) [SECTION 14] has the effect of changing Criminal Rule 35.

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

March 25, 1982

Document# 115-82

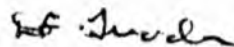
The Honorable Ramona L. Barnes
Chairperson
House Judiciary Committee
Pouch V
Juneau, Alaska 99811


Dear Ms. Barnes:

House Bill No. 553 is identical to the original Senate Bill No. 535. As a result of the size of the department's fiscal note on SB 535, the Senate Judiciary Committee adopted a committee substitute which, among other amendments, deleted section 16 which would increase presumptive sentence length from six years to eight years for a first felony conviction while using a firearm or deadly weapon. That action reduced the department's fiscal note from \$3,808,800 to zero.

We thought this information may be of use to your committee in its deliberations.

Sincerely,



 Helen D. Beirne
Commissioner

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. House Bill No. 553
 Title "An Act relating to the criminal laws of the state."
 Requested by Judiciary Committee Date March 24, 1982

II. FISCAL DETAIL
 Agency Affected Department of Health & Social Services
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						1,160.4
200 TRAVEL						16.8
300 CONTRACTUAL						236.5
400 COMMODITIES						212.3
500 EQUIPMENT						28.0
600 LAND & STRUCTURES			3,808.8			
700 GRANTS, CLAIMS, ETC.						52.4
TOTAL	-0-	-0-	3,808.8	-0-	-0-	1,706.4

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	3,808.8	-0-	-0-	1,706.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	3,808.8	-0-	-0-	20
PART TIME						
TEMPORARY						

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

Assumptions:

1. The only section with significant fiscal impact on the Division of Adult Corrections is Section 16 amending AS 12.55.125 (c)(1).
2. The presumptive sentence length has been taken as the mean sentence for all offenders sentenced under AS 12.55.125 (c)(1).
3. The impact of this legislation will not be experienced for 4 1/2 years from the date of effect. At the present time, an average of 32 persons are convicted of first offense felonies with the use of a firearm. The current flat time sentence is 4 1/2 years. Under the proposed legislation the flat time served would be six years. Therefore, the population of inmates for which the Division of Adult Corrections is responsible would

IV. DATE March 24, 1982 PREPARED BY Roger C. Lange
 AGENCY Division of Adult Corrections
 Original: Legislative Finance PHONE 465-3376

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

House Bill No. 553

"An Act relating to the Criminal laws of the state."

March 24, 1982 - (Continuation)

increase by 48 persons in the fifth and sixth years that the increased sentence length is in effect.

4. Capital budget projections are based on statewide average costs for the addition of 48 beds to be on line in FY '87. Based on current costs estimated to be \$69,000 per bed x 48 beds plus 15% inflation for one year = \$3,808,800.
5. It is estimated that a facility of this size would require a minimum staff of twenty. Other costs are related to direct prisoner care and operation of the physical plant.

Rapist slapped with long sentence

By SHEILA TOOMEY
Daily News reporter

An Anchorage Superior Court judge Friday sentenced rapist Joseph Contreras to three consecutive jail terms that will keep the 38-year-old escape artist behind bars until he is well past 50 years of age.

In a courtroom bristling with extra security, Judge Douglas Serdahely sentenced Contreras to 15 years for robbing, assaulting and terrorizing an Anchorage couple in August, 1980. Contreras also drew terms of six years each for two short-lived escape attempts. The convict also is known as David Ziegler.

In a court appearance last year, Contreras leaped over the defense table and dashed through the judge's exit door, leading troopers on a two-block chase until he was recaptured.

Ketchikan District Attorney Mary Ann Henry, who handled the prosecution, appeared for the state and asked for a 48-year sentence. "He taunted the victims and he put them through an extended period of terror," Henry said as both victims listened from the rear of the courtroom.

According to testimony at his July trial, Contreras broke into the couple's apartment and waited until they returned from a night of dancing. He met them at the door, his face hidden behind a ski mask and a pistol in his hands. Contreras sexually assaulted the woman and threatened to kill the man, holding the gun to his head and telling him, "You're about three-eighths-inches from death. You have two seconds to live."

The man eventually wrested the gun from Contreras, sustaining a minor gunshot wound in the process.

Contreras lived to be tried only because the gun he used that night failed to fire when his victim tried to shoot him in the head with it.

Contreras was convicted on nine different counts connected with the incident. Henry asked that separate jail terms be imposed on most of the counts, to be served one after the other.

According to testimony at his July trial, Contreras broke into the couple's apartment and waited until they returned from a night of dancing. He met them at the door, his face hidden behind a ski mask and a pistol in his hands. Contreras sexually assaulted the woman and threatened to kill the man, holding the gun to his head and telling him, "You're about three-eighths-inches from death. You have two seconds to live."

The man eventually wrested the gun from Contreras, sustaining a minor gunshot wound in the process.

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Contreras was convicted on nine different counts connected with the incident. Henry asked that separate jail terms be imposed on most of the counts, to be served one after the other.

But Public Defender Brant McGee argued successfully that all the counts were part of a single criminal transaction. Although Serdahely imposed a total of 68 years, he ruled that all the lesser terms could be served concurrently with the longest single sentence given, which was 15 years.

Serdahely then took advantage of the two

See Page C-3, RAPIST



Anchorage Daily News/Paul Brown

An Alaska state trooper escorts convicted rapist Joseph Contreras from court Friday.

escape convictions to almost double Contreras' jail time by imposing the maximum six-year sentence for each of the two counts.

Under the state's presumptive sentencing for felons with prior convictions, Contreras will have to serve three-quarters of his sentence, or nearly 21 years, behind bars before becoming eligible for parole. "It is clear that Mr. Contreras is going to be a middle-aged man before he sees daylight again," McGee said.

Everyone who entered the fourth-floor courtroom for

Friday's sentence hearing was met at the door by two security guards who ran metal detectors over each person's body and searched pocket-books and briefcases.

Inside the courtroom, one uniformed and three plain-clothes Alaska State Troopers watched the slight, shackled defendant throughout the proceeding.

Contreras, who has three felony convictions in other states, still faces trial for kidnapping, rape and assault of another Anchorage couple. That trial has been held up pending the outcome of a legal dispute over the admissibility of evidence from previously hypnotized witnesses.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 553

Title "An Act relating to the criminal laws of the state."

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Public Safety

Program Category Affected Administration of Justice

BRU, Program, Or Subprogram(s) Affected Alaska State Troopers

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

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

No fiscal impact is anticipated.

IV. DATE April 5, 1982

PREPARED BY *MLM* Marcia Lynn McKenzie

AGENCY Department of Public Safety

Original: Legislative Finance

PHONE 465-4349

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill No. 553
 Title An Act revising certain criminal laws of the state
 Requested by House Judiciary Committee Date April 1, 1982

II. FISCAL DETAIL

Agency Affected Alaska Court System
 Program Category Affected Administration of Justice
 BRN, Program, Or Subprogram(s) Affected Trial Courts
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

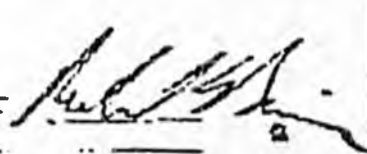
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section II)

There is a possibility that this Act might result in increased workload for the judiciary. Since the likelihood and volume of any increase are speculative at this time, fiscal impact cannot be projected.

iv. DATE April 2, 1982

PREPARED BY Richard F. Barrier
 AGENCY Alaska Court System
 PHONE 264-0565



Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)