INSANITY ISSUE MATERIAL, S.B. 4 ALL VERSIONS HB

The Anchorage Times

pages | 68th year | FRIDAY EVENING, MAY 7, 1982 | 25

API found confessed killer 'cured'

laureen Blewett
Mary Pat Murphy
Writers

laska Psychiatric Institute of-ls said six months ago that rles Louman Meach III, ged with killing four teen-s Monday, was mentally pre-d to return to society. They mmended his discharge.

uperior Court Judge Ralph dy refused to go that far. Pat May, in the absence of opposi-from the state district attor-he had agreed to gradually in-se Meach's involvement in the munity.

Meach was on a 10-hour work-ase pass from the institute at time of the killings.

e had been in state custody e 1973, when he was found not y by reason of insanity for kill-Robert Alexander Johnson at thquake Park in Anchorage.

district attorney characterized that crime as "a brutal and unprovoked attack."

The API recommendation for discharge came after staff at the Institute found Meach "to be cured of his mental defect and an appropriate candidate for administrative discharge," said documents filed in support of the Dec. 11, 1981, motion.

API superintendent Harold Conrad said today Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

"This institute is small enough that any recurrence of psychosis would have been observed," Conrad said.

"You don't have to be psychotic to engage in criminal activity."

Meach's integration into the community began last spring, following recommendations from API and lacking opposition from the state District Attorney. On May 4, 1981, Moody had granted Meach "unescorted ground privileges" on the API campus.

Three months later, on July 31, Moody — again at the request of API — granted permission for Meach to participate in a work-release program. The district attorney did not oppose that request either. A psychiatrist for the state also had recommended restricted freedom.

Meach, 34, has spent the nine years since the murder of Johnson in state custody.

He was found not guilty by reason of insanity in October 1973 by Superior Court Judge C. J. Occhipinti, now retired, and sent to Atascadero State Hospital in Atascadero, Calif. All Alaskans judged criminally insane were housed at the facility at that time.

In February 1975, Atascadero officials said Meach was in a sexual reorientation program and was "gaining more from group therapy because he is becoming more specific and less vague . . . Mr. Meach has recently become involved in a re-motivation project. His attitude towards treatment remains positive."

Meach was under medication, the report said.

He was returned to Alaska in September 1980, at the recommendation of California state psychiatrists. They said he was ready for reintegration into the community.

On March 24, 1981, Conrad requested "unescorted ground passes" and "unescorted passes into the community."

Moody allowed the ground passes but ordered another hearing before granting the community passes. At that second hearing, Moody granted gradually increasing community passes, up to 10 hours, "at the discretion of API

(See API, page A-4)

Inside . . .

Mental patient says he shot 4 teens

e sketch of Charles Meach drawn this week from eyewitness reports

by Patti Epler
Times Writer

A mental patient arrested Thursday night for the murders of four young people at Russian Jack Springs Park has confessed to the killings.

Court documents filed this morning say that 34-year-old Charles Louman Meach III told police he went to the tent of the victims Monday night intending to steal some cassette tapes, then committed the murders after he was surprised by one of the victims.

Killed at the campsite scene were Rebecca D. Phillips and Sabrina Imlach, both 16-year-old West Anchorage High School students; 19-year-old Vern Sylvester of Kenai, and Joseph "Dean" Kimler, also 19.

Meach, the son of an affluent dentist in a small Michigan town, has spent most of the last decade in mental institutions. In 1973, Meach was found not guilty of another killing by reason of insanity and was committed to a California institution for the criminally insane.

He has been charged with four counts of first-degree murder and is currently in custody at Alaska Psychiatric Institute under $100,000 bail.

At the time of Monday night's killings, Meach was a patient at API where he was on an unsupervised work release program and was free to leave the institute without an escort.

Last year the medical staff at API unanimously determined that Meach was mentally fit for the work release program. API director Dr. Adrian Conrad said today Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

A document charging Meach with the killings was filed this morning in Anchorage Superior Court. According to that document, Meach told police investigators that he went to the park, where Sylvester and Kimler had been living in a tent, with the intention of stealing some cassette tapes he had previously noticed there.

The four young people had gathered at the campsite Monday to start an evening of celebration for Imlach's birthday. She would have been 17 years old on Tuesday.

Police believe that Kimler returned to the tent to pick up something and that the four had planned to leave the campsite as

(See MURDERS, page A-4)

Tearful mother recalls son's 1973 death

by Mary Pat Murphy
Times Writer

The mother of a young man kicked to death by Charles L. Meach nine years ago wondered today "why he was allowed to do it again."

Meach, found innocent by reason of insanity in the 1973 murder of 22-year-old Robert A. Johnson Jr., was charged with four counts of first-degree murder in the deaths of four teenagers at Russian Jack Springs Park on Monday night.

"It's just like it's all over again," Johnson's mother, Hilda Holmquist, said today. "Maybe they'll do something with him this time."

A friend had called earlier today to tell her Meach had once again been arrested for murder. Her tears evident over the telephone, Holmquist recalled her agony after her son's body was found in the snow near Earthquake Park.

"They just kept it all hushed up," she said. "They wouldn't even tell me when he (Meach) went to trial."

First, she said, she was told that her son had been shot. Then she was told he hadn't been shot. It ini-

(See MOTHER, page A-3)

Private gun sales aren't regulated under state law

by Dave Carpenter
Times Writer

Alaska has no laws regulating the sale of handguns between individuals, state officials said today.

"If I'm selling somebody a gun, I don't even have to so much as give him a receipt," said Alaska State Trooper John Johnston.

"Basically, there's no control of private sales between individuals because there's no state gun registration and there's virtually no way to control it."

Only four states — Hawaii, Michigan, Mississippi and New York — plus the District of Columbia have gun registration laws, according to the National Rifle Association.

Charles L. Meach III, the man charged late Thursday with murdering four teen-agers three nights earlier, bought the .38-caliber pistol used in the shootings from an unidentified person about a week ago, according to police.

Anchorage Police Chief Brian Porter said Meach bought the gun from a private party because the suspect apparently knew that with his background he wouldn't be allowed to possess a gun and that the gun could be traced back to him if he had bought it from a reputable dealer.

"He didn't have any immediate use for it" when he bought the gun a few weeks ago, Porter said, adding that Meach apparently kept the gun and ammunition stashed in the woods near the Alaska Psychiatric Institute where he resided.

Johnston said his home state of Massachusetts has a mandatory one-year imprisonment for violation of its strict gun laws, "and from what I know it hasn't done any good." He said it is virtually impossible to police gun transactions between individuals.

When buying a gun in a store in Alaska, a person must comply with federal laws, Johnston said. The would-be purchaser must fill out a federal form asking if he is a convicted felon, an alcoholic or a drug addict, among other questions.

The licensed dealer is legally prohibited from selling a gun to anyone who responds with even a single "yes" answer or fails to produce proof of identity.

Assistant Attorney General Michael Stark of the Department of Law's criminal division said from Juneau that a convicted felon cannot possess a concealable firearm within five years of his unconditional discharge for the felony.

However, even the presence of gun registration legislation would not force felons to comply. The U.S. Supreme Court ruled in 1968 that a convicted felon or other person prohibited from possessing a gun cannot be prosecuted for failing to register it, since to do so would be an admission of guilt, violating the Fifth Amendment.

Tougher 'insanity' plea law proposed

Times Staff and Associated Press

Juneau — Reacting to news that a mental patient has been charged with murdering four teen-agers in Anchorage, Rep. Russ Meekins vowed today to try to rewrite state law to require criminals who are judged insane to serve jail time before being freed.

Meekins, D-Anchorage, said he met with Gov. Jay Hammond's top aide this morning to enlist support for a bill he has asked legislative

even if he or she is insane. If convicted, the person would receive a sentence, but would be placed in a mental hospital, rather than jail.

However, if the person eventually were judged sane, he then would be required to go to jail to complete whatever time remained of his sentence.

Meekins said Idaho recently became the first state to pass such a law.

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Meekins, D-Anchorage, said he met with Gov. Jay Hammond's top aide this morning to enlist support for a bill he has asked legislative attorneys and the attorney general to draft.

Meekins said the proposed bill essentially would abolish the current defense of "not guilty by reason of insanity."

"This insanity plea has been really abused," Meekins said. "The worst crimes are committed by the people who are insane and those are the people who are getting the lightest sentences.'

"Right now, if you co[illegible] a crime and are judged insane, you go to API (Alaska Psychiatric Institute) and they (hospital officials) decide when you are sane and when you get released," Meekins said.

He proposes to change state law to require that a person stand trial even if he or she is insane. If convicted, the person would receive a sentence, but would be placed in a mental hospital, rather than jail.

However, if the person eventually were judged sane, he then would be required to go to jail to complete whatever time remained of his sentence.

Meekins said Idaho recently became the first state to pass such a law.

The new Idaho law, which allows the question of insanity in criminal cases to be raised only at the time of sentencing, was referred to on ABC's "20/20" Thursday night. The program focused on the insanity defense of would-be presidential assassin John Hinkley.

ABC said a major weakness of this defense is that a defendant found innocent by reason of insanity and placed in a mental institution can be released at any time he is declared to be sane.

The network cited two examples of convicted murderers who, like Charles Meach — the man charged with murdering the four Anchorage teen-agers — were found innocent by reason of insanity, later walked out of mental institutions, and killed again.

Mother

(Continued from page A-1)

tially appeared Johnson had been shot in the face, police reports said, but autopsy results showed no shot had been fired.

Holmquist was told Meach would probably get off because he "had a rich father," she said.

"He (her son) was a native person and they don't seem to care if a native person is killed," she said. "You read about it all the time and they don't seem to do anything about it [illegible]e they don't care."

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"You get more for killing a moose than you do for killing a person," she said.

Meach was transferred to a mental institution in California and was brought back to API in 1981. He was an outpatient enrolled in a work-release program when he was arrested Thursday.

Holmquist's ordeal didn't end with Meach's commitment to API.

"I went through a lot," she said. "I didn't have the money for the burial. The funeral home kept his age from Bristol Bay in 1959.

On the Saturday night he was killed, Johnson had left work and visited a few night clubs. Police investigation showed he did not spend much money or drink much. It was believed he met someone at one of the nightclubs and left with that person.

His body was found the next morning after an officer of the Fish and Wildlife Protection Division of the Department of Public Safety received a call from a man reporting that someone had apparently shot a moose west of Earthquake Park.

A Wildlife Protection officer found a trail of blood leading fro[illegible] the road into the woods and found Johnson's body in the snow.

Meach was arrested a few days later.

The complaint against him alleged Meach hit and kicked Johnson so hard that he had a "torn liver, numerous broken ribs and a crushed face."

The complaint quoted Johnson's mother as saying he was retarded and had one arm that was shorter than the other. It said Meach admitted killing Johnson after a fight, but admitted that Johnson hadn't hit h[illegible] back.

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"I went through a lot," she said. "I didn't have the money for the burial. The funeral home kept his body for six months."

Finally, she said, she sold the Naknek home she used as a summer fishing base to pay the funeral home. The state had urged her to sue, she said, but "no amount of money I get is going to make anything better."

"He did a quick job on these last kids," Holmquist said. "Mine he made suffer."

By all accounts, Robert Johnson was a dependable, well-mannered young man who had worked as a box boy at Carr's Aurora Village Food Center for four years before his death, providing a major source of income for his mother and younger brother, who is now 19.

The family moved to Anchorage from Bristol Bay in 1959.

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The complaint quoted Johnson's mother as saying he was retarded and had one arm that was shorter than the other. It said Meach admitted killing Johnson after a fight, but admitted that Johnson hadn't hit him back.

"He wouldn't hurt anybody or do anything to anybody," Johnson's mother recalled today. "He never got into a fight in his whole life."

Corrections and clarifications

The Anchorage Times reserves this space each day to correct errors of fact or interpretation. Readers who notice mistakes are asked to call the newspaper at 279-5622.

Pictured on page B-10 in Tuesday's paper was Fire Chief Robert Howell and Linda Goodrich. Not pictured was John F. Fullenwider.

Murders

(Continued from page A-1)

soon as Kimler came back from the tent.

But Kimler never returned to his friends. He was found shot to death a few feet outside the small tent nestled in the heavily wooded area.

Meach was in the tent when Kimler arrived and after "a few words were said," Meach pulled out a .38 caliber revolver "and immediately shot the man once in the head," the court documents said.

Police believe Sylvester and the girls heard the shot and began running down the dirt path toward the tent to see what was happening to their friend.

Meach told police that he left the tent to go back toward his bicycle which had been parked at the entrance to the camping area — near where Imlach had parked her orange Gremlin. He saw Sylvester coming toward him down the path, the document said.

Meach said he passed the second youth on the trail, then turned and shot him once in the back of the head.

Meach then came upon the two girls and shot each of them once in the head, the document said.

An autopsy report revealed that each of the girls was shot at close range and that Sylvester and Kimler were shot at a range beyond four to five feet.

Meach also told the police that just after the shootings he saw several other people coming down the path and yelled to them to "get out of here."

According to the document, witnesses walking together past Imlach's car heard gunshots, walked farther into the park where they saw a man who turned his back to them, "appeared to pull up his pants, turn back toward them and angrily shouted . . . The witnesses fled."

police station for further questioning, the two witnesses who had seen the blue bike and the man in the woods Monday night were asked to come down to the station to see if they could identify him.

They picked him out of a lineup, Porter said, where he was standing with other men of about Meach's size and description.

Meach is about 6-foot 6-inches tall, 220 pounds and has brown hair with a slightly receding hairline.

Meach was committed to Atascadero, a California institution for the criminally insane after his 1973 trial. He spent five years in that institution and was returned to API in 1980.

The judge, former Superior Court C.J. Occhipinti, in committing him to the mental institution in 1973, ordered that Meach not be returned to Alaska until another court hearing could be held to determine his mental condition.

But overcrowded conditions at Atascadero combined with psychiatrists evaluations that indicated an improvement in Meach's condition resulted in his return to Anchorage.

Last year Meach was given work release privileges after API's medical staff unanimously agreed he was fit for the program. The killings occurred while Meach was on a 10-hour work pass. He returned to the hospital without incident at 9 p.m., about one hour after the shootings, records show.

Although Alaska law requires that a court hearing be held before releasing a psychiatric patient into the community, Porter said no one notified police that Meach had been granted a work release.

David Predeger of The Times

Pallbearers leave Holy Family Cathedral with the casket of Sabrina Imlach after services Thursday afternoon

API

(Continued from page A-1)

staff."

The judge approved the work release passes, also 10 hours, in July at the request of a state public defender. Meach had been off medication "for some time," according to a source.

Meach checked out of API under a work release pass Monday. He returned to API without incident at 9 p.m., about an hour after the killings. He confessed to the crimes Thursday.

"The people at API are terribly saddened by this," Conrad said. "No one here would ever knowingly allow a person into the community where all of our spouses and children are if we had any evidence that something like this would happen."

Conrad said the state constitution requires authorities to reintegrate mentally ill offenders into society as soon as it is safe.

Dr. Joseph Bloom, formerly a psychiatrist at the Langdon Clinic and now assistant chairman of the department of instructional psychiatry at Oregon Health Sciences University in Portland, testified during Meach's hearing in 1973 that he suffered from schizophrenia, paranoid sub type.

Bloom explained in his findings that while Meach would be competent to aid in his own defense in a trial, under terms of the American Law Institute test, Meach's illness was such that "he could not conform his actions to the needs of society."

Conrad said API "would never release a patient on a pass who was showing active signs of psychosis, who had assaulted anyone, or who had broken the terms of his pass. We would never release a patient if we had any observational evidence he would hurt anyone."

Contrasts mark Meach's personality

by A.J. McClanahan
and Dave Carpenter
Times Writers

Charles "Charlie" Lawrence [illegible] which he was acquitted by reason of insanity, a California health official said Meach expressed no guilt [illegible] They noted, however, that he was arrested and charged with being drunk and disorderly on Jan. 22 [illegible] years, but said he was aware that Charlie had recently returned to Alaska.

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Three days later, another wit-
s gave police a brown paper
with the word "Meach" writ-
on it that had been found under
ridge near the homicide scene,
court document said.

Meach had been employed
ce March 5 as a part-time sales
rk in the suit section of Sear's
n's department. He last showed
for work on Saturday.

His pass also allowed him to at-
d Anchorage Community Col-
e.

"He was a typical sales clerk,
y polite with customers," man-
er Bill Sblendorio said this
rning.

Sblendorio said he didn't know
at Meach was on work release
m API or that he had any con-
ction with API whatsoever. No
ference to API was made on the
nployement application, he said.

The break in the case came
en two witnesses reported see-
g a new, blue Schwinn Travelers
cycle leaning up against a tree
ar where Imlach's car had been
rked.

Police Chief Brian Porter said
e witnesses told police that they
me back through the area a
ort time later and the bike was
ne.

They also said they had seen a
an in the bushes when they came
ck "and presumed he must have
en the one with the bike," Porter
id.

Those two witnesses came for-
rd after they heard police were
oking for a brown van that had
en parked in the area. Those wi-
sses were in a brown van coinci-
ntally, Porter said, although
eir van was not the one being
ught by police. That van and its
iver, who another witness said
me out of the woods and climbed
o the van shortly after the shoot-
s, has yet to be found.

Contrasts mark Meach's personality

by A.J. McClanahan
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Times Writers

Charles "Charlie" Louman Meach III was described today as "very intelligent," a "very polite" clerk who sold suits at a local store. That same Charles has a history of mental illness, a loner who had troubles getting along with others.

To an uncle from Traverse City, Mich., Meach was different from others in his family, "the only rotten apple in the bunch."

Anchorage Sears store manager Bill Sblendorio called him "a typical sales clerk, very polite with customers."

Psychiatrists who treated him said he was a troubled man interested in his treatment.

Alaska Psychiatric Institute Director Dr. Adrian Conrad said Meach showed no signs of psychosis during evaluations by at least four psychiatrists in the past year.

"This institute is small enough that any recurrence of psychosis would have been observed," Conrad said.

"You don't have to be psychotic to engage in criminal activity."

Meach's uncle, Fred Meach of Traverse City, Mich., said Charlie grew up in Traverse City, and had problems getting along with other kids before he entered high school. He was disliked, Meach said, because he "picked on little kids" or because he sometimes tried too hard.

Meach's mother spent the remainder of her life after Meach's birth hospitalized for mental problems, according to testimony at a 1973 psychiatric hearing, following Meach's involvement in the beating death of Robert Johnson of Anchorage.

At that hearing, it was disclosed that Meach had been diagnosed as schizophrenic. He was described which he was acquitted by reason of insanity, a California health official said Meach expressed no guilt for the killing.

"Mr. Meach has discussed his offense openly, but he seems to feel that he had sufficient reason to commit it — he expresses no guilt or remorse," the medical director of the Atascadero (Calif.) State Hospital, Dr. Alfred Rucci, said in a March 1974 letter to the Alaska Division of Mental Health.

"He is quite grandiose and seems to have no trouble giving himself permission to do whatever he pleases . . .

"Despite this patient's many and complex problems, he verbalizes an interest in treatment and we hope that he will benefit from what we have to offer here."

Rucci also said Meach has some "serious sexual concerns, particularly regarding his homosexual impulses."

"He suffers from mood swings, he is overly dependent on others and he is hypersensitive to criticism," he said.

His uncle Fred Meach described Charlie as "very intelligent," and said he could have been a good student had he worked at it. His serious problems in getting along with others did not start until Charlie began using drugs in his last year of high school Meach said.

Former high school classmate Jeremy Conoway of Traverse City described Meach as "clearly destined to go to an Ivy League school" because as the son of a dentist, Charlie was among the more affluent children in the resort town of about 18,000.

Police in Flint, Mich., said the only information they could release was that a Charles Meach, whose birth date was Oct. 1, 1947, was convicted for being drunk in a public place on Oct. 5, 1968. They noted, however, that he was arrested and charged with being drunk and disorderly on Jan. 22, 1972.

Fred Meach said Charlie was the youngest of three children.

He described him as a child who "had more problems than most," but added that news of Charlie being charged with four murders "is kind of a shock to me."

Charlie's father, Charles [illegible] was recovering from hip surgery in Traverse City this week and could not be reached for comment. Fred Meach said he does not think Charles has been told of the murder charges against Charlie.

Meach said he had had little contact with Charlie in recent years, but said he was aware that Charlie had recently returned to Alaska.

"I thought he had been making progress in his recovery, but evidently not," Meach said.

He said Charlie attended several different college, mostly on the West Coast, but completed none of them.

Meach also said he was not surprised to learn that Charlie had been picked up on charges of public drunkenness. He said a local hotel would not allow him in because of his behavior when he drank.

"His sisters are beautiful girls, nice family. Charlie is the only rotten apple in the whole bunch," he said.

Meach called 'lost', 'loner'

Psychiatrists who examined Charles L. Meach III during court proceedings nine years ago described him as "totally lost," a "loner" who was unable to conform his actions to society's standards.

Meach was charged with first-degree murder in the beating death of 22-year-old Robert Johnson, but was found not guilty by reason of insanity and transferred to a California institution for treatment.

Here are excerpts from fragmentary in-court notes taken by a court reporter during the proceedings. The notes paraphrase psychiatrists' evaluations of Meach.

A psychiatrist, not named in the transcript, testified that he:

"saw dft (defendant) 3 hours on 3 different occasions — he was aware he'd committed crime resulting in a person's death and knew wrongfulness of his act

"invited him to tell me about himself

"displayed poor judgment

"concrete things

"gave (illegible) history as sick for long duration

"could remember his conception

"spent remainder of her life in hospital

"no warm feelings for mother

"sadistic qualities

"suspiciousness

"lots of fights in recent years.

"why no serious trouble before now

"psychotic the last 3 or 4 years

"failure in relationships in school and people

"concern about his capacity as a man

"claims he does not remember

"knew he'd committed a crime

"done in thoughtless, senseless, irrational way

"opinion he is psychotic and was at time of trial

"[illegible] was competent to stand

take care of anyone who didn't understand he was sick and needed hospital instead of prison.

Another psychiatrist, Dr. Jerry Bloom at Oregon Health Sciences University in Portland, testified that Meach:

"understands nature of consequences and can aid in his defense

"unable to conform his actions at the time.

"suffering from this type of problem for many years

"thought disorder

"smiling when he's describing something that isn't funny.

"hurt, and gradual isolation, loner type pattern

"generally leads to diagnosis of schizophrenia

"fraught with a lot of danger

"turned it around into an aggressive person

"very frightened man

"basis of the letters, various schools

"detailed the pain in his life

"totally lost

"results of the testing

"most effective treatment

"depends upon several factors

"paranoid stance

"proper location, very strongly

was showing active signs of psychosis, who had assaulted anyone, or who had broken the terms of his pass. We would never release a patient if we had any observational evidence he would hurt anyone."

The hospital finds itself playing the role between the needs of society and the needs of rehabilitation of the patient, Conrad said. "It is a difficult role."

The law, written in territorial days and recodified as Title 12 of state statute, requires authorities to rehabilitate patients who have committed crimes and been acquitted because they were judged legally insane.

Bloom during the 1973 court proceedings said he believed Meach could respond to treatment and following a period of hospitalization and medication, it might be possible to release Meach as a functioning member of society.

sought by police, that van and its driver, who another witness said came out of the woods and climbed into the van shortly after the shootings, has yet to be found.

Detectives ran a check on every new blue Schwinn Travelers bike they could find in Anchorage and came up with Meach's name as having recently purchased just such a bike, Porter said.

At the bike shop, Meach had left his address as 2900 Providence Drive, the Alaska Psychiatric Institute.

"At that point, it was one of a hundred leads we were looking at," Porter said.

But detectives were able to locate Meach at API and first talked to him late Thursday afternoon, Porter said.

They interviewed him and left, returning after hospital officials called police with Meach's confession.

Meach led police to the gun, a .38 caliber revolver, that is believed to have been used in the murders. The gun was located in the bushes just off the bike path near Lake Otis Parkway and 20th Avenue.

Porter said Meach apparently kept the gun and ammunition stashed in that location near API.

The gun has been sent to the FBI firearms testing laboratory in Virginia for ballistics tests to determine if bullets taken from the bodies were indeed fired from that gun.

Porter said Meach apparently purchased the gun a few weeks ago from a private party, not from a store where he would have had to fill out registration forms.

After Meach was taken to the

ing death of Robert Johnson of Anchorage.

At that hearing, it was disclosed that Meach had been diagnosed as schizophrenic. He was described as "a loner type," "a very frightened man," "totally lost" and "suffering from a major mental illness."

Following the 1973 murder for

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"he was not altogether cooperative — would act negatively to close questioning

"was loose in his associations

"was very restless — spasms

"he threatened me — would

opinion he is psychotic and was at time of trial

"he was competent to stand trial

Dr. Joseph Bloom, formerly of Langdon Clinic in Anchorage and now assistant head of the department of instructional psychology

"paranoid stance

"proper location, very strongly feel he should not be in correctional institution — would continue to be a loner

"needs to be in a hos

David Predeger of The Times

psychiatry at Oregon Health Sciences University in Portland, testified during Meach's hearing in 19 that he suffered from schizophrenia, paranoid sub type.

Bloom explained in his findin that while Meach would be comp tent to aid in his own defense ir trial, under terms of the Americ Law Institute test, Meach's illne was such that "he could not c form his actions to the needs of ciety."

Kimler were shot at a range beyond four to five feet.

Meach also told the police that

Although Alaska law requires that a court hearing be held before releasing a psychiatric patient into the community, Porter said no one

Present Law (1982)

Sec. 12.45.083. Mental disease or defect excluding responsibility. (a) A person is not responsible for criminal conduct if at the time of the conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(b) Reliance on mental disease or defect as excluding responsibility is an affirmative defense. The burden of proof beyond a reasonable doubt does not require the prosecution to disprove an affirmative defense unless and until there is evidence supporting the defense. The requirement of evidence supporting the affirmative defense is not satisfied solely by evidence of an abnormality which is manifested only by repeated criminal or otherwise antisocial conduct.

(c) If the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

(d) When a person offers a defense based on mental disease or defect excluding responsibility for his criminal conduct, he may waive a jury trial without the consent of the state. (§ 1 ch 119 SLA 1972)

Sec. 12.45.085. Evidence of mental disease or defect. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. However, evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense. (§ 1 ch 119 SLA 1972)

Sec. 12.45.087. Psychiatric examination. (a) If a defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist, or a forensic psychologist certified by the American Board of Forensic Psychology, or shall request the superintendent of the Alaska Psychiatric Institute to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant. (§ 1 ch 119 SLA 1972; am § 2 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, added "or a forensic psychologist certified by the American Board of Forensic Psychology" following "one qualified psychiatrist" in the first sentence and added the second sentence of subsection (a).

Sec. 12.47.060. Procedure after raising defense of mental disease or defect. (a) At the time the defendant files notice to raise the affirmative defense of mental disease or defect as excluding responsibility he shall also file notice as to whether if found not guilty by reason of mental disease or defect as excluding responsibility he will assert that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the same trier of fact as the underlying charge, but if a jury was the trier of fact, the hearing shall be held before a jury of six drawn from the original jury in accordance with rules adopted by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 or until the mental disease is cured or the defect corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined under a petition filed in the superior court at intervals beginning no sooner than six months from his initial commitment and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section except that the defendant is not entitled to a jury unless he files a motion for a jury no later than 15 days before the date set for the hearing. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of the mental disease or defect and is no longer dangerous to public peace or safety the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section. (§ 6.10 ch 34 SLA 1962; am § 6 ch 104 SLA 1971; am § 2 ch 11 SLA 1972; am § 3 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section.

Revisor's notes. — In the first sentence of subsection (e), the word "section" was substituted for "position" by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 12.45.100. Determination of mental disease or defect during trial or probation. (a) No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) When, after arrest and before the imposition of sentence or before the expiration of any period of probation, the attorney general, the district attorney, or the attorney for the accused has reasonable cause to believe that a person charged with an offense may be presently suffering mental disease or defect or is otherwise so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, he may file a motion for a judicial determination of the mental competency of the accused. Upon that motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall have the accused, whether or not previously admitted to bail, examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for a reasonable period as the court may determine to a suitable

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hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present mental disease or defect or of other mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect to his mental condition. No statement made by the accused in the course of an examination into his mental competency provided for by this section, whether the examination is with or without the consent of the accused, may be admitted in evidence against the accused on the issue of guilt in a criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 6.11 ch 34 SLA 1962; am § 3 ch 119 SLA 1972)

Sec. 12.45.110. Commitment on finding of incompetency. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.45.100, that a defendant is so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court shall order the proceedings against him stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or his authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against him shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 — 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is murder.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of his commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to properly assist in his own defense or does not disable him from understanding the proceedings and assisting in his own defense. (§ 6.12 ch 34 SLA 1962; am § 1 ch 43 SLA 1966; am § 6 ch 104 SLA 1971; am § 4 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote the section.

Sec. 12.49.115. Determination of sanity after commitment. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.45.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him and to assist in his own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.45.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 2 ch 43 SLA 1966; am §§ 4 — 6 ch 119 SLA 1972; am § 5 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, in subsection (a), substituted "AS 12.45.110" for "AS 12.45.110(a)" and deleted "after release of the accused from custody" following "conveniently possible" in the first sentence. The amendment, in subsection (b), substituted "and" for "or" preceding "to assist" and substituted "may" for "shall" preceding "be commenced." In subsection (c), the amendment substituted "in accordance with AS 12.45.110" for "as provided in AS 12.45.110(a)."

House panel polishes insanity plea bill

by Bill White
Times Juneau Bureau

Juneau — A House committee has blended three separate plans to toughen use of the insanity plea by defendants but still is fine tuning the language of the 10-page draft bill.

Meeting for the fifth day in a row Wednesday, the Judiciary Committee brought out a new issue to be dealt with before they sign off on the bill. That issue involves what happens to a person found "guilty but mentally ill" who's still ill when his sentence ends.

Mark Johnson, a lawyer working on the issue for the panel, quickly wrote a third draft of the bill calling for a screening of such defendants to see if they should be committed after they've served their sentences.

The committee work is in marked contrast to that of the Senate. The senior chamber last Saturday passed a bill, introduced the day before by the Law Department, after a one-hour hearing and 30 minutes of floor debate.

The House committee is working with the Law Department's proposal and versions drafted by Johnson and Bill Cook, former counsel to the panel.

The committee has gone through so many rewrites of the proposal that new drafts are being coded by the hour at which they were composed to distinguish them from earlier drafts.

The insanity defense issue sprang up this month in the wake of the murders of four teen-agers in Russian Jack Springs Park in Anchorage on May 3.

Charles Meach III, the accused killer, was on a work-release program from the Alaska Psychiatric Institute. Meach was found not guilty by reason of insanity in 1973 on charges he murdered a man at Earthquake Park.

Under current law, a defendant can be found not guilty by reason of insanity if he didn't understand the wrongfulness of his crime. It's also up to the prosecution to prove the defendant is sane.

The features of the latest Judiciary Committee draft include:

- Insanity would be redefined to apply to those who didn't appreciate the nature or quality of their actions.
- The defendant would be forced to prove his insanity.
- Juries would be given a fourth verdict — guilty but mentally ill — to join guilty, not guilty and not guilty by reason of insanity as possible verdicts.
- Those found guilty but mentally ill would get treatment while confined until they no longer were dangerous. If they still had time to serve on their sentences, they would serve it in prison. If they're still mentally ill when their sentences end, they could remain in confinement under a civil commitment procedure.
- For a defendant found not guilty, the prosecutor would file within 24 hours for a screening to see if the acquitted person should be committed for treatment.
- A judge would appoint at least two neutral psychiatrists to examine defendants who indicate they plan to rely on the insanity defense.
- Defendants found not guilty by reason of insanity must prove they're suffering from no mental illnesses before they would be released. They must prove their cases by "clear and convincing" evidence, a tougher standard than the present "preponderance of the evidence."

Thursday, May 20, 1982

The Anchorage Times

HANDBOOK
ON
CRIMINAL LAW

By

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HORNBOOK SERIES

ST. PAUL, MINN.
WEST PUBLISHING CO.
1972

THE INSANITY DEFENSE: THEORY AND PURPOSE

36. The word "insanity" has many meanings in law, depending upon the context within which it is used. In the field of criminal law, it must be defined for the purpose of identifying the scope of a special kind of defense to a criminal charge, and also for various procedural purposes.

The insanity defense is quite different from other defenses in that the result, if it is successfully interposed, is not acquittal and outright release of the accused but rather a special form of verdict or finding ("not guilty by reason of insanity") which is usually followed by commitment of the defendant to a mental institution. Thus, its purpose is usually said to be that of separating from the criminal justice system those who should only be subjected to a medical-custodial disposition.

Such a purpose is consistent with all the generally accepted theories of punishment. However, whether the insanity defense should be abolished is still a matter of considerable debate.

THE TRADITIONAL TESTS: "RIGHT-WRONG" AND "IRRESISTIBLE IMPULSE"

37. In the overwhelming majority of jurisdictions in this country, what is most often referred to as the M'Naghten rule has long been accepted as the test to be applied for the defense of insanity. Under M'Naghten, an accused is not criminally responsible if, at the time of committing the act, he was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it that he did not know he was doing what was wrong.

Somewhat less than half of the jurisdictions which follow M'Naghten have supplemented it with another test which is unfortunately labeled the "irresistible impulse" rule. Those two words suggest limitations upon the rule which are not strictly adhered to in practice, so that the "irresistible impulse" rule may more accurately be described as a test whereby the accused is not criminally responsible if he had a mental disease which kept him from controlling his conduct.

THE MODERN TESTS: "PRODUCT" AND "SUBSTANTIAL CAPACITY"

38. Under what is usually referred to as the Durham rule, adopted by the Court of Appeals for the District of Columbia, an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect. The rule, as originally formulated, was criticized because of the ambiguity in the words "product" and "mental disease or defect." Subsequent cases have held that an act is a "product" of mental disease or defect if the defendant would not have committed the act but for the disease or defect, and that the term "mental disease or defect" means "any abnormal condition of the mind which substantially affects mental or emotional processes and impairs behavior controls."

Under the American Law Institute Model Penal Code insanity test, a person is not responsible for criminal conduct if, as a result of mental disease or defect (not defined but expressly stated not to include an abnormality manifested only by repeated criminal or otherwise antisocial conduct), he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law.

INCOMPETENCY AT TIME OF CRIMINAL PROCEEDINGS

39. If a defendant is suffering from a mental disease or defect which renders him unable to understand the proceedings against him or to assist in his defense, he may not be tried, convicted, or sentenced so long as that condition persists. Rather, he is ordinarily committed to a mental institution until such time as he recovers. In practice, these commitments often appear to be used for punitive purposes, and they have in large measure displaced the process of trial, acquittal on grounds of insanity, and commitment following acquittal.

If a defendant sentenced to death is suffering from a mental disease or defect which renders him unable to understand the nature and purpose of the punishment about to be imposed, he may not be executed until such time as he has recovered from that condition.

PROCEDURES FOR PRESENTING THE INSANITY DEFENSE

40. It is the defendant who usually raises the insanity defense, although it is not uncommon for the defendant deliberately not to do so for the reason that the consequences of conviction are preferred over commitment following a verdict of not guilty by reason of insanity. There is some questionable authority that in such an instance the court or prosecutor may force the insanity issue into the case. In only a minority of the states need the defendant give advance warning by plea or notice of his intention to rely upon the insanity defense.

It is to the advantage of both the prosecution and defense to have the defendant examined by a psychiatrist whose orientation and examination procedures are such as will probably support their side of the case. In most states the prosecutor can obtain this advantage by a court-ordered examination which is usually conducted by a psychiatrist in the employ of the state. The indigent defendant is most hampered in this regard, as the prevailing view is that he is not entitled to the services of a psychiatrist.

There is a general presumption of sanity, and thus the initial burden (called the burden of going forward) is on the defendant to introduce evidence creating a reasonable doubt of his sanity. As to the burden of convincing the jury (called the burden of persuasion), some states require the defendant to prove insanity by a preponderance of the evidence, while others require the prosecution to prove sanity beyond a reasonable doubt. Expert witnesses are usually used, and they are permitted to testify in the language of the applicable insanity test.

At the close of all the evidence, the jury is instructed on the insanity test and is given three verdict alternatives: guilty; not guilty; and not guilty by reason of insanity. Under the prevailing view the jury may not be told of the significance of the latter verdict—that it must or is likely to be followed by commitment of the defendant.

PROCEDURES FOLLOWING FINDING OF NOT GUILTY BY REASON OF INSANITY

41. After a finding that the defendant is not guilty by reason of insanity, he is usually committed to a mental institution for treatment. In some jurisdictions commitment is mandatory following such an acquittal, but the majority view is that commitment is to be ordered only if it is found (usually, by the trial judge) that the defendant's insanity continues or that he is dangerous. The constitutionality of mandatory commitment is subject to serious question on both due process and equal protection grounds.

Because of limited resources and the emphasis upon security, the individual committed may receive little or no treatment. Recently, a few courts have recognized a "right to treatment" and have indicated they might order the person released if he is not promptly treated, although several commentators have expressed doubts about the propriety and effectiveness of such judicial supervision.

In most jurisdictions the release decision is vested in the committing court or some other court, although the court will not have occasion to consider the matter unless the patient or the authorities having custody of him seek release. Four different standards for release are now in use: (1) sanity; (2) lack of dangerousness; (3) sanity and lack of dangerousness; (4) sanity or lack of dangerousness. Considerable uncertainty exists as to the meaning of each standard. The burden of proof is usually placed upon the patient, and often he must establish grounds for release beyond a reasonable doubt. Some existing limitations on release of the patient committed because of acquittal on insanity grounds may be challenged as a denial of equal protection in that they are more severe than the release procedures for patients civilly committed.

PARTIAL RESPONSIBILITY

42. Under the better view, evidence of an abnormal mental condition, even though not sufficient to constitute legal insanity, is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense charged.

Such evidence has been most frequently received in cases requiring a determination whether the defendant acted with the premeditation and deliberation required for first degree murder. In at least some jurisdictions, however, this evidence has been held admissible on the issue of whether the defendant's crime is murder or manslaughter and the issue of whether the defendant had the requisite mental state for other lesser offenses.

Work Johnson's draft, marked up

*Section 1, AS 12.45 is amended by adding a new section to read:

See 12.45.082, ~~MENTAL DISEASE OR DEFECT~~ INSANITY 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~~ was unable as a result of a result of a mental disease or defect, ~~either to~~ to appreciate the ~~wrongfulness of his conduct or to conform his conduct to the requirements of law~~ nature and quality of his conduct.

(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, as a result of a mental disease unable to appreciate the nature and quality of his conduct

(c) A defendant found to lack the capacity described in ~~Section (A) of this section~~ shall be considered insane ~~for the purposes of this title~~.

Section 2, AS 12.45.45 is amended by adding a new section to read.

See 12.45.082 (a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found "guilty but mentally ill". He may not be found "not guilty by reason of insanity".

(b) For purposes of this section, "mental illness" or "mentally ill " means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he ~~is unable to appreciate the wrongfulness of his behavior or is unable to conform his conduct to the requirements of law~~ was insane as defined in AS 12.45.081

*Section 2, AS 12.45.083, is repealed and reenacted to read:

AS 12.45.083, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE ~~OF MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY~~ INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of ~~mental disease or defect excluding responsibility~~ insanity, the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill,

(B) If the case is heard by the court sitting without a jury, the court shall make the finding established in (A) of this section,

*Section 3, AS 12.45, is amended by adding a new section to read:

Section 12.45.084, PROCEDURE UPON FINDING OF GUILTY BUT MENTALLY ILL

(A) if a defendant is found "guilty but mentally ill" under AS 12.45.083, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(B) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety, or until his sentence is completed, whichever occurs first. The department shall determine the course of treatment. When treatment terminates under this subsection the defendant shall be required to serve the remainder of his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

(C) Nothing in this section limits the discretion of the court to recommend, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(D) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he ~~is unable to appreciate the wrongfullness of his behavior or is unable to conform his conduct to the requirements of law~~ was insane under AS 12.45.081

*Section 5, AS 12.45.090 is amended to read:

Section 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF MENTAL DISEASE OR DEFECT. (a) At the time the defendant files notice to

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raise the affirmative defense of ~~mental disease or defect (AS)~~ insanity under AS 12.45.081 ex-~~cluding responsibility~~, he shall also file notice as to whether, if found "not guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity", he will assert that he is not presently suffering from any [A] mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity" under AS 12.45.081 and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

(c) If the defendant is found "not guilty by reason of ~~mental disease or defect (AS) excluding responsibility~~ insanity" under AS 12.45.081, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the court sitting without a jury (THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT). At the hearing, the defendant has the burden of proving by clear and convincing (A PREPONDERANCE OF THE) evidence that he is not presently suffering from any (A) mental ill-ness (DISEASE OR DEFECT) that causes him to be dangerous to the public. If the court (OR JURY) determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(A)(3) or until the mental illness (DISEASE) is cured or (THE DEFECT IS) corrected as determined at a hearing under (e) of this section.

#48

insert #2

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined by the court sitting without a jury under a petition filed in the superior court at intervals beginning no sooner than a year (SIX MONTHS) from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section. (EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING). A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(A)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness

be sufficient to exclude criminal responsibility under AS ~~11.81.635~~ 12.45.081, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 6. This Act takes effect immediately in accordance with AS 01.10.070(c).

Cook's 12.45.087 revision

Illinois Law

CRIMINAL PROCEDURE—INSANITY DEFENSE

PUBLIC ACT 82-553

SENATE BILL 867

AN ACT to revise the law in relation to the insanity defense and to establish a plea and verdict of guilty but mentally ill, and amending certain Acts herein named.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 6-2 and 6-4 of the "Criminal Code of 1961", approved July 28, 1961, as amended, are amended to read as follows:

(Ch. 38, par. 6-2) [S.H.A. ch. 38, ¶ 6-2]

Sec. 6-2. Insanity. (a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

(b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill.

(d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired but does not negate his ability to appreciate the wrongfulness of his behavior or his ability to conform his conduct to the requirements of law.

(Ch. 38, par. 6-4) [S.H.A. ch. 38, ¶ 6-4]

Sec. 6-4. Affirmative Defense. A defense based upon any of the provisions of Article 6 is an affirmative defense except that mental illness is not an affirmative defense but an alternative plea or finding that may be accepted under appropriate evidence upon the affirmative defense of insanity is raised or the plea of guilty but mentally ill is made.

Section 2. Sections 113-4, 113-6, 115-1, 115-2, 115-3, 115-4 and 115-6 of the "Code of Criminal Procedure of 1963", approved August 14, 1963, as amended, are amended to read as follows:

(Ch. 38, par. 113-4) [S.H.A. ch. 38, ¶ 113-4]

Sec. 113-4. Plea. (a) When called upon to plead at arraignment the defendant shall be furnished with a copy of the charge and shall plead guilty, guilty but mentally ill, or not guilty.

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(b) If the defendant stands mute a plea of not guilty shall be entered for him and the trial shall proceed on such plea.

(c) If the defendant pleads guilty such plea shall not be accepted until the court shall have fully explained to the defendant the consequences of such plea and the maximum penalty provided by law for the offense which may be imposed by the court. After such explanation if the defendant understandingly persists in his plea it shall be accepted by the court and recorded.

(d) If the defendant pleads guilty but mentally ill, the court shall not accept such a plea until the defendant has undergone examination by a clinical psychologist or psychiatrist and the judge has examined the psychiatric or psychological report or reports, held a hearing on the issue of the defendant's mental condition and is satisfied that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.

(e) If a defendant pleads not guilty, the court shall advise him at that time or at any later court date on which he is present that if he escapes from custody or is released on bond and fails to appear in court when required by the court that his failure to appear would constitute a waiver of his right to confront the witnesses against him and trial could proceed in his absence.

(Ch. 38, par. 113-5) [S.H.A. ch. 38, ¶ 113-5]

Sec. 113-5. Plea and Waiver of Jury by Person under 18. No person under the age of 18 years shall be permitted to plead guilty, guilty but mentally ill or waive trial by jury in any case except where the penalty is by fine only unless he is represented by counsel in open court.

(Ch. 38, par. 115-1) [S.H.A. ch. 38, ¶ 115-1]

Sec. 115-1. Method of Trial. All prosecutions except on a plea of guilty or guilty but mentally ill shall be tried by the court and a jury or the court when a jury is waived by the defendant in open court.

(Ch. 38, par. 115-2) [S.H.A. ch. 38, ¶ 115-2]

Sec. 115-2. Pleas of Guilty and guilty but mentally ill. (a) Before or during trial a plea of guilty may be accepted when:

(1) The defendant enters a plea of guilty in open court;

(2) The court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(b) Upon acceptance of a plea of guilty the court shall determine the factual basis for the plea may hear evidence of the charge.

(c) Before or during trial a plea of guilty but mentally ill may be accepted by the court when:

(1) The defendant has requested to enter a plea of guilty but mentally ill and has undergone examination by a clinical psychologist or psychiatrist and has waived his right to trial by jury;

(2) The judge has received the psychiatric or psychological report or reports; and

(3) The judge has held a hearing at which either party may present evidence on the issue of the defendant's mental health and of the conclusion of such hearing is satisfied

that there is a factual basis that the defendant was mentally ill at the time of the offense to which the plea is entered.

(Ch. 38, par. 115-3) [S.H.A. ch. 38, ¶ 115-3]

Sec. 115-3. Trial by the Court. (a) A trial shall be conducted in the presence of the defendant unless he waives the right to be present.

(b) Upon conclusion of the trial the court shall enter a general finding, except that, when the affirmative defense of insanity has been presented during the trial and acquittal is based solely upon the defense of insanity, the court shall enter a finding of not guilty by reason of insanity. In the event of a finding of not guilty by reason of insanity, a hearing shall be held pursuant to the Mental Health and Developmental Disabilities Code[1] to determine whether the defendant is subject to involuntary admission.

(c) When the defendant has asserted a defense of insanity, the court may find the defendant guilty but mentally ill, if, after hearing all of the evidence, the court finds beyond a reasonable doubt that the defendant:

(1) is guilty of the offense charged, and

(2) was mentally ill at the time of the commission of the offense, and

(3) was not legally insane at the time of the commission of the offense.

[1] Chapter 91½, ¶ 1-100 et seq.

(Ch. 38, par. 115-4) [S.H.A. ch. 38, ¶ 115-4]

Sec. 115-4. Trial by Court and Jury.) (a) Questions of law shall be decided by the court and questions of fact by the jury.

(b) The jury shall consist of 12 members.

(c) Upon request the parties shall be furnished with a list of prospective jurors with their addresses if known.

(d) Each party may challenge jurors for cause.

(e) A defendant tried alone shall be allowed 20 peremptory challenges in a capital case, 10 in a case in which the punishment may be imprisonment in the penitentiary, and 5 in all other cases; except that, in a single trial of more than one defendant, each defendant shall be allowed 12 peremptory challenges in a capital case, 6 in a case in which the punishment may be imprisonment in the penitentiary, and 3 in all other cases. If several charges against a defendant or defendants are consolidated for trial, each defendant shall be allowed peremptory challenges upon one charge only, which single charge shall be the charge against that defendant authorizing the greatest maximum penalty. The State shall be allowed the same number of peremptory challenges as all of the defendants.

(f) After examination by the court the jurors may be examined, passed upon, accepted and tendered by opposing counsel as provided by Supreme Court rules.

(g) After the jury is impaneled and sworn the court may direct the selection of 2 alternate jurors who shall take the same oath as the regular jurors. Each party shall have one additional peremptory challenge for each alternate juror. If before the final submission of a cause a member of the jury dies or is discharged he shall be replaced by an alternate juror in the order of selection.

(h) A trial by the court and jury shall be conducted in the presence of the defendant unless he waives the right to be present.

(i) After arguments of counsel the court shall instruct the jury as to the law.

(j) Unless the affirmative defense of insanity has been presented during the trial, the jury shall return a general verdict as to each offense charged. When the affirmative defense of insanity has been presented during the trial, the court shall provide the jury not only with general verdict forms but also with a special verdict form of not guilty by reason of insanity, as to each offense charged, and in such event the court shall separately instruct the jury that a special verdict of not guilty by reason of insanity may be returned instead of a general verdict but such special verdict requires a finding by the jury that the defendant committed the acts charged but at the time of the commission of those acts the defendant was insane. In the event of a verdict of not guilty by reason of insanity, a hearing shall be held pursuant to the Mental Health and Developmental Disabilities Code[1] to determine whether the defendant is subject to involuntary admission. When the affirmative defense of insanity has been presented during the trial, the court, where warranted by the evidence, shall also provide the jury with a special verdict form of guilty but mentally ill as to each offense charged and shall separately instruct the jury that a special verdict of guilty but mentally ill may be returned instead of a general verdict but that such special verdict requires a finding by the jury beyond a reasonable doubt that the defendant committed the acts charged and that the defendant was not legally insane at the time of the commission of those acts but that he was mentally ill at such time.

(k) When, at the close of the State's evidence or at the close of all of the evidence, the evidence is insufficient to support a finding or verdict of guilty the court may and on motion of the defendant shall make a finding or direct the jury to return a verdict of not guilty, enter a judgment of acquittal and discharge the defendant.

(l) When the jury retires to consider its verdict an officer of the court shall be appointed to keep them together and to prevent conversation between the jurors and others. Upon agreement between the State and defendant or his counsel the jury may seal and deliver its verdict to the clerk of the court, separate, and then return such verdict in open court at its next session.

(m) In the trial of a capital or other offense, any juror who is a member of a panel or jury which has been empaneled and sworn as a panel or as a jury shall be permitted to separate from other such jurors during every period of adjournment to a later day, until final submission of the cause to the jury for determination, except that no such separation shall be permitted in any trial after the court, upon motion by the defendant or the State or upon its own motion, finds a probability that prejudice to the defendant or to the State will result from such separation.

[1] Chapter 91½, ¶ 1-100 et seq.

(Ch. 38, par. 115-6) [S.H.A. ch. 38, ¶ 115-6]

Sec. 115-6. Appointment of Psychiatrist or Clinical Psychologist. If the defendant has given notice that he may rely upon the defense of insanity as defined in Section 6-2 of the Criminal Code of 1961[1] or the defendant indicates that he intends to plead guilty but mentally ill or the defense of intoxicated or drugged condition as defined in Section 6-3 of the Criminal Code of 1961[2] or if the facts and circumstances of the case justify a reasonable belief that the aforesaid defenses may be raised, the Court shall, on motion of the State, order the defendant to submit to examination by at least one clinical psychologist or psychiatrist, to be named by the prosecuting attorney. The Court shall also order the defendant to submit to an examination by one neurologist, one clinical psychologist and one electroencephalographer to be named by the prosecuting attorney if the State asks for one or more of such additional examinations. The Court may order additional examinations if the Court finds that additional examinations by additional experts will be of substantial value in the determination of issues of insanity or drugged conditions. The reports of such experts shall be made available to the defense. Any statements made by defendant to such experts shall not be admissible against the defendant unless he raises the defense of insanity or the defense of drugged condition, in which case they shall be admissible only on the issue of whether he was insane or drugged. The refusal of the defendant to cooperate in such examinations shall not automatically preclude the raising of the aforesaid defenses but shall preclude the defendant from offering expert evidence or testimony tending to support such defenses if the expert evidence or testimony is based upon the expert's examination of the defendant. If the Court, after a hearing, determines to its satisfaction that the defendant's refusal to cooperate was unreasonable it may, in its sound discretion, bar any or all expert evidence upon the defense asserted.

[1] Paragraph 6-2 of this chapter.

[2] Paragraph 6-3 of this chapter.

Section 3. Section 5-2-5 of the "Unified Code of Corrections", approved July 26, 1972, as amended, is amended and Section 5-2-6 is added thereto, the amended and added Sections to read as follows:

(Ch. 38, par. 1005-2-5) [S.H.A. ch. 38, ¶ 1005-2-5]

Sec. 5-2-5. In any issue of determination of fitness of a defendant to plead, to stand trial, to be sentenced or to be executed, or in any issue related to insanity or to mental illness, a clinical psychologist as defined in paragraph (a) of Section 102-21 of the Code of Criminal Procedure of 1963 shall be deemed qualified to testify as an expert witness in the form of his opinion about the issue of fitness or insanity or mental illness and shall not be restricted to testifying with regard to test results only.

(Ch. 38, new par. 1005-2-6) [S.H.A. ch. 38, ¶ 1005-2-6]

Sec. 5-2-6. Sentencing and Treatment of Defendant Found Guilty but Mentally Ill. (a) After a plea or verdict of guilty but mentally ill under Section 115-2, 115-3 or 115-4 of the Code of Criminal Procedure of 1963, the Court shall

order a presentence investigation and report pursuant to Sections 5-3-1 and 5-3-2 of this Act[1] and shall set a date for a sentencing hearing. The court may impose any sentence upon the defendant which could be imposed pursuant to law upon a defendant who had been convicted of the same offense without a finding of mental illness.

(b) If the court imposes a sentence of imprisonment upon a defendant who has been found guilty but mentally ill, the defendant shall be committed to the Department of Corrections, which shall cause periodic inquiry and examination to be made concerning the nature, extent, continuance, and treatment of the defendant's mental illness. The Department of Corrections shall provide such psychiatric, psychological, or other counseling and treatment for the defendant as it determines necessary.

(c) The Department of Corrections may transfer the defendant's custody to the Department of Mental Health and Developmental Disabilities in accordance with the provisions of Section 3-8-5 of this Act.[2]

(d) (1) The Department of Mental Health and Developmental Disabilities shall return to the Department of Corrections any person committed to it pursuant to this Section whose sentence has not expired and when the Department of Mental Health and Developmental Disabilities determines no longer requires hospitalization for mental treatment, mental retardation, or addiction.

(2) The Department of Corrections shall notify the Director of Mental Health and Developmental Disabilities of the expiration of the sentence of any person transferred to the Department of Mental Health and Developmental Disabilities under this Section. If the Department of Mental Health and Developmental Disabilities determines that any such person requires further hospitalization, it shall file an appropriate petition for involuntary commitment pursuant to the Mental Health and Developmental Disabilities Code.[3]

(e) (1) All persons found guilty but mentally ill, whether by plea or by verdict, who are placed on probation or sentenced to a term of periodic imprisonment or a period of conditional discharge shall be required to submit to a course of mental treatment prescribed by the sentencing court.

(2) The course of treatment prescribed by the court shall reasonably assure the defendant's satisfactory progress in treatment or habilitation and for the safety of the defendant and others. The court shall consider terms, conditions and supervision which may include, but need not be limited to, notification and discharge of the person to the custody of his family, community adjustment programs, periodic checks with legal authorities and outpatient care and utilization of local mental health or developmental disabilities facilities.

(3) Failure to continue treatment, except by agreement with the treating person or agency, and the court, shall be a basis for the institution of probation revocation proceedings.

(f) The period of probation shall be in accordance with Section 5-6-2 of this Act[1] and shall not be shortened without

receipt and consideration of such psychiatric or psychological report or reports as the court may require.

[1] Paragraphs 1005-3-1 and 1005-3-2 of this chapter.
[2] Paragraph 1003-8-5 of this chapter.
[3] Chapter 91½, ¶ 1-100 et seq.
[4] Paragraph 1005-6-2 of this chapter.

Section 4. This Act takes effect upon becoming a law. [S.H.A. ch. 38, ¶ 6-2 note]

APPROVED: September 17, 1981 EFFECTIVE: September 17, 1981

TOWNSHIPS—ASSESSMENTS AND ASSESSORS—TOWNSHIP OFFICERS

PUBLIC ACT 82-554

SENATE BILL 1104

AN ACT amending certain Acts in relation to assessments and assessors and other township officers.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. Sections 1.3, 1.5, 1.6, 2, 2.2a, 2.2b, 7, 20g, 100, 106, 119, 146, 148a and 149 of the "Revenue Act of 1939", filed May 17, 1939, as amended, are amended, and Sections 2.2c and 131a are added thereto the amended and added Sections to read as follows:

(Ch. 120, par. 482.3) [S.H.A. ch. 120, ¶ 482.3]

Sec. 1.3. Role of Township and Multi-Township Boards of Trustees with Regard to Elected Assessors. After December 1, 1980, the several township boards of trustees of townships comprising a multi-township assessment district and the township board of trustees in townships which are not a part of a multi-township assessment jurisdiction shall, ex officio, constitute a multi-township or township board of trustees, as the case may be, for their respective assessment jurisdictions.

Each multi-township board of trustees shall organize and select one of its number as chairman, another as clerk and another as treasurer, and such officers shall serve a term of 2 years or until their successors are elected in like manner, except no person shall be a member of a multi-township board of trustees after the expiration of his term as a member of township board of trustees.

Such a multi-township board of trustees or township board of trustees shall have no power and duties with respect to property tax assessment administration matters except: (1) the power to allocate--the levy of taxes for 1981 and subsequent years necessary to provide the funds required by

Additions in text are indicated by underline; deletions by ~~strikeout~~

Barnes asks Walatka case audit

by Bill White
Beth Barrett
and Jeff Berliner
Times Writers

Jurors in the two Walatka murder trials are supporting a state representative's call for an investigation of the Anchorage district attorney's office.

In a letter Thursday to the legislative Budget and Audit Committee, Rep. Ramona Barnes, R-Anchorage, asked for the special audit to determine "if that agency (the district attorney's office) properly discharged the duties delegated to it in the prosecution of Timothy Hopkins, Dale Willhite and Scott Walker" for the murders last year of Mildred Walatka and her son, Herbert Oakley.

Willhite was given immunity by the prosecution for his testimony against the other two. Both defendents were acquitted of murder and convicted of several lesser charges.

Sen. Arliss Sturgulewski, R-Anchorage and chairman of the Legislative Budget and Audit Committee, said Barnes' request for an investigation will be discussed by committee members Saturday.

Today, District Attorney Larry Weeks lashed back at the Legislature, particularly Barnes who is chairman of the House Judiciary Committee. More convictions might be returned if the Legislature passed better laws and if more sophisticated jurors were chosen to hear "complicated" cases, Weeks charged.

Defending his handling of the Walatka case, Weeks said he was limited by the state laws that kept Walker and Hopkins from testifying in each others trials. As a result, each jury panel had to rely on the evidence of Willhite and the story of a single defendant.

"If the Legislature could pass a law forcing defendants to testify in one another's trial — not using that testimony against them — it would solve problems like this," Weeks said.

Barnes said today that she was not aware of that problem in the legal system. However, she said the audit was intended to look at those kinds of "breakdowns" in the system.

"This investigation is not trying to point a finger at Larry Weeks," she said. "It is an attempt to look at the entire system."

Weeks said the jury selection process in Alaska makes it more

(See AUDIT, page A-6)

difficult to win major convictions.

"Most people who are busy doing things and making decision in the world cannot take three weeks off for a complicated murder case," he said.

"Also, because there is a good deal of publicity in these cases, people who read newspapers or who watch the news also are excused.

"As a result, the people who are left tend not to have as much interest or experience in heavy decision making," he said.

But the majority of jurors in the Walatka murder case agreed with Barnes that the prosecutor's office should be investigated. Jurors interviewed by The Times said the state gave too good a deal to Willhite, that Willhite was not believable, that deals such as those made with Willhite should be looked into, that the prosecution did not have the evidence for a murder conviction, and that they were upset no murder convictions could be returned.

Weeks, however, said his office had "no evidence" that Willhite perjured himself. He said jurors in neither case got a complete picture, because they did not hear the testimony of both defendants and Willhite.

Willhite's attorney Ron Drathman today said he thought the district attorney made a "reasonable" deal. He would not comment on the state's handling of the rest of the case.

In response to juror's charges that the state mismanaged the case, Weeks said "we gave them everything we had."

"Sometimes people think that the state can find everything out, that is is all powerful," he said. "we can't always do that."

Weeks said the state asked for the first-degree murder charge, rather than a second-degree verdict, because it seemed "a clear execution," kind of murder. Although a second-degree murder charge — five to 99 years — technically could have been requested, Weeks said it was not applicable in the Walatka case.

"In this case it was first degree or nothing," he said. "If, for example, the Walatkas had been kidnapped and then killed in a car wreck, that would be a felony (or second degree) case. But that was not the situation here."

Also, Weeks said the kidnapping charge — which jurors returned against both Walker and Hopkins — carried the same sentence as a second-degree murder verdict would have.

Nearly half of the jurors in the Walker and Hopkins cases were contacted.

"There should be an investigation into the kind of deals they give," said Michael Richardson, jury foreman in the Walker case. "I think they went too far. That should be investigated."

Richardson said he agreed with a defense statement that Willhite's immunity from prosecution represented "the best deal the state's ever given a criminal."

The Walker jurors not only objected to Willhite's immunity, but also found him difficult to believe and confronted Weeks with this.

Knowing that Willhite's grant of immunity did not extend to perjury, the jurors collectively and individually suggested Weeks prosecute Willhite for lying under oath.

Weeks reportedly told the jurors that would be difficult to do and that Willhite's testimony was needed in the Hopkins trial which was scheduled to start immediately after the Walker verdict was returned.

Jurors in the Walker case said that, following the verdict, Weeks approached the jurors and said: We don't have much evidence against Hopkins, our case is not as strong, and you can help us.

The district attorney then asked jurors about their misgivings in the Walker case to help strengthen the Hopkins case.

However, if there was one single issue that united the jurors after they returned their split verdict against Walker, it was that Willhite perjured himself and the prosecution simply did not have the evidence for a conviction.

Juror Joan Nelson said the Walker jury might have returned a guilty verdict for second-degree murder but did not have that option.

"The state is a little bit guilty in my opinion," said Nelson, "I'm kind of sour on the whole system because of this."

Nelson said she planned to send a telegram to Barnes supporting an investigation of the district attorney's office.

"We wanted him (Weeks) to get Willhite for perjury at least," said Nelson, "but he said they needed him to get a conviction for Hopkins."

That two people are dead and none of the three involved was convicted of murder is all "a little game," said Nelson.

Several jurors suggested the district attorney should have brought the lesser charges against Willhite.

"To me they could have gotten all three of them on kidnap, burglary and theft, the three lesser charges," said Gary Stevens, a juror in the Hopkins case.

"They shouldn't have given Willhite that kind of deal. They could have gotten him on lesser charges," said Pamela Cowdery, a juror in the Walker case.

Asked whether there should be an investigation of the district attorney's office, Cowdery replied, "I don't think it would hurt."

Jennifer Colvin called it "sickening and frightening" that no murder convictions could be returned. She served on the Hopkins jury.

"There wasn't enough evidence," said Colvin. "It was a hard case, and with what they (the district attorney) had, they did a good job. But they dealt with Willhite too quickly and gave him too much freedom and leeway."

Bill Cobb's draft

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.082, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was insane and consequently lacked substantial capacity to appreciate the nature and quality of his conduct.

(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 of insanity under (a) of this section,

(c) A defendant found by a preponderance of the evidence to be insane at the time of the offense shall be found "not guilty by reason of insanity". ~~if otherwise the verdict would have been guilty.~~

*Section 2, AS 12.45.083 is repealed and reenacted as follows:

Sec. 12.45.083, GUILTY BUT MENTALLY ILL,

A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct, cannot be found "not guilty by reason of insanity", and may be found "guilty but mentally ill", if otherwise the verdict would have been guilty. For purposes of this section, "mental illness" or "mentally ill" means a

disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which substantially impaired the person's judgment, but not to the extent that he was unable to appreciate the nature and quality of his conduct.

*Section 3, AS 12.45., is amended to add a new section as follows:

Sec. 12.45.084, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.082 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill,

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.085 is amended to read as follows:

Sec. 12.45.085. EVIDENCE OF MENTAL DISEASE OR DEFECT. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant <u>was or was not insane or mentally ill, or</u> did or did not have a state of mind which is an element of

the offense. However such evidence [OF MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] is not admissible unless the defendant, at the time of entering his plea of not guilty or within 30 [10] days thereafter [OR AT SUCH LATER TIME AS THE COURT MAY FOR GOOD CAUSE PERMIT] files a written notice of his intent to rely on that defense.

*Section 5, AS 12.45, is amended by adding a new section to read:

Section 12.45.086, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found guilty but mentally ill under AS 12.45.084, the court shall

(1) enter the finding of guilty but mentally ill as part of the judgment

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found guilty but mentally ill. The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety, or until his sentence is completed, whichever occurs first. The department shall determine the course of treatment. When treatment terminates under this subsection the defendant shall be required to serve the remainder of

his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

(c) Nothing in this section limits the discretion of the court to recommend, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged guilty but mentally ill.

(d) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the nature and quality of his conduct.

*Section 6, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity, under AS 12.45.081 he shall also file notice as to whether, if found not guilty by reason of insanity, he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety. That notice by the defendant shall be admissible evidence in the criminal trial, where evidence of the affirmative defense of insanity has been admitted at the request of the defense.

(b) If the defendant is found not guilty by reason of insanity and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 7, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.081 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict must be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section.] and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the

defendant was acquitted under AS 12.45.083(A)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 8, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not

required that the mental illness be sufficient to exclude criminal responsibility under AS 11.81.635, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 4. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] ~~three~~ two disinterested qualified psychiatrists [OR A FORENSIC PSYCHOLOGIST CERTIFIED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY,] OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH

DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to

the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

~~(6) if directed by the court, an opinion as to the extent,~~ if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law was impaired at the time of the criminal conduct charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

~~*Section 10, AS 12.45.083(d) is repealed.~~

*Section 11. This act takes effect immediately in accordance with AS 01.10.070(c)

SECOND WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.081, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45 is amended by adding a new section to read as follows:

Sec. 12.45.082, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.082 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(5) not guilty but mentally ill,

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.033, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. The department shall determine the course of treatment. If prior to the end of the sentence treatment terminates under this subsection, the defendant shall be required to serve the remainder of his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

(c) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(d) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or

behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY BUT MENTALLY ILL. If a defendant is found "not guilty but mentally ill" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two disinterested qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH

DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to

the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.081, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness

that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall

order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if

he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 9, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by

either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 10. This act takes effect immediately in accordance with AS 01.10.070(c)

THIRD WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-19-82
5:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough or parole.

(e) If, 30 days before the end of a defendant's sentence, the defendant is still receiving treatment under subsection (b), the Commissioner shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. If a defendant is found "not guilty" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of <u>insanity</u> [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that <u>insanity or mental illness</u> [MENTAL DISEASE OR DEFECT OF THE DEFENDANT]

will otherwise become an issue in the cause, the court shall appoint at least [ONE] two disinterested qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.081, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reasc of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of <u>insanity under AS 12.45.080</u> [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] <u>of "not guilty by reason of insanity"</u>, to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] <u>the same</u> jury, <u>unless the criminal trial was without a jury.</u> [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING

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SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c)

of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic

written reports to the court on the mental condition of a person committed under this section.

*Section 9, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 10. This act takes effect immediately in accordance with AS 01.10.070(c)

Phillips

FOURTH WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-20-82
5:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough or parole.

(e) If, 30 days before the end of a defendant's sentence, the defendant is still receiving treatment under subsection (b), the Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. If a defendant is found "not guilty" under AS 12.45.082, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of the defendant to determine the need for further treatment of the defendant under the civil commitment laws.

*Section 6. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of <u>insanity</u> <u>under AS 12.45.080</u> [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that <u>insanity or mental illness</u> [MENTAL DISEASE OR DEFECT OF THE

DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two ~~disinterested~~ qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

(f) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought,

mood, or behavior which afflicted a person at the time of the commission of the offense and which imparied the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 7, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 8, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further

commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined

or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public

peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 9, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is

"dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 10. This act takes effect immediately in accordance with AS 01 10.070(c)

FIFTH WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-22-82
1:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough or parole.

Public Safety Dangerous to Society? Need Statistics — have.

(e) The Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence if:

(1) less than 30 days remain before the end of the defendant's sentence;

(2) the defendant is still receiving treatment under subsection (b); and

(3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill.

(g) For purposes of this section, except for subsection (e), "mental illness" or "mentally ill" means a disorder of thought, mood, or behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.080.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. (a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that

individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082;and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 6. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental illness is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental illness which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental illness, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

(d) As used in this section, "mental illness" has the meaning ascribed to it in AS 12.45.081.

*Section 7. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the

unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

(f) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which imparied the person's judgment, but not to the extent that he was insane under AS 12.45.080.

*Section 8, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court

shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 9, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to

exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the

defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 10, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not

required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 11. This act takes effect immediately in accordance with AS 01.10.070(c)

SIXTH WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-25-82
11:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

(e) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense was not insane but lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be relieved of criminal responsibility for his conduct and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation,

which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough, work release, or parole.

(e) The Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence if:

(1) less than 30 days remain before the end of the defendant's sentence;

(2) the defendant is still receiving treatment under subsection (b); and

(3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. (a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 6. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A

defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

*Section 7. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of <u>insanity under AS 12.45.080</u> [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at

least [ONE] two qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 8, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 9, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE

SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT

THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 10, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 11 This act takes effect immediately in accordance with AS 01.10.070(c)

SEVENTH WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

5-26-82
11:00 p.m.

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

(e) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) In all cases in which the defendant raises the affirmative defense of "insanity" under AS 12.45.080, the defendant may be found "guilty but mentally ill" if the mental disease or defect which afflicted him does not rise to the level of "insanity" under AS 12.45.080. A defendant who, at the time of the commission of a criminal offense was not insane but lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be relieved of criminal responsibility for his conduct.

(b) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity,

(4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue

until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough, work release, or parole.

(e) The Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigation to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence if:

(1) less than 30 days remain before the end of the defendant's sentence;

(2) the defendant is still receiving treatment under subsection (b); and

(3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and

Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY. (a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082;and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

*Section 6. AS 12.45.085 is repealed and re-enacted to read:

Sec. 12.45.085 POST-CONVICTION DETERMINATION OF MENTAL ILLNESS.

(a) In cases in which the defendant does not raise the affirmative defense of insanity under AS 12.45.080 and is convicted of a crime, the defendant, the prosecuting attorney, or the court on its own motion may raise the issue of whether the defendant is guilty but mentally ill. A hearing must be held on this issue at or before the sentencing hearing. At the hearing the court shall determine whether the defendant has been shown to be guilty but mentally ill by a preponderance of the evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

(b) If a court finds that a defendant is guilty but mentally ill as part of the judgment. The court shall sentence the defendant as provided by law.

(c) A defendant determined to be guilty but mentally ill under this section is subject to the provisions of AS 12.45.083(b)-(h).

(d) A defendant convicted of a crime is guilty but mentally ill if, when he engaged in the criminal conduct, he lacked, as a result of a mental disease or defect the

substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(e) In this section "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

*Section 7. AS 12.45.085 is amended to read:

Sec. 12.45.085 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

*Section 8. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least [ONE] two qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE

HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant

to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of tnis section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 9, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert

that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 10, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines

that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until [THE MENTAL DISEASE IS CURED OR THE DEFECT CORRECTED] the defendant is not presently suffering from any mental illness that causes him to be dangerous to the public as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release

shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 11, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 12. This act takes effect immediately in accordance with AS 01.10.070(c)

(2nd) -combined

FINAL WORK DRAFT FOR
INSANITY DEFENSE AMENDMENTS TO
HCS CS SB 535 (Judiciary)

*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.081, INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(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,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

*Section 2, AS 12.45 is amended by adding a new section to read as follows:

Sec. 12.45.082, GUILTY BUT MENTALLY ILL,

(a) A defendant who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility

for his conduct, and may be found "guilty but mentally ill." He may not be found "not guilty by reason of insanity."

(b) For purposes of this section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired the person's judgment, but not to the extent that he was insane under AS 12.45.081.

*Section 3, AS 12.45.083, is repealed and reenacted to read as follows:

Sec. 12.45.083, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.082 the jury shall find and the verdict shall state whether the defendant is:

(1) guilty;

(2) not guilty;

(3) not guilty by reason of insanity; or

(4) guilty but mentally ill,

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

*Section 4, AS 12.45, is amended by adding a new section to read:

Section 12.45.084, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.083, the court shall

(1) enter the finding of "guilty but mentally ill" as part of the judgment; and

(2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety, or until his sentence is completed, whichever occurs first. The department shall determine the course of treatment. Wher treatment terminates under this subsection the defendant shall be required to serve the remainder of his sentence. This subsection does not authorize the department to hold a defendant in custody except as provided by the sentence imposed.

(c) Nothing in this section limits the discretion of the court to recommend, or of the Department of Health and Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(d) For purposes of this section, "mental illness" or "mentally ill" means a disorder of thought, mood, or

behavior which substantially afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he was insane under AS 12.45.081.

*Section 5. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that insanity or mental illness [MENTAL DISEASE OR DEFECT OF THE DEFENDANT] will otherwise become an issue in the cause, the court shall appoint at least [ONE] two disinterested qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE HIMSELF,] to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period

as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

(1) a description of the nature of the examination;

(2) a diagnosis of the mental condition of the defendant;

(3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

*Section 6, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.081, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.081, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

*Section 7, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.081 [MENTAL DISEASE OR DEFECT AS EXCLUDING RESPONSIBILITY] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to

exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(a)(3) or until the insanity [MENTAL DISEASE] is cured or [THE DEFECT IS] corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083(A)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

*Section 8, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) An order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude

criminal responsibility under AS 11.81.635, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

*Section 9. This act takes effect immediately in accordance with AS 01.10.070(c)

Hinckley before Judge Barrington D. Parker, as psychiatrist John

The Insanity Plea on Trial

John W. Hinckley Jr. is every family's nightmare come to life. He is the child who drifts off into private hells of depression, despair and finally irrevocable disaster, leaving his parents only the bitterness of "perhaps," the futility of "if only." He was raised in a home where success came naturally and opportunity lay ready for the asking. He lacked nothing that carried a price tag. But he had no friends. He imagined a lover, then wandered into fantasies about a movie star he could barely talk to, let alone impress. This was the picture that emerged last week as Hinckley's lawyers began the painful task of trying to convince a jury that he should not be held responsible for shooting the President of the United States.

The case against Hinckley is as clear an example of attempted murder as any jury will ever see on videotape. Bereft of any alibis, his lawyers have chosen to advance what has been called the defense of last resort: insanity. They face heavy odds, for they must lead the jury of five men and seven women to suppress the evidence they can see and accept the evidence of Hinckley's invisible psyche. The lawyers don't dispute that Hinckley planned the attack, bought special bullets, tracked the President and fired from a shooter's crouch. But he couldn't help it, they insist, for he was responding only to the driving forces of a diseased mind.

Denounced: It is not a propitious time to be making their plea. For even as Hinckley sits stolidly in Room 19 of Washington's Federal District Court, the insanity defense itself is on trial across the nation. What once was routinely regarded as a standard part of any civilized legal system is now denounced in Congress and many state legislatures. One state, Idaho, has abolished the defense completely. Bills in two dozen other states would replace it with a new plea—guilty but mentally ill.

The surprise is that the insanity defense has withstood most of the withering attacks. The criticism of the last decade has been constant, pointed, but often contradictory. Among the charges: that it spurs crime, frees criminals, relies too much on experts, holds psychiatrists up to ridicule, sends troublemakers to hospitals and defies definition. Some even charge that it hurts the defendants it spares. "The defense is comforting to our conscience but not to the accused," says University of Chicago law Prof. Norval Morris. The defendant ends up with a double stigma—he's bad and he's mad.

In fact, defendants seldom use the defense and rarely succeed. Some of the most publicized killers of our time have tried one form or another of the plea—Jack Ruby, Sirhan Sirhan, John Wayne Gacy (who murdered 33 young boys in Chicago)—but they all failed. "Son of Sam" David Berkowitz, Charles Manson, Mark David Chapman—all colloquially "certifiable"—never even raised it at trial. In all, according to a national study, only about 3,100 persons held in mental hospitals in 1978 had been acquitted of crimes on a plea of insanity.

The struggle is actually a profound con-

Illustration for NEWSWEEK by Frank Morris

oper testifies about his former patient

flict over principle. Juries are eager to protect their communities from people who are dangerous, for whatever reason. But legal scholars say that criminals must have *mens rea*, "a guilty mind"; that in order to be punished, they must have intended to break the law. If conduct is all that counts, the scholars argue, then the 5-year-old who squeezes the trigger of his father's pistol can be guilty of murder. "The insanity defense is the exception that proves the rule," says Alan Stone, a psychiatrist who teaches at Harvard Law School. "It demonstrates that all other criminals have free will, the ability to choose between good and evil."

Kick in the Pants: Pleading insanity is far easier than proving it. Hinckley's lawyers must do more than show that he was a disturbed young man. They must convince the jurors, in the language of the law, that his mental illness was so severe that he "lacked substantial capacity to appreciate" the wrongfulness of his acts and could no longer control his own conduct. That inexact standard forces the lawyers to lead the jurors through an exploration of Hinckley's troubled mind. The defense relied on three riveting witnesses last week to begin filling in the details. Dr. William T. Carpenter, a University of Maryland psychiatrist, charted Hinckley's evolution from teen-age failure to "process schizophrenic." Dr. John J. Hopper, a private psychiatrist who treated the family, described the failure of his prescribed kick-in-the-pants program of therapy. And Hinckley's father, weeping openly, tried to explain how a national tragedy had sprung, in his view, from a family that turned its back on a troubled son.

The testimony focused on the six months leading up to the shooting. During this period, the defense contends, Hinckley appeared outwardly the ne'er-do-well son of a prosperous family, when in fact his personality was collapsing. The lawyers argue that Hinckley's illness had been hidden even from Hopper, the Evergreen, Colo., psychiatrist his parents insisted he see. Last week Hopper told the jury that he sized Hinckley up as a rather "typical" socially underdeveloped young man who exaggerated his "obsessions" and other mental problems.

During his seven hours on the witness stand, Hopper seemed to be under almost as much suspicion as his former patient. Not only did his diagnosis seem rather casual in retrospect, but also, the defense lawyers insisted, badly flawed, considering a three-page autobiography Hinckley wrote for the doctor in November 1980. In it he described the period from mid-September to mid-October as "a month of unparalleled emotional exhaustion. My mind was on the breaking point the whole time. A relationship I had dreamed about went absolutely nowhere. My disillusionment with EVERYTHING was complete." (Hinckley was referring to a full trip to Yale University where he approached actress Jodie Foster, then a freshman. She rebuffed his advances.) Elsewhere in his essay, Hinckley told the doctor, "I have remained so inactive and reclusive over the past 5 years I have managed to remove myself from the real world."

'Plan': Under questioning by defense lawyer Gregory B. Craig, Hopper conceded what is now obvious—that he did not show "as much concern [for John] as we all realize now that we should have." He persuaded the elder Hinckleys to deal with their son in a firm fashion. When they considered hospitalizing John in mid-December to cure his suspected dependence on Valium, Hopper talked them out of it. John, he said, would become a "mental cripple." Instead, Hopper and the Hinckleys formulated a "plan" to force the youth out of the house by March 30—as it happens, the day he shot Reagan.

Hinckley's parents, particularly his father, clung to Hopper's regimen. But it never seemed to work. When John quit a handyman's job after only a few days of work in February 1981, he simply disappeared. The next time his parents heard from him was in the early-morning hours of March 6. He called from New York, incoherent, broke and hungry, begging for a ticket home. Hopper advised them to let John stew a day in New York first. They followed the doctor's advice.

Last week John Hinckley Sr. told the jury that forcing his son out of the house was the "greatest mistake" of his life. Testifying after the psychiatrist, he described his last scene with John when his son flew back to Denver from New York on March 7. "On the way to the airport, I prayed that we were doing the right thing," Hinckley began. "His mother couldn't go with me. She couldn't bring herself to do it." He found his son in bad shape. "He was dazed, wiped out. He could hardly walk from the plane." They talked in a waiting room. "I told him how disappointed I was in him, how he had let us down, how he had not followed the plan we had all agreed on, how he left us with no choice but not to take him back again." He handed his son a couple of hundred dollars and suggested he stop at a YMCA.

At that point the elder Hinckley, an erect, self-made man, had trouble speaking. "OK, you're on your own. Do whatever you want," were his final words to John. "In looking back on that, I'm sure that was the greatest mistake of my life. I am the cause of John's tragedy. We forced him out at a time when he just couldn't cope. I wish to God that I could trade places with him right now." Hinckley began weeping quietly into his handkerchief. His wife was led out of the courtroom sobbing. John Jr. sat rigidly at the defense table and showed no emotion.

It has been controversial for years, and now the case of John Hinckley Jr. may fundamentally alter it.

Despite the strong impact of Hinckley's testimony, it was fodder for the prosecution. On cross-examination he conceded that he had never heard his son complain about voices in his head or disorientation. If John was so disturbed the prosecution implicitly asked, why had no one close to him seen it? For an answer, the defense turned to its expert on schizophrenia, psychiatrist Carpenter. He told the jury that beneath Hinckley's demeanor of placid failure lay a maelstrom of fantasies and obsessions that robbed him of his power to reason.

Carpenter, who has interviewed the defendant for 45 hours since the shooting, traced John's problems back to his adolescence. As a teen-ager, Carpenter said, John began an irreversible withdrawal. He had no friends. Music consumed his youth, yet he always played alone in his room. (His parents heard him perform for the first time last week when lawyers played a tape of a love song he recorded for Foster.) At college he invented a girlfriend as a ploy to get more money from home. Later, Carpenter said, "she became real to him." She was also an

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Stalking a President: Hinckley waits for Reagan outside the Washington Hilton

article of faith for the elder Hinckleys; they didn't learn she was a ruse until after their son's arrest.

By 1979, Carpenter said, Hinckley could barely separate reality from his own delusions. With no friends, a deteriorating relationship at home and no strong sense of identity, he latched on to the characters in the movie "Taxi Driver." He began collecting guns like the film's protagonist, Travis Bickle. And he became obsessed with Foster, who played the role of a 12-year-old prostitute Bickle rescued in a spasm of violence. He spent the summer of 1980 "despairing and depressed" until he hatched a plan to meet Foster. He told his parents he was enrolling in a writing course at Yale. They gave him $3,600 and he headed for New Haven and his "magical and extraordinary union." What he found instead was a teen-age celebrity who politely brushed him off. In a tape recording of one phone conversation played for the jury last week, Foster tried to explain why they couldn't meet. "I can't carry on these conversations with people I don't know. It's dangerous, and it's just not done, and it's not fair, and it's rude."

Replied Hinckley: "Well, I'm not dangerous. I promise you that."

'Fantasy World': Getting nowhere with Foster, Hinckley reverted to the Bickle character. He bought more guns. He traveled the country and took target practice. He began stalking Jimmy Carter, and once he even flew to New York looking for young prostitutes who needed help. Hinckley, said Carpenter, spent only a few minutes of each day dealing with reality. The rest of the time he was "in his fantasy world . . . There wasn't an incoherence in his thinking, but there were the inner dictates from his inner world that were guiding him."

Hinckley periodically appeared in Colorado for sessions with therapist Hopper. Carpenter said the two were "worlds apart." Hinckley did not level with Hopper because the psychiatrist was also treating his parents. At the same time, Hinckley was dropping tantalizing hints that Hopper failed to pursue.

The slide toward madness, Carpenter said, was now precipitous. When Mark David Chapman killed Hinckley's idol, John Lennon, Hinckley identified with both men. One verse he wrote at the time began: "Inside this mind of mine I commit first-page murder. I think of words that would alter history . . . This mind of mine doesn't mind much of anything unless it comes to mind that I'm out of my mind."

On New Year's Eve he recorded a "message to the world" that the jury heard last week. "It's gonna be insanity if I even make it through the first few days . . . Anything that I might do in 1981 would be solely for Jodie Foster's sake. And I mean that sincerely. I wanna make some kind of statement or something on her behalf . . . All I want her to know is that I love her. I don't want to hurt her or anything. I can't hurt anybody, really. I'm such a coward, really."

When his parents cut him off in early March, Carpenter says, John lost his "last important links with the real world." He checked into a Denver motel as J. Travis. He entertained notions of a mass slaughter at Yale, or hijacking a plane and demanding Foster as the ransom. Then he took a bus to Washington, planning on laying over on his way to New Haven and death. Once in the capital, Carpenter says, Hinckley spotted a copy of Reagan's schedule for the next day and changed his plans. But first he wrote a final love letter to Foster. "I will admit to you that the reason I'm going ahead with this attempt now is because I just cannot wait any longer to impress you," he wrote. "I've got to do something now to make you understand . . ."

Outside the Hilton Hinckley found that it was easy to get close to the Presidential party. As Reagan walked into the hotel, he waved to the crowd; Carpenter said Hinckley took that as an omen. On the way out Reagan waved again. Then Hinckley began shooting.

Inner Drives: At the end of his two days of testimony, Carpenter offered his professional opinion that Hinckley suffers from a serious form of "process," or slowly developing, schizophrenia that got worse as he aged. The disease, Carpenter contended, rendered Hinckley criminal insane: while he knew that shooting Reagan was illegal, Hinckley did not "appreciate" what he was doing. "In his mental state," Carpenter said, "[the victims] were bit players . . . and were not, in and of themselves, important." Hinckley had lost the ability to control himself, and was responding only to his diseased inner drives.

The defense expects to call two more psychiatrists and a psychologist to bolster

Hinckley's father on his way to court, Foster in 'Taxi Driver': Every family's nightmare

Bruce Hoertel

Steve Schapiro—Transworld

its case. Those experts will describe for the jury still more bizarre fantasies. Then the jury will hear from the prosecution's doctors; once the defense raises the issue of mental health, the government must prove beyond a reasonable doubt that the defendant was sane. The prosecutors plan to rely on several doctors who have testified in other prominent cases. The thrust of their argument will be that for all Hinckley's troubles, he can still be held responsible for his behavior.

The insanity defense has evolved over the centuries as a small but important concept in Western law. The basic idea has always remained constant: a civilized society should not punish a person mentally incapable of controlling his conduct. The modern standard developed in the 1840s after a British jury acquitted Daniel M'Naghten, a deranged man who killed Prime Minister Robert Peel's private secretary in an attempt on Peel's life. The M'Naghten rule, which most U.S. courts adopted, requires, in effect, that the defendant must not have understood right from wrong when he committed the act. Over the next century many states added "irresistible impulse" as a second reason for absolving a defendant from a crime.

Legal Morass: In the 1950s, however, as Harvard's Alan Stone wryly recalls, the great modern romance between law and psychiatry began. Nowhere was the fervor as ardent as in Washington, where U.S. Court of Appeals Judge David Bazelon created the *Durham* rule. This controversial doctrine greatly broadened the grounds for an insanity plea: it covered defendants who could prove that their crimes were a "product" of a mental disease or defect. Bazelon invited psychiatrists into the courts and optimistically predicted a new world of jurisprudence. Instead, the Durham rule produced a legal morass. Critics charged that psychiatrists dominated trials and that their evidence confused more than it clarified. Defendants were tempted to feign mental illness. One doctor practicing in Washington said that hospital wards soon filled up with "the sick and the slick." Ten years ago the appeals court overruled Durham and turned to the narrower test Hinckley's lawyers must satisfy, a modern fusion of the M'Naghten and impulse tests.

Because of the notoriety surrounding cases like Hinckley's, the public has an exaggerated notion both of who uses the insanity defense and who gets away with it. In California only 259 defendants out of 52,000 convicted felons successfully pleaded not guilty by reason of insanity in 1980. Last year Bridgewater State Hospital, Massachusetts' maximum-security institute for criminal insane males, examined about 500 men for their competency to stand trial. Many had been charged with minor offenses, such as refusing to pay a highway toll, and more than 100 had been admitted for vagrancy. "When the public hears 'insanity defense,' it tends to think of the chronically psychotic, the kooks of the world," says Dr. Robert A. Fein, director of Bridgewater's psychiatric-rehabilitation program. "But most of these individuals aren't psychotic. They just can't make it in society and the judge doesn't want to put them in jail."

In many cases insanity is a plea of last resort. "The stronger the evidence and the more severe the penalty, the greater the likelihood of an insanity defense," says District Attorney Cal Dunlap of Reno, Nev. In 1977 an Indianapolis man named Anthony Kiritsis strapped a shotgun to the head of the mortgage banker who planned to foreclose on Kiritsis's real-estate project. It was a scene flashed on television screens across the nation. Kiritsis was found not guilty of kidnapping by reason of insanity, and today he remains in the hospital ward of the Indiana State Reformatory at Pendleton. In an interview last week Kiritsis said he regards himself as a "political prisoner."

Bettmann Archive

Nineteenth-century cartoon: The slick join the sick

Even when a defendant seems certifiably insane, juries are often reluctant to acquit, particularly if the crime is a heinous one. A few years ago Houston police arrested 16-year-old Calvin Hopkins for killing a 92-year-old woman. Hopkins obviously had problems. His mother dressed him in her clothes and insisted that he kiss the walls of their house. He had a record of cruelty to animals. On the last day of the trial he wore lipstick and rouge to court. But the jury found him sane and convicted him; he was sentenced to 40 years in prison. In a more macabre case, Sacramento's "vampire killer," Richard Chase, murdered six people in the winter of 1977 and drank the blood of several of his victims. "He was as far out as you can get," says Ronald Markman, a forensic psychiatrist in Los Angeles. Nevertheless, a jury found Chase sane and sentenced him to death (he later committed suicide in San Quentin). "Juries do not tend to buy insanity in multiple-murder cases," says Markman. "They do in cases that do not involve social outrage. For killing a wife and kids, insanity may be okay. But not for killing a dozen neighbors." As John Gaffney, a Boston attorney, says: "A lot of truly insane people have been convicted. The juries see that these nuts have killed. They're afraid that they will get out and kill again."

Incompetent: Adding to those fears are the "deinstitutionalization" policies of the nation's mental hospitals. Twenty years ago, before the widespread use of psychotropic drugs, the criminal insane were usually incompetent to stand trial; they were locked up for life in mental institutions. But in 1972 the Supreme Court ruled that defendants found incompetent to stand trial because of mental illness could not be held interminably; the rule of thumb now is to try or release these patients within eighteen months. At the same time civil libertarians won court judgments that freed nondangerous patients who weren't receiving treatment. The difficulty, says Dr. Stanley Portnow, president of the American Academy of Psychiatry and the Law, is that "we don't have very good data on which to predict dangerousness."

In some states the combination of new law and new therapeutic practice set mental patients free too quickly for the public's taste. During the 1970s in Michigan, 124 of 223 criminal insane defendants were released after a 60-day hospital stay. Inevitably, the revolving door occasionally leads to tragedy. In Georgia a Savannah man was twice released from hospitals after two juries found him insane. After he was sprung the last time, he walked into a hotel lounge and killed his wife and two bystanders.

As a result of cases like that, New York now insists that a judge approve the release of all criminal insane patients from mental hospitals; and consequently, patients there spend about as much time in hospitals as comparable felons do in prison. Other states have gone much further, calling into

question the premise that only people who commit crimes with "blameworthy minds" can be punished. Michigan, Indiana, Illinois and Georgia, for instance, have come up with a new verdict: "guilty but mentally ill." Typically, a judge sentences a defendant found guilty but mentally ill exactly as he does a sane defendant found guilty of the same offense. The intent is for a convict to start out his term in a hospital and be transferred to a prison after treatment. In one Michigan study, however, more than 75 percent of convicts went straight to prison and received no treatment. Most of the others had only an occasional visit from a corrections-department psychiatrist. "Guilty but mentally ill is a fraud and a sham," says Bruce Ennis, former national legal director of the ACLU, and now a lawyer in private practice. "It has no consequence other than straight guilty."

Idaho has taken the boldest step against the insanity defense, wiping it off the state's statutes, effective July 1. The new law does not ban all evidence of mental illness. A defendant can still argue he was so sick that he literally didn't know what he was doing—that he thought he was squeezing lemons while he was strangling someone. But this is a far more stringent test than "the capacity to appreciate," and Idaho has thus ruled out arcane psychiatric debates over what constitutes mental illness. Chicago's Norval Morris supports Idaho's approach. "The insanity defense is witches and warlocks, ritual and liturgy," he says. Morris argues that the only proper issues in a case like Hinckley's are whether the defendant intended to shoot someone, and what kind of treatment he should get.

Even in California, traditionally one of the states most sympathetic to using psychiatrists in court, the defense has run into trouble. Since the 1950s California has allowed a plea of "diminished capacity," a variation of the insanity defense that comes into play if the defendant lacks the ability to "meaningfully premeditate the crime." A defendant who makes his case does not go free, but he is convicted of a lesser offense—manslaughter instead of murder. Popular support for diminished capacity was severely dented in 1979 when it became known as "the Twinkie defense." At his trial, killing San Francisco Mayor George Moscone and city supervisor Harvey Milk, Dan White argued that his mental faculties had been impaired by a steady diet of junk food. After the jury found him guilty of manslaughter, angry crowds damaged San Francisco's city hall. Last session the California State Legislature thought it had repealed the rule. But prosecutors say the poorly worded new statute has only

The Case for the Victim

As expert witnesses debate John Hinckley's sanity in a Washington courtroom, psychiatrist Willard Gaylin will follow the testimony from a safe distance in his Hastings, N.Y., office. Gaylin, who refuses to testify in criminal cases, has nothing but contempt for the current use of the insanity defense. "It has been degraded to a point of professional embarrassment," he writes in a book to be published next week.*

Gaylin makes his case by telling the harrowing story of one crime and punishment. In the early morning hours of July 7, 1977, Richard Herrin killed his college girlfriend, Bonnie Joan Garland, while she was asleep at her parents' home in Scarsdale, N.Y. Richard and Bonnie were students at Yale: he had been recruited from the Los Angeles barrio; she was the product of a fashionable education at the Madeira School in Virginia. They were lovers for three years, but when Bonnie wanted more freedom, Richard bludgeoned her with a claw hammer until her head, he said, "broke open like a watermelon." Smeared with Bonnie's blood, Herrin turned himself in to a priest and then to the police. The Roman Catholic community at Yale immediately rallied around him with financial and legal assistance. Herrin, who pleaded not guilty by reason of insanity, was convicted of manslaughter performed under extreme emotional duress. A judge sentenced him to prison for a minimum of eight years.

Tony Ruiz—Newsweek

Garland, Herrin: 'Certain crimes demand public censure'

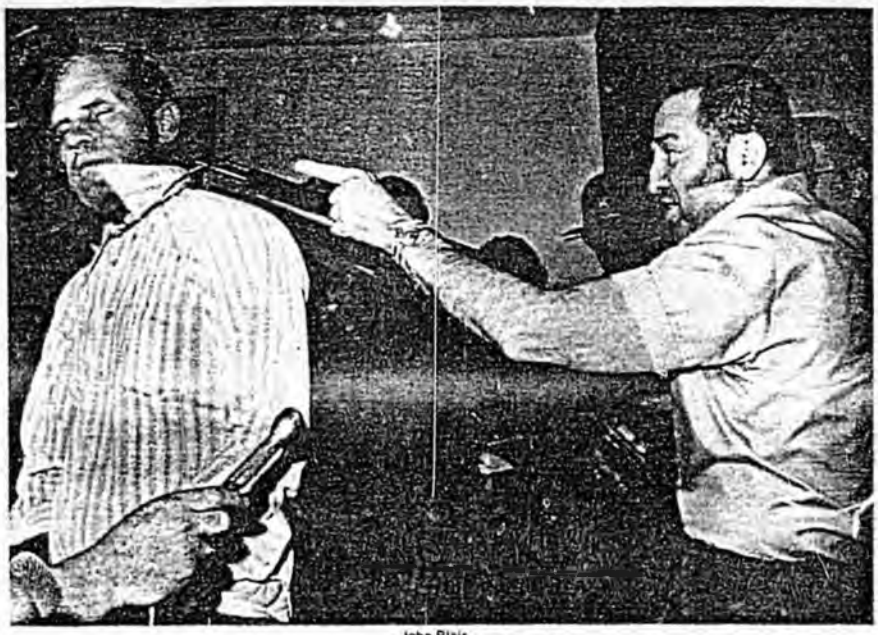
Gaylin's account is partly a story of how the criminal "usurps the compassion that is justly his victim's due." Except in the Garland family, he writes, "more tears have since been shed for the killer than for his victim." The book also explores the uneasy alliance between law and psychiatry. The trouble, Gaylin says, is that each discipline has its own peculiar—and conflicting—field of vision. The law rests on the notion of free choice and individual responsibility. But modern psychiatry is the province of determinism. "All acts—healthy, sick or not-sure-which—share one property," writes Gaylin. "They are predetermined."

Gaylin has little use for most psychiatrists who serve as expert witnesses. "If you drew up a list of the 50, 100 or 10,000 most prominent psychiatrists in the country," he said in an interview, "the doctors that lawyers use would not be on the list." Too many of these witnesses become advocates, he says, and that means abandoning their proper roles. "To be a physician and advocate, to see ambiguity everywhere and feel committed to [express] certitude will inevitably undermine the integrity of [the witness] and confound the purposes of justice," he concludes. To make matters worse, lawyers vary widely in their abilities to use a psychiatrist skillfully. At Herrin's trial, Gaylin writes, the prosecutor was so concerned with rebutting the insanity plea that he overlooked testimony from one of his own witnesses that while Herrin was extremely disturbed at the time of the killing, he was not ill enough to be absolved of responsibility for it. The jury didn't miss the point; it used that diagnosis to find Herrin guilty of manslaughter.

Blame: Gaylin did not consider that verdict inappropriate, and he remains convinced of the need for an insanity defense to "excuse those truly not responsible." But he worries that, in Herrin's case, the *perception* of the verdict was unacceptable and dangerous. To much of the public, it was just another example of a criminal beating the system. Enough of those, Gaylin fears, and the system will collapse. The blame lies not just with wayward courts. Gaylin also attacks intellectuals who, he believes, have devalued punishment in their preoccupation with the rights of the individual. "Certain crimes demand public censure," he writes. "The state must tell the Garlands, their friends and those of us who are parents of daughters that it abhors that which was done." Sometimes, in short, righteousness demands punishment.

ARIC PRESS

"The Killing of Bonnie Garland: A Question of Justice." 366 pages. Simon and Schuster. $16.50



John Blair

Gunman Kiritsis: A 'political prisoner'?

John Storey—San Francisco Chronicle

White in custody: The 'Twinkie' defense

David Harris—Newsworld

Berkowitz: Juries don't like mass murderers

further confused the issue. Voters in California will have a chance to clarify the matter on June 8. One proposition on the primary ballot is a victim's bill of rights that would abolish the diminished-capacity defense.

The case of Maine's David Fleming illustrates the tangled nature of deciding who is sane and who isn't. In 1974 Fleming was judged not guilty by reason of insanity for shooting to death his girlfriend and their child. Fleming had no previous history of mental illness, but defense psychiatrists showed him to be a paranoid schizophrenic, and he was sent to the Bangor Mental Health Institute. Fleming escaped twice from the hospital; he was captured each time, and he has since been convicted for the escapes and sentenced to serve five years in prison when he gets out of the hospital, where he has been committed indefinitely. But if Fleming is insane, how can he be convicted of the escapes, since guilt implies sanity? The answer, says James Erwin, Maine's assistant attorney general, is that Fleming's criminal conduct—his two escapes—has nothing to do with his mental disease. Erwin uses another case to illustrate his point. "Say a man murders his wife, then, fleeing from the scene, murders a policeman. He can be found insane for the first killing, but sane for the second, for the second killing is not directly connected to his mental disease."

Boost: For all the criticism directed against the insanity defense, the great weight of scholarly opinion favors its retention. It recently received a boost from a preliminary report by an American Bar Association panel now reviewing the issue. The committee, which voted to retain the defense, rejected such new schemes as guilty but mentally ill. "The defense of mental disability has been a traditional one in every society for as long as we can remember," says Terence F. MacCarthy, chairman of the insanity-defense task force. "Traditionally, crime involves some element of blameworthiness, and we're not going to hold people responsible for a crime if they don't have this blameworthiness."

Richard J. Bonnie, director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia and a supporter of the insanity defense, nevertheless thinks minor modifications are in order. He would stop acquitting persons who claim to have been "compelled" toward crime. "The risks are greatest when the experts and the jury are asked to speculate whether the defendant had the capacity to 'control' himself," says Bonnie. "Many crimes are committed by persons who are not acting 'normally' . . . but that is not what the law means, or should mean by insanity."

Others want to limit the role of expert witnesses at trials. Some psychiatrists for the defense see insanity wherever they look, and juries tend to forget that psychiatry is as much an art as a science. "Psychiatric testimony is so unreliable and open for sale to the highest bidder that it's a national scandal," says Stanford University law Prof. John Kaplan. Jack Litman, the New York attorney who defended Richard Herrin in Bonnie Garland's case (box), says he is careful not to use expert witnesses who have become identified with either the prosecution or the defense. For Herrin's defense Litman used a Yale psychiatrist whose name was not well known to him. "The first questions I ask [the prosecution expert]," he says, "are 'How often have you testified? And for which side?' I can destroy a prosecution psychiatrist by bringing out that he testifies only for prosecution cases."

The insanity defense is not without its ironies, as an acquittal of Hinckley would graphically demonstrate. If the jury found him not guilty by reason of insanity, he would most likely be committed to St. Elizabeth's Hospital in Washington. Once he was there, his attorneys could ask that he be released because he was no longer mentally ill or dangerous. As proof they could cite the testimony of the *prosecution's* experts at the trial. To keep Hinckley institutionalized, government lawyers would be in the anomalous position of having to disown their own witnesses and turn instead to the *defense's* experts who swore that Hinckley was mentally ill.

Compassion: In large degree, the future of the insanity defense may rest on the outcome of the Hinckley case. An acquittal would undoubtedly spur new efforts for change and abolition; many would find it unthinkable for a Presidential assailant to go unpunished. But if the public perceived that Hinckley was convicted despite overwhelming evidence of illness, the defense would be widely viewed as inadequate to protect the very people who need it. Either result would be a blow to the insanity-defense concept—a development that legal scholars would deplore. For, as New York forensic psychologist Thomas Litwack suggests, that legal tradition is one of the justice system's reminders that compassion and mercy are high values in American society.

ARIC PRESS with DIANE CAMPER in Washington, MARTIN KASINDORF in Los Angeles, PEGGY CLAUSEN in New York, SYLVESTER MONROE in Chicago, DANIEL SHAPIRO in Houston and JOHN TAYLOR in Boston

THE DIVIDING LINE

Insanity and Hinckley and the administration of justice

By Patrick J. Buchanan

Washington — The defense of John B. Hinckley Jr. — would-be assassin of Ronald Reagan — rested appropriately, with Judge Barrington D. Parker Jr. sending the jury off to the movies. The feature film was "Taxi Driver," about a violent character, infatuated with a 12-year-old hooker (played by Jodie Foster), who stalks a presidential candidate. The flick was the piece de resistance in the grand tour of the mind of John B. Hinckley Jr., as reconstructed for us at the time of the shooting by defense lawyers and psychiatrists on the payroll of John B. Hinckley Sr.

As the defense rested and the jury departed for the weekend, the judge admonished jurors against reading or reviewing reports on the trial, lest they be influenced by something other than the relevant and admissible testimony to which they had been witness.

"This is serious business and I have to have you in a serious frame of mind. This is an administration of justice."

PERHAPS THE JUDGE, known to take himself more seriously than others, believes the "administration of justice" is the correct phrase to describe the burlesque of a criminal trial ongoing in his courtroom. Others are laughing cynically.

For a month now, the defense has been dishing up extracts of John B. Hinckley's collected works — poems and fragments of poems he has written, little mash notes to Jodie, letters, even tapes and transcripts of phone calls with John B. warbling out his love in song.

"Expert psychiatric witnesses" have been summoned and sworn to interpret for us, with all the gravity of Talmudic scholars, the meaning of this literary opus, to tell us of hours in deep conversation with young Hinckley, to repeat verbatim what he said.

BUT THERE IS one person for whom this jurisprudential travesty is supreme triumph: John B. Hinckley Jr.

For John B. Jr. was, and is, a wimp, the runt of the Hinckley litter, a gutless little failure at everything he attempted, outclassed and outperformed by his brother and sister, an embarrassment and a heartbreak to his parents, a freeloader, a nerd. Yet, look at him now — smirking in the courtroom.

Everywhere he goes, he is guarded by marshals and police. Television cameras trace his movements. A horde of reporters peers constantly to catch his every expression. Was that anger, rage, pleasure, puzzlement he showed there? His dumb little poems reach an audience that would be the envy of a Robert Frost.

His love for Jodie, the stuff of conversation, will soon be the stuff of legend. She will never be able to escape him; they are linked forever. Mommy and Daddy, who got weary of carrying the shiftless little bum and finally booted his miserable fanny out of the house, look at them now! Weeping, publicly blaming themselves for John's situation, admitting they were wrong, doting over him like a couple of hens. James Brady may be crippled for life; who cares? It is the baby face of John B. Hinckley Jr. that looks out from the cover of Newsweek. The entire nation is learning how he did it; the world, it seems, wants to know what was in the mind of John B. Hinckley Jr. Prosecutors of the United States government are waging a landmark legal struggle to convict him, while attorneys from one of Washington's most prestigious firms and "expert psychiatric witnesses," who find him an interesting historic figure, are battling for his freedom.

amendments voted down in House Judiciary & Finance Committee

Proposed revisions for CSSB 535(Jud) am:

(I) Replace Sec. 5 with following language:

* Sec. 5. AS 11.46.200 is amended by adding a new subsection to read:

(c) Unlawful use of the entertainment services listed in AS 11.81.900(b)(50) is a class A misdemeanor.

(II) In Sec. 6 add the word "commercial" before "telecommunications":

* Sec. 6. AS 11.46.482(a) is amended by adding a new paragraph to read:

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

(III) In Sec. 7 substitute the words "electromagnetic signals" for the words "satellite telecommunications":

* Sec. 7. AS 11.46.482 is amended by adding a new paragraph 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 electromagnetic signals 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).

(IV) In Sec. 10 add the word "commercial" to the proposed new language:

* Sec. 10. AS 11.81.900(b)(50) is amended to read:

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

* Sec. 6. AS 12.45.085 is amended to read:

AS 12.45.085. MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental illness is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental illness which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental illness, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.080. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)-(j).

(d) As used in this section, "mental illness" has the meaning ascribed to it in AS 12.45.081.

Renumber remaining sections

Law bars defendant's plea of mental illness

4-3-82 News

By QUANE KENYON
The Associated Press

BOISE, Idaho — Gov. John Evans signed into law Friday a bill eliminating the plea of mental illness as a defense in criminal cases.

The bill, which according to its sponsors is the first such legislation enacted in the nation since the 1930s, was passed by the Legislature last week.

Evans signed the bill without comment. The state Mental Health Association had been urging the governor to veto the legislation, claiming it didn't adequately protect the rights of the mentally ill.

"This bill should help sort out the frustrations people have had about defendants using mental illness as a defense," said Attorney General David Lercy, who prepared the bill. "And I think it will better protect the rights of the mentally ill in criminal matters."

The law, which takes effect July 1, says mental illness or defect may not be used as a defense in criminal cases. Instead, a trial would be held on guilt or innocence.

If a defendant is found guilty, the judge would consider mental illness in sentencing. The law says a judge may order psychiatric examination to determine if a de-

See Back Page, IDAHO

Idaho bans use of mental illness plea

Continued from Page A-1

fendant is capable of understanding the trial and to aid in his defense.

Leroy said three states in the 1930s outlawed mental illness as a defense in criminal cases, but each law was overturned by the courts.

"Those were simplistic laws. I believe we have fully protected the basic principles of fairness, the right to confront an accuser and for a defendant to participate fully," Leroy said.

Both House and Senate in the Idaho Legislature passed the bill overwhelmingly. "It's our chance to do some pioneering in an area where everyone agrees we need some reform," said sponsor Rep. Gary Montgomery, R-Boise.

An opponent of the bill, Rep. Pam Bengson, said it should not also apply to mentally ill people who commit non-violent crimes. "I'm all for law and order, but I really question whether this might be going too far," said Bengson, R-Boise.

The bill says that if a person convicted of a crime is ordered to undergo treatment for mental illness, he or she still would have to serve the rest of a prison term after treatment, but would get credit for the time in a mental health facility.

JAY S. HAMMOND, GOVERNOR

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

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

DOCUMENT NO. 142-82

April 13, 1982

The Honorable Ramona L. Barnes
Representative
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Representative Barnes:

We wish to bring to your attention an inconsistency in the Alaska State Statutes which directly impacts the operation of our Department.

The Alaska State Legislature in 1978 passed a substantial revision of the criminal code in the Alaska Statutes. At that time, the penalties for fraud in public assistance problems were not specifically addressed since they were contained in Title 47 (Welfare, Social Services, and Institutions), rather than in Title 11 (Criminal Code).

The penalties for fraud in public assistance programs in Title 47 do not match those for fraud in similar financial transactions contained in Title 11. For example, fraud of $500 of public assistance benefits in Title 47 has a misdemeanor penalty while similar behavior covered under Title 11 would be categorized as a felony. We believe this to be inequitable and have enclosed drafted language to correct that deficiency. The enclosed draft bill repeals the current penalties in Title 47 to permit these fraudulent acts in public assistance programs to be addressed under the Title 11 provisions.

We anticipate no additional cost to the department, including our Division of Adult Corrections, if this bill were passed into law. We would welcome the opportunity to discuss this further with you, if you have additional questions or comments.

We appreciate your interest in this matter.

Sincerely,

Helen D. Beirne
Commissioner

Enclosure

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Proposed Amendment to CSSB 535
Title An Act relating to fraud & collections in Public Asst Programs
Requested by Commissioner's Office Date February 11, 1982

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Offender Confinement Information & 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						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL	**	**	**	**	**	**

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

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

Statistical information furnished by the Fraud Investigation Section, Department of Health and Social Services shows an average of four cases per year over the last three years of welfare fraud referred to the District Attorney's Office for prosecution. These cases, for the most part, would fall into the Class C felony and Class A misdemeanor classifications. These cases are generally first offenses. Therefore, there would be little jail time served, based on historical data, and this could be absorbed by the Division of Adult Corrections.

** It cannot be predicted whether or not the more restrictive limits for felony offenses would result in a greater number of cases referred to the District Attorney for prosecution.

IV. DATE February 11, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

Preliminary Results
of
Survey of 50 State
Fraud in Public Assistance
Programs Statutes

I. States Responding to Survey - 26

Alabama
Arizona
Arkansas
Connecticut
Delaware
Georgia
Hawaii
Idaho
Kansas
Maryland
Massachusetts
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Hampshire
New Mexico
North Carolina
North Dakota
South Carolina
South Dakota
Virginia
West Virginia
Wisconsin
Wyoming

*Also, District of Columbia responded to the inquiry.

II. Dollar Threshhold at Which Felony Penalties for Fraud in Public Assistance Programs are Established.

Over $100 - 6 states (Arizona, Arkansas, Kansas, Nevada, New Hampshire, New Mexico)

Over $150 - 3 states (Idaho, Missouri, Minnesota)

Over $200 - 2 states (Hawaii, South Dakota)

Over $300 - 1 state (Maryland)

Over $500 - 5 states (Georgia, Michigan, West Virginia, Wisconsin, Nebraska)

Felony and amount listed - 2 states (Oregon - provider fraud, Virginia)

Summary

Total with Felony	= 19
Total with no Felony Penalties	= 3
No Information	= 4

III. Interesting Provisions in Statute.

A. Alabama uses its state general misappropriations of public funds to prosecute fraud cases in public assistance. Some states have a fraud in public assistance statutes fraud program in lieu of specific fraud statutes for each assistance program. If states chose to highlight programs in its fraud statutes, Food Stamps and Medicaid are the programs most often highlighted. Specific Medicaid issues addressed included:

1. Suspension of providers,
2. Cancelling of provider agreements with individual or facility up to 5 years,
3. Bribes and kickbacks,
4. Failure to provide department with later received payments from third parties,
5. Submitting false claims.

B. Some states have stricter penalties for counterfeiting food coupons or ID material. Other states provide strict penalties to providers or public assistance workers convicted of fraud or misappropriation of public funds.

C. Most state statutes provide for full restitution. Some additionally charge the individual penalties ranging from 2 to 3 times the amount of the monies misappropriated plus an interest charge ranging from 5% per year to 1 1/2% per month.

D. Connecticut provides for a general state subrogation statute applying for claims paid by state, not just medical assistance ones. Hawaii's subrogate statute covers both medical and burial claims paid by the state.

E. Nevada has in statute a rebuttal provision that if overpayment occurred due to client error on three or more occasions, fraud exists.

F. Michigan and Wisconsin statutes address fraud in certification of facilities for Medicaid payment process to cover situations where the administrator gave material false statements in order to qualify for facility certification.

IV. Other Issues to Consider in Drafting a Fraud in Public Assistance Statute.

A. Fraudulent conveyance of property to qualify for aid.

B. Recovery of payments from responsible relatives or individual's estate.

C. Access to records (especially confidential medical records) needed to prosecute fraud cases and how to handle cases if provider fails to keep adequate records. (In one state, this is a felony if provider tried to obstruct fraud investigation by destroying or not keeping adequate records.)

D. Misappropriation of public assistance by staff is in some states a felony or minimum grounds for immediate dismissal of the employee. At least one state requires staff to report possible fraud incidents to supervisors and penalties (loss of job or prosecution) may result for the employee's failure to comply.

E. Requirement for notification of change in status for public assistance programs is in some states a misdemeanor, in others it may be a felony depending on how much aid received as result.

F. Procedures for administrative fraud hearings (similar to Fair Hearing) as a preliminary procedure to court action.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 898
Title "An Act relating to the insanity defense"
Requested by House Judiciary Date May 15, 1982

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Corrections
(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		627.6	1,151.3	1,231.8	1,318.1	1,410.3
200 TRAVEL		11.7	21.8	23.8	25.9	28.2
300 CONTRACTUAL		248.1	463.7	505.4	550.9	600.5
400 COMMODITIES		49.6	92.7	101.0	110.1	120.0
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS,CLAIMS,ETC.						
TOTAL		937.0	1,729.5	1,862.0	2,005.0	2,159.0

FUNDING (Thousands of Dollars)

GENERAL FUND		937.0	1,729.5	1,862.0	2,005.0	2,159.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME		24	24	24	24	24
PART TIME						
TEMPORARY						

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

A. Assumptions

1. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.

2. Persons in pre-trial status requiring psychiatric evaluation and observation be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven month funding is identified for this program component, allowing for facility familiarization and training. This will be a 36 bed mental health unit as an integral program within this facility.

IV. DATE May 20, 1982 PREPARED BY Roger C. Lange
AGENCY Division of Adult Corrections
PHONE 465-3376

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

B. Expenditures

1. Personal Services

A total of 24 positions are required to implement this legislation.

The positions, are as follows:

Position Classification	Number Requested
Forensic Psychiatrist R/28F + 5%	1
Mental Health Clinician III (Clinical Psychologist) R/21	1
Mental Health Clinician II (Social Worker) R/19	1
Activity Therapist R/14B	1
Psychiatric Nurse Sup. R/17	1
Registered Nurses I-III R/14B	5
Correctional Officer R/13B	12
Clerk/Typist II R/7B	1
Secretary I R/10B	1
Total	24

Of the 24 positions, 7 are included in the FY 1983 budget request for Alaska Psychiatric Institute. These positions are:

Position Classification	Number Requested
Correctional Officer II	6
Activity Therapist	1
Total	7

These positions will be transfered to the Anchorage Pre-trial Facility.

2. Travel

Travel funds are necessary to transport inmates to the treatment unit and, subsequently, to other facilities when they are classified to be ready for a general prison environment.

3. Contractual

Contractual funds are requested to provide psychiatric services to inmates found guilty but mentally ill. This will permit an average of 36 hours of psychiatric medical treatment per month in each of the states correctional centers.

4. Commodities

   The majority of these costs are for pharmaceautical products to be used in the treatment program. Some office supplies are also included.

5. Equipment

   Specialized medical equipment will be required for both program components. Equipment will also be needed for the new positions.

6. Inflation was considered to be constant over the period covered by the fiscal note, as follows:

Personal Services	-7%
Other expenditure catagories	-9%

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB898
Title "An Act relating to the insanity defense..."
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Health & Social Services
Program Category Affected Mental Health/DD
BRU, Program, Or Subprogram(s) Affected Alaska Psychiatric Institute
(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		(132.8)	(243.6)	(260.6)	(278.9)	(298.4)
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	(132.8)	(243.6)	(260.6)	(278.9)	(298.4)
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	(7)	(7)	(7)	(7)	(7)
PART TIME						
TEMPORARY						

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

1. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.

con't

IV. DATE 5/21/82 PREPARED BY Gary Shaeffer
TITLE Director, Division of Mental Health & DD
PHONE 465-3370

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

SB-001 (Rev. 12/81)

2. Persons in pre-trial status requiring psychiatric evaluation and observation will be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven months of funding are deleted from the API BRU to allow for transfer of seven (7) positions to the Anchorage Pre-trial Facility for staffing of a 36 bed mental health unit within that facility.

3. The Psychiatric security services now being provided at API will be transferred along with these seven (7) positions.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HCS for CSSB 535 (Judiciary)
Title "An Act relating to the criminal laws of the State."
Requested by House Judiciary Date April 14, 1982

II. FISCAL DETAIL
Agency Affected Department of Health and 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				137.4	147.0	2,448.6
200 TRAVEL						17.5
300 CONTRACTUAL				14.4	15.7	355.7
400 COMMODITIES				32.2	35.1	474.1
500 EQUIPMENT						
600 LAND & STRUCTURES		897.0	6,900.0			
700 GRANTS,CLAIMS,ETC.						46.6
TOTAL	0	897.0	6,900.0	184.0	197.8	3,342.5

FUNDING (Thousands of Dollars)

GENERAL FUND	0	897.0	6,900.0	184.0	197.8	3,342.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	0	0	0	5	5	45
PART TIME						
TEMPORARY						

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

A. Bed Space estimates:

An analysis of HCS for CSSB 535 (Judiciary) indicates there would be a need for an additional 113 beds in the Alaska Correctional system if the bill were enacted. The following gives a section by section estimate for these increased bed needs.

IV. DATE April 15, 1982 PREPARED BY Roger C. Lange
AGENCY DHSS - Division of Adult Corrections
PHONE 465-3376

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

33-001 (Rev. 12/81)

Sections 1 and 2: Multiple Deaths

It is estimated that multiple deaths from manslaughter (class A felony) or from criminal negligence (class C felony) will occur one or two times a year each. Therefore, we would expect to average 1 1/2 additional A-Felony convictions and 1 1/2 additional C-Felony convictions per year. The additional cumulative time served would be about 8 man years.
(1.5 x 4.5) + (1.5 x .82) = 7.98.

Section 4: Joyriding - Second Offense

It is estimated that there are likely to be between 90 and 100 joyriding convictions per year. Of these 10% are estimated to be repeat offenders. For these 9 or 10 convicted offenders, the law would require sentencing as Class C felons. Therefore, these 9 or 10 would serve approximately 162 additional days on the average (each). The aggregate impact would be about 1,539 added man days or slightly more than 4 man years.

Section 11: Multiple Offenses, Consecutive Sentencing

Multiple charges are not rare. Currently prisoners are rarely sentenced to serve consecutive sentences for more than one offense. A recent survey of in-state offenders showed that among 451 convicted persons, 150 or 33% were imprisoned on more than one charge or count. Of these, 48 appeared to qualify for sentencing consecutively under the statute. A very few of these are now serving consecutive sentences, but the majority have received concurrent sentences. If these 48 could be considered representative of the number and type of multiple offender entering the system annually (which is by no means certain), then we can estimate the additional bed spaces needed to provide for the consecutive sentencing provision of this section. We expect to commit about 80 Class A felons per year. Of these, approximately 55 are first offenders and the remainder are repeaters (25). Homicide convictions yield about 12 admissions annually. A flat 10% of all these admissions would suggest about 9 convicted felons entering the system annually may be eligible for the consecutive sentencing practice. We may delete 2 or 3 of these as not having lead to any injury. Therefore, about 6 or 7 felons will be consecutively sentenced for periods averaging approximately 6 years each, the current sentence for first time A felons using firearms in the commission of a crime. The consecutive provision will add 4.5 years of jail time per person. This produces approximately 30 additional man years of accumulated jail service.

Section 13: First Offense Felony with Firearm

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 increase by 48 persons in the fifth and sixth years that the increased length is in effect. The inclusion of manslaughter among the offenses identified will raise the number of affected sentences by about 10 cases per year. The additional 1 1/2 years of incarceration times 10 yields 15 man years to be added to the 48 identified above. Therefore, the total impact of this section is estimated to be 63 beds.

Section 15: Prior Conviction within past 10 years

The addition of 3 years to the retroactive period during which a convicted offender is in jeopardy changes from 7 to 10 years the span of vulnerability. Since the frequency of recidivism is a monotonically decreasing function we believe that the effect of this provision will be moderate at most. Our investigations have shown that more than 80% of repeat offenses occur during the first three years after release. If the balance were uniformly spread over the remaining seven years then recidivism could occur in the last three years of a ten year period. Further, if the frequency declined uniformly to zero by the end of the tenth year (see sketch) then only about 1.8% of the recidivist population would remain to be convicted after the 7th year. This last value yields an estimated increase in second offender felony convictions of slightly less than 3 per year. These would be spread in a proportionate manner over all classes of felony offenses. The approximate average increase in time served would be about 4.8 years for Class A felons, 1.85 years for Class B, and 1.05 years for Class C. If we had one each of A, B, C felons the aggregate man year increase would be approximately 7.7. The aggregate total of increased bed space needs is, therefore, 112.6 (rounded up to 113).

B. Cost Estimates

1. Capital Expenditures

113 beds at an estimated cost of $69,000 per bed.

113 x $69,000 = $7,797,000
13 requested in FY 1983
100 requested in FY 1984

2. Operating Expenditures

The major impact of this legislation would not occur for approximately 4 years after its effective date. Therefore, most new positions are not requested until FY 1987.

The operating costs were developed using the Juneau Correctional Center budget as a model since their current bed capacity is very similar to the number of new beds required. This results in a new staff of 45 positions.

Five correctional officers to man one post plus some commodities (food, clothing, etc.) and contractual (medical) are identified beginning in FY 1985.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. WORK DRAFT HCS FOR CSSB 535 (JUDICIARY)
Title AN ACT RELATING TO THE CRIMINAL LAWS OF THE STATE
Requested by HOUSE JUDICIARY Date APRIL 14, 1982

II. FISCAL DETAIL
Agency Affected HEALTH & SOCIAL SERVICES
Program Category Affected OFFENDER CONFINEMENT, REHABILITATION & 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			1,999.8	2,133.7	2288.4	2448.6
200 TRAVEL			13.5	14.8	16.1	17.5
300 CONTRACTUAL			274.7	299.4	326.4	355.7
400 COMMODITIES			396.1	399.6	434.9	474.1
500 EQUIPMENT			30.0	-	-	-
600 LAND & STRUCTURES		7,797.0				
700 GRANTS, CLAIMS, ETC.			36.0	39.2	42.8	46.6
TOTAL	-0-	7,797.0	2,719.1	2,891.1	3,108.6	3,342.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	7,797.0	2,719.1	2,891.1	3,108.6	3,342.5
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	45	45	45	45
PART TIME						
TEMPORARY						

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

IV. DATE APRIL 14, 1982 PREPARED BY ROGER C. LANGE
AGENCY DIV. OF ADULT CORRECTIONS
PHONE 465-3376

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

Bed Impact - HCS fol SB #535 Judiciary

Section	Beds	Offense/Result
Sections 1 & 2	8	Multiple Deaths - Manslaughter, Neg. Homicide
Sec. 4	4	Joyriding - Repeat Off.
Sec. 11	30	Multiple Offenses - Consecutive Sentences
Sec. 13	63	1st Felony With Use of Firearm or Dangerous Instrument; Presumptive Sentence Length Increased From 6 Years To 8 Years.
Sec. 15	7.7	Prior Conviction Within Past 10 Years (Instead of 7 Years) Considered For Sentencing.
Total	112.7 (113 Rounded)	

Capital Costs $113 \times \$69{,}000 = \$7{,}797{,}000.$

6.9
4.3
2.6

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House CS for CS for Senate Bill 327 (Judiciary)
Title An Act Relating to Parole of Offenders: Continuing the Parole Board
Requested by Senator Parr Date April 16, 1982

II. FISCAL DETAIL
Agency Affected Department of Health & Social Services
Program Category Affected Offender Confinement Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Parole Board
(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		6.5	4.1	8.4	5.1	10.0
300 CONTRACTUAL		1.3	-0-	1.5	-0-	1.7
400 COMMODITIES		-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT		-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.						
800 COMPENSATION		49.0	48.4	49.0	48.4	49.0
TOTAL		56.8	52.5	58.9	53.5	60.7

FUNDING (Thousands of Dollars)

GENERAL FUND		56.8	52.5	58.9	53.5	60.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

NO NEW POSITIONS

FULL TIME		-0-	-0-			
PART TIME		-0-	-0-			
TEMPORARY		-0-	-0-			

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

See Attached Sheet

IV. DATE April 16, 1982 PREPARED BY Samuel H. Trivett
AGENCY H & S.S. Parole Board
PHONE 465-3384

JCC

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

A. Section .050, Compensation

The bill would provide payment to the Board members for any day they are conducting business, including the reading of files, handling Board business by phone, as well as hearings.

a) Reading reports-assume 225 cases/year x 3/4 hours per file = 23 "member days". Guess 23 days x 2.5 members x $100 = 5.8

b) Phone log shows average of 30 calls/quarter to the office x 4 quarters/year = 120 calls for handling appeals, requests for special hearings, mandatory release conditions, etc. x $100 = 12.0

c) Pay full days compensation for those days holding preliminary hearings, 1/2 day parole hearings, etc., now being paid @ $50 per day. Guess 35 member days x $50 = 1.8

19.6

Also, the bill increases the compensation for Board members from $100 to $150 per day. Current budget shows 257 per diem days x $50 increase = 12.8

Increase a), b), & c) alone to $150 per day x 213 days = 10.7

Total 43.1

B. Section .080, Responsibilities

Funds for teleconferencing of hearings to adopt regulation, advertise hearings, have staff travel to hearings to establish regulations in the Alaska Administrative Code. Budget every other year. Four member days compensation @ $150 per day.

Contractual	1.3
Transportation	1.0
Per Diem	1.0
Compensation	.6
Total	3.9

C. Section .180, Change in Conditions

Anticipate 5 parolees will request a hearing pursuant to this Section resulting in 5 teleconference hearings by three Board members @ $150.

Transportation	1.6
Per Diem	1.3
Compensation	2.3
Total	5.2

D. Section .280, Revocation Hearings

The "clear and convincing evidence" test will result in a representative from the District Attorney's office presenting some of the cases for the Division of Corrections, as is done in many probation revocation cases now. Assume District Attorneys will be present in 1/4 of the cases (7) which will result in a doubling in the length of the hearing time in those cases resulting in 4 additional "board days per year" x 5 members x $150.

Per Diem	1.6
Compensation	3.0
Total	4.6

E. Assumption for FY-84 Through FY-87

a) Travel = 15% in FY-84 and FY-85; 10% thereafter.

b) Contractual = 8%

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House CS for CS for Senate Bill No. 327 (Judiciary)
Title "An Act relating to parole of offenders.....
Requested by Senator Parr Date March 8, 1982

II. FISCAL DETAIL
Agency Affected Health and Social Services
Program Category Affected Offender Confinement, Reformation & Supervision
BRU, Program, Or Subprogram(s) Affected Adult Confinement - Probation
(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)

The changes incorporated into Committee Substitute for Senate Bill No. 327 (HESS) have removed the fiscal impact which would have been experienced with enactment of the original bill.

It has been assumed that all parolees will cooperate with the probation officers and waive a formal hearing when a change of parole condition is considered necessary by Department staff. The alternative for a parolee is to be incarcerated for the period until the hearing could be scheduled.

IV. DATE March 9, 1982 PREPARED BY Roger C. Lange Roger C. Lange
AGENCY Division of Adult Corrections
Original: Legislative Finance PHONE 465-3376
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)

fcc

Ramona,
Give a reason on SB# 167.

The House only put $100,000 in the budget which is only enough to finish up the year and then all they can do is write reports

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT

VISIONS

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 toally 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 proprietory 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

4731 Business Park Blvd.
Anchorage, Alaska 99503
907/276-0400

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.

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

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,

Bob

Robert J. Gould

RJG/kj

Encs.

ISSN: 0148-0839

MULTICAST

Editor: George Eagle (202) 547-4050
Associate Editor: Alan Cole-Ford (213) 454-0639
No. 225
November 13, 1981
NEWSLETTER ON MULTIPOINT DISTRIBUTION SERVICE

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

TO LC LF JL LW SRO CLV

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 HBO 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 copyright 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, rescheduled 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 outside subscribers' homes to filter out premium service. Such so-called negative security costs roughly $15 per household per tap 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 ***Presto! 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 cable viewer 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.

HARTECH, INC.
P.O. Box 88, Littleton, Colorado 80160
(303) 795-2813

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 osciallator] 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

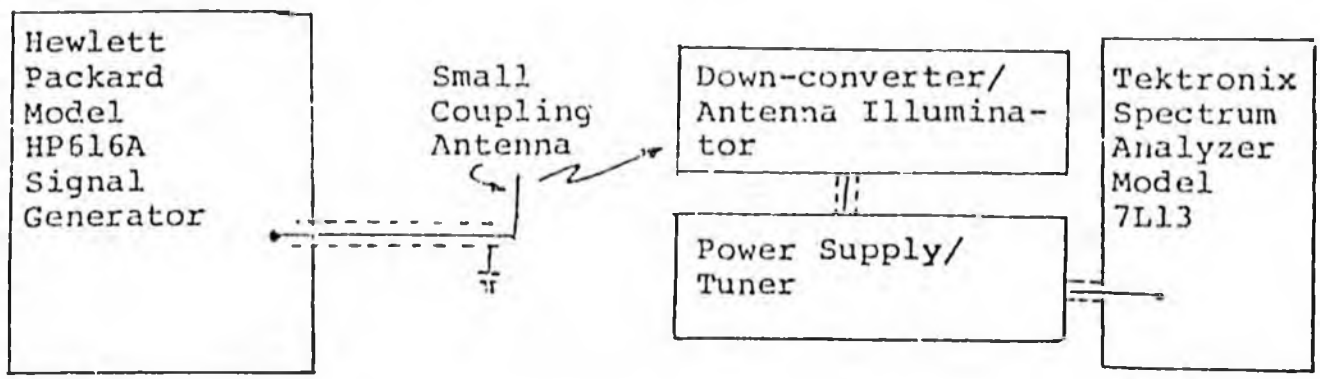
The unit tested had the following components and markings:

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

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-coverter. 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.

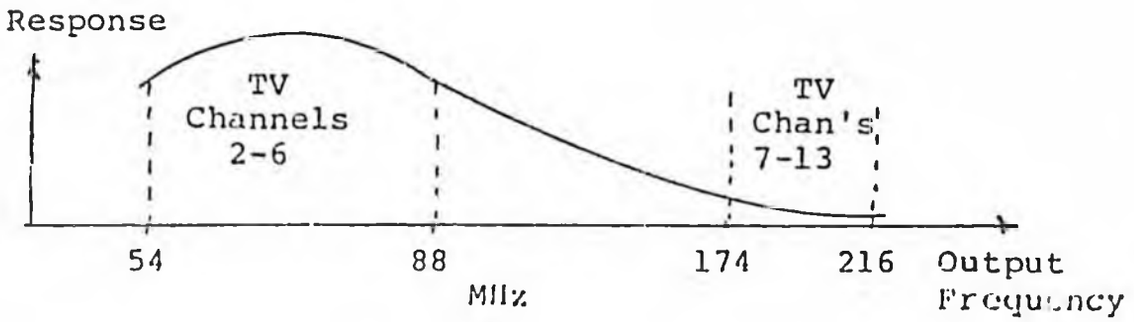
Before making conversion tests, the local osciallator frequency range was checked by using the calibrated frequency meter in the spectrum analyzer. This was done by checking the radiation from the down-converter detected at the fiberglass tube enclosure. The oscillator tuned from 2206 to 2246 MHz.

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 osciallator) could be tuned from 56 to 96 MHz. These frequencies cover Channels 2 to 6 (see Appendix) on a atandard 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, P.E.

JAMES WALTER HART REGISTERED 12787 PROFESSIONAL ENGINEER STATE OF COLO

Hartech, inc.
P.O. Box 88, Littleton, Colorado 80160
(303) 795-2813

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.]

HarTech, INC.
P.O. Box 88, Littleton, Colorado 80160
(303) 795-2813

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 reseach 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 Q.C., Product Service, Proposal Preparation, and Technical Publications. Served as Secretary of the New Products Committee.
7-61 to 10-66	DYNASCAN 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, preproduction 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.

Hartech, Inc.
P.O. Box 88, Littleton, Colorado 80160
(303) 795-2813

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 contributrибutions 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 2-76) [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, 5-7?

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.

Hartech, Inc.
P.O. Box 88, Littleton, Colorado 80160
(303) 795-2813

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:

Frequency (GHz)	Maximum VSWR at Each Port	Minimum Isolation - Ports	Waveguide or Input Flange
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

U.S. POSTAGE
0.28

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

Ace
Ex. 83

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, w th 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 sombody'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 abeting. 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

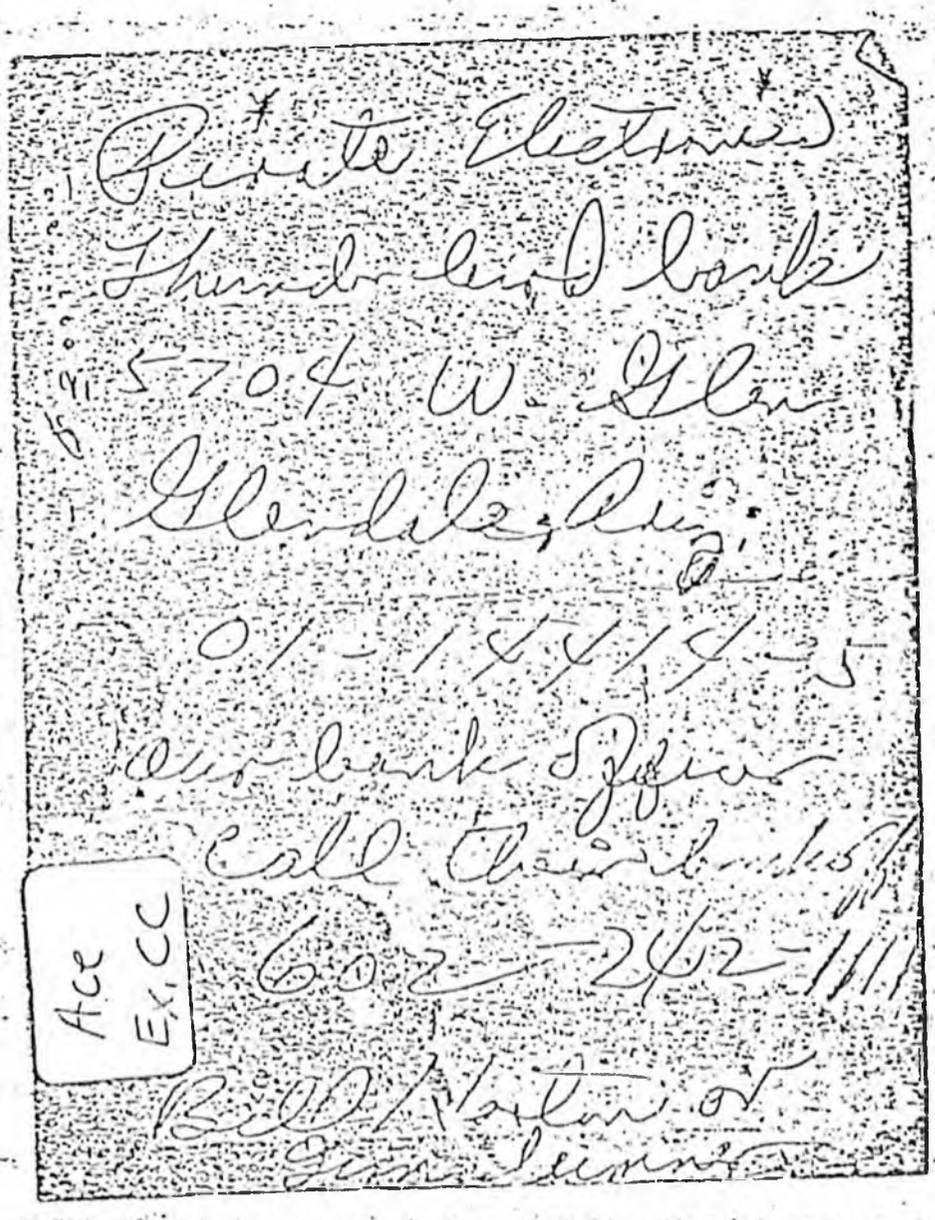


EXHIBIT A PAGE

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.

Sincerely,

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

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

EXH C

Jim Blake

EXHIBIT 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

ENTLEMEN:

E ARE MANUFACTURER'S DISTRIBUTORS OF THE FINEST MICROWAVE ANTENNA AVAILABLE
N THE MARKET TODAY. IT IS CAPABLE OF RECEIVING MICROBAND TRANSMITTED SIGNALS
ITH A CLARITY AND RANGE FAR SUPERIOR TO MOST OTHER ANTENNAS .
UR PRODUCT IS COMPLETE WITH ALL HARDWARE AND ACCESSORIES NEEDED TO INSTALL IT.
HE ANTENNA IS PACKAGED AND CONTAINS AN INSTALLATION INSTRUCTION SHEET.
E WILL SHIP YOU A SAMPLE UNIT UPON REQUEST[PRE-PAID BY U.P.S.].
NCLOSED 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 OPPERTUNITY 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
E

EXHIBIT E PAGE

Acc
Ex. I

DRW. 940
AP612940—2x42
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MONIQUE
Wednesday, May 7, 1980

ON Z—ON Z—ON Z—ON 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!

FOR FURTHER DETAILS, CALL:

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

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ON Z—ON Z—ON Z—ON Z

EXHIBIT I PAGE

4-Wheel Drive Accessories

or come by
7521 Old Seward
• Installation Available

1976 CAPRI Hatchback, 6-cyl, A.T., $2700; 243-6952 B

1973 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 K6JB
Rt. 1, 22518-97th Ave. North
Rogers MN 55374

Jevon Lieberg N6FQA
Rt. 1, 12295 Generous 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.[1]

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!

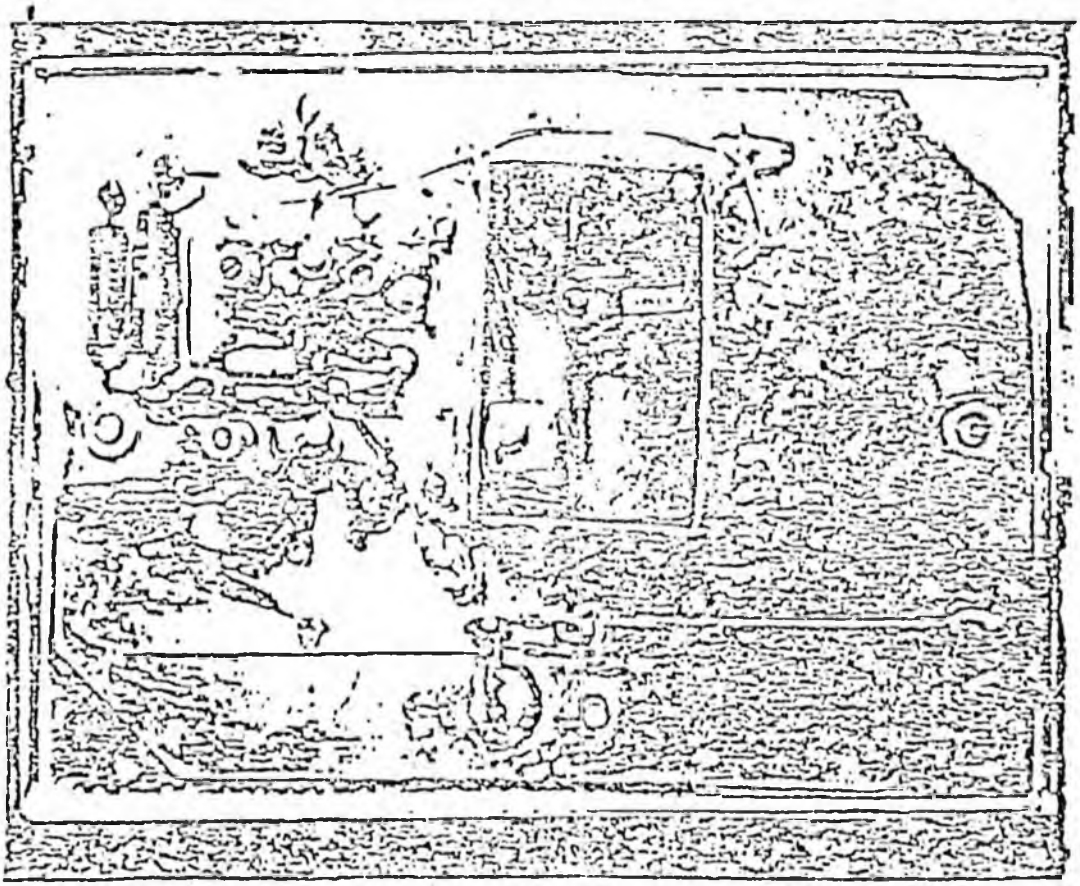

Photo A. This is a close-up of the downconverter showing i-f amplifier, mixer, and the local oscillator in its brass box with the cover removed. The piece of angle aluminum used to mount the box to the mast can also be seen.

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.[2]

Locating the MDS Transmitter

If you have seen a

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 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.

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

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 project.

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

IT I PAGE 10 of 12

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 satellites, 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.

EXHIBIT V PAGE 1 OF 11

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

RANCE W. McGARRY
NGELES (UPI) — The
ke no crossbones about
ate TV" is the name
ting the "pay" out of
is the game.
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patch and bandanna
ss.

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

TV broadcasters are
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is turn of events by
awsuits, but the pirate
s is booming, say John
n and MacKenzie Davis.
son's Pirate Electronics
nix, Ariz., manufactures
ent that is sold in
states by Davis' Pirate
the Los Angeles suburb
ira.

see nothing unethical or
n their business.
subscription TV compa-
adcast on a microwave
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ey're free to broadcast
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ld be free to do what
with them while they're
through."

rgument draws scorn
bert Cahill, one of the
s 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 assistant to three chairmen of the FCC, I helped write the subscription TV regulation and I know what they're doing is illegal.

"We have over $40 million invested 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 Electronics has grown in two years from a garage wo hop 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 manufact equipment that takes the "pay" out of pay TV by receiving signals without broadcaster's knowledge. Pay TV broadcasters are expressing their unhappi over this turn of events by filing lawsuits, but business is booming, says Sam 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 religously 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 p companies, they are "p ing a public serv preventing establishme monopoly." The broad will always have a market among those wh rather make low r payments than buy the ment outright for a price, they maintain.

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

Odds And Ends

E DETECTIVE: It's not
uthor who can celebrate
tion of a book with some
very characters it por-
s, but that's what biogra-
everly Linet managed to
day in New York. Shel-
ters and Howard DaSil-
owed up to help her
ch her new paperback,
A Hollywood Tragedy."
ostarred with Alan Ladd
eyday as a matinee idol,
opposite him in the 1949
of "The Great Gatsby,"
was screened at the pub-
n party. Another Linet bi-
y — of Susan Hayward
dy to roll. And who's
Young —
if I can ever solve the mys-
tery." Young apparently mur-
dered his 31-year-old fifth wife,
Kim Schmidt, then committed
suicide in Oct. 1978 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. 16 to Aug. 12. The
ceremonies will include races
naval displays and other spe-
cial events including a mock
seabattle between two fleets
when, instead of cannon and
musket fire, the entire port will
be lit by fireworks.

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.

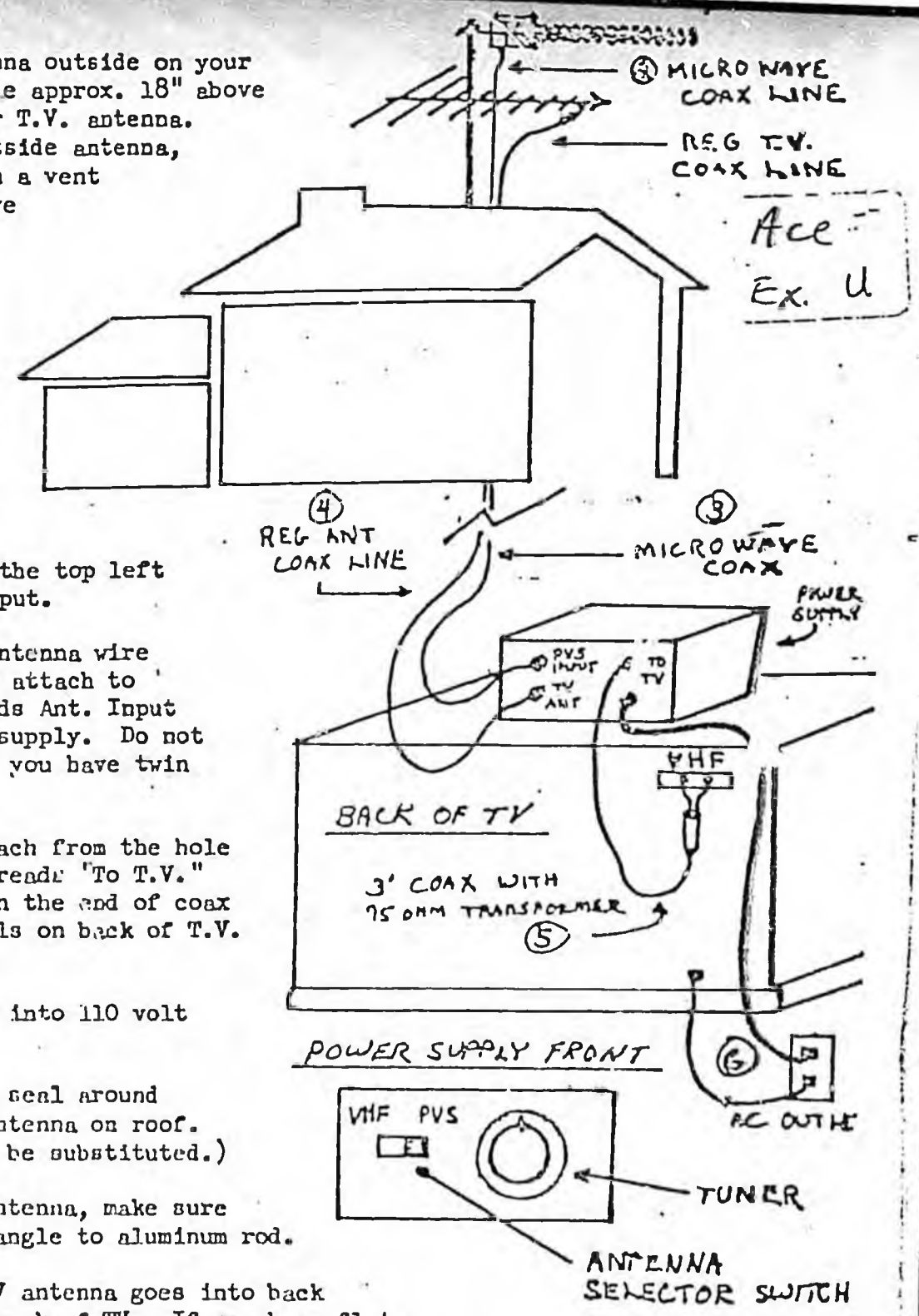
4) Disconnect regular T.V. antenna wire from the back of T.V. and attach to bottom left hole that reads Ant. Input on the back of the power supply. Do not attach to back of T.V. if you have twin lead coax.

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 theoritically).

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.

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 _____

_____

Purchased on: _____

AUTOMOTIVE

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

1968 TOYOTA, 24 mpg, needs paint job, $650; 344-3815, BOWLING AUTO SALES!

1974 EL Camino SS AT, PB, PS, 350, custom paint, mags, looks and runs good, $2000; 333-2201 C

1972 DUSTER, 66,000 miles, 6-cyl, 3-spd, 18 mpg, $1200; 338-1498 days

1970 CHEVY, 1973 Caprice, 1972 240-Z, 1971 LTD, $750, $500, $1500, $250 or best; 338-3166

1968 OLDS Delmont 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 1 or both; 344-2883 after 5pm

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

1973 CHEVY Wagon, AT, radial tires, snow tires, winterized, nice dependable car, $1495; 337-2832

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

1972 OLDS Toronado, $900 or best offer; 279-2201

1975 FORD Granada, white with vinyl roof, great gas mileage, with 3-spd trans, 52,000 miles, 4 radial tires, looks sharp, no body damage, runs good, $2000 or best offer; 274-4746 after 5:30pm

1970 CHEVELLE, good body, exc interior, good tires; 694-4088 after 5pm

1973 DATSUN 1200, rebuilt engine $500; 279-9155

1970 3/4-ton pickup with 390, 4-spd, $850; 272-5639

1971 ROADRUNNER; perfect body, 383, 4-spd, wide tires; needs minor work; $1200; 243-2291

1976 MUSTANG, 4-cyl, 2300cc, exc gas mileage, all tune-up, 4924 East 43rd 333 home eves, daytime

MISCELLANEOUS

1973 RIVIERIA; 1969 Dodge Van, fair cond; antique phonograph; RCA color console, not working, make offer; after 5pm, Carl, 272-9662

GAS BURNING boiler, used for residential heating by means of baseboard heat, make offer; Jon 272-8062, 277-0988 C

RECORD PLAYER with 8-track, $50; 40-gal elec hot water heater, $50; 6'8"x2'4" door, $20; 2 closet doors with rollers, $10; four 1500 watt elec wall heaters, $10 each; pair ice skates, $15; pair roller skates, $10; 344-9386 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 D

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

EXCESS FIXTURE Liquidation, apparel store clearing excess items including: clothing racks, various sizes in chrome and wood; metal and wood shelving; sturdy wood tables 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. 735 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 277-3279

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, $95; bed frame and headboards, $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 Bragaw)

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

GOLD TWEED loveseat, $40; 344-5997

ANTIQUES, smoke stand, $75; cherry-wood gossip bench, 1920-30, $350; carved wood clock, with porcelain, 1900, $150; black walnut marble 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, eves 333-7217

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 Attex ATV, $1200 or best offer; 349-2307

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

OLIN Mark 4's 150's and 175 Blizzards and size 8 Nordicas, good cond, best offer; 333-7734

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

MODEL 97 12-gauge, 2 ¾", $150; 333-7224 after 5pm

NEW RUGER 22 rifle with Weaver scope, $100; Winchester single shot shotgun, like new, $60; 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-SPD 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; 344-3008 B

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, 276-6286 C

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

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

TWO 5-hole Jeep rims, bolt circle 5½", center hole 4"; 337-4319 eves. and weends.

SUBARU 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 tow

MOTORCYCLES

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

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

1978 YAMAHA XS-400, 1700 miles, like new, $800 or best offer; 248-0980 B

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

SNOWMOBILES

SCORPION 340, $275; Yamaha 438, $125; 344-2883 after 5p

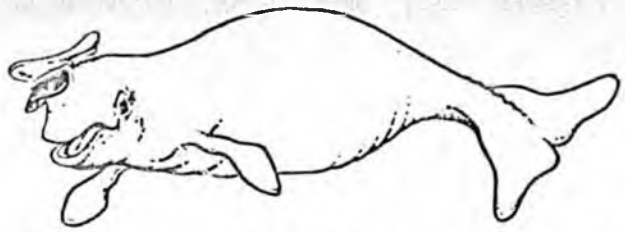
WANTED: Two snowmobiles trailer for my equity in 2-plus acres located north of Willow, good access; 333-0535

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

POLARIS Gemini snowmo: 344-0808

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED AS A UNIT IN THE ORIGINAL DOCUMENT.

Rita Ihly
Arts and Crafts



Nick Ihly
Sporting Goods
F.F.L. 92-04203

BELUGA ENTERPRISES

P.O. Box 417, Homer, AK 99603
(907) 235-8411

May 15, 1982

Ramona Barnes
House Judiciary Committee
Pouch V
Juneau, Alaska 99811.

Dear Ms. Barnes,

I am a moderator in Homer for the Teleconference net, and often hear the testimony on current issues. I am often tempted to make comments, but very often, there is a good deal of testimony from "professionals" and people well versed on the subject, and I feel I am talking only as an interested citizen, not one completely well informed. However, I was encouraged by the testimony of Ms. Marshall because her views paralled mine exactly, and I wish I could express my appreciation to her for all the time spent on research even if she was not in the medical or legal field. Her voice, her comments, all the passion she projected, was what I wished I could pour out myself. She said it well. Dr. Keihl is to be applauded in putting the role of the pyschiatrist and psychologist in the right perspective. His eight points were rational, reasonable, and should be noted with care in all this consideration. I am not without compassion for the "rights" of an individual, but this has all gone too far. In protecting (or trying to protect) everyone the way is strewn with inno cent victims with no voice to speak for them. All they have is the sympathy of the community, and that does not bring back the life of a loved one.

People who are criminally insane should be separated from society. If we have to build th special facilities, then lets do it! Why can we find so much money for culteral centers a the like, and not find the funding for fundamental safety? As a citizen of this state, I feel that responsibility is the missing link in the majority of these tragedies. The criminal is not responsible, (he is insane), the courts are not esponsible, the institutions are not responsible, but the victim is dead. Somewhere somebody has got to be responsible, or the aggragate of the system has got to be responsible, but when responsibili can be kicked around like a ping pong ball, how can you get the respect or the confidence

Rita Ihly
Arts and Crafts

Nick Ihly
Sporting Goods
F.F.L. 92-04293

BELUGA ENTERPRISES

P.O. Box 417, Homer, AK 99603
(907) 235-8411

of the people served? I think everyone of the people considering tighter legislation should be made painfully aware, that the next victim could be himself, or a close member of his family.....just sit and think deeply of that victim being your child, or your husband and ask yourself how you would feel about your obligation then. We are all victims in a sense, because it is just a matter of chance which one of us will be next.

I agree that psychiatrists and psychologists have no place in the courtroom. There is no way that one individual no matter how well trained can look into the mind of another. The field is too vague, too unpredictable, and the sad part to their testimony is that when they utter the words, they carry a great deal of weight because the layman is totally unfamiliar with the field, and degreed people have an authority about them that commands acceptance of knowledge. There is no doubt that they have been wrong many times, but when they make a wrong judgement, there is no penalty, only a victim. If they were to serve a sentence every time the patient went out and killed, or caused carnage, how many do you suppose would be declared competent?

I also agree, one cannot say that just because a law failed to pass the test of constitutionality that it should forever be shelved. It is worth another try. So make insanity pleas inlawful. Provide institutions for those deemed criminally insane as opposed to jails for other criminals. In summary, I agree with the testimony of the last three people who spoke on the teleconference, and would urge the committe to listen well to these comments.

Thank you for the opportunity to speak out.

Yours truly,

Rita Ihly

Rita Ihly

Video Communications vs. Visions

FROM: R.J. Gould

TO: EVERYONE

new file

RE: BOOTLEGGING/THEFT OF SERVICE
A SUMMARY OF THE LAW

FEDERAL LAW

I. Signals are freely receivable only if properly authorized. Section 605 of Communications Act of 1934 (as amended) (47 U.S.C. section 605) exempts from control only "broadcast (broadcasts) .... for the use of the general public." VISIONS is not for the use of the general public but only for its subscribers who pay to receive it. ("No person not being authorized by the sender shall intercept any radio communication...").

II. FCC Rules and Regulations, sec. 21-903 (b) (3) & (4) required the licensee (Hendershot) to maintain "control" of all receivers using it's service, although they may be owned by the licensee's customer (VISIONS).

III. FCC Rules and Regulations, sec. 21-903 (c) requires licensee to "provide for complete security of transmission".

IV. Federal penal sanctions for violation of the Communications Act and/or Commission's Rules and Regulations include:

a) $10,000 fine and/or up to (1) year in jail for a willful violation (Communications Act, Section 501)

b) Issuance of a ceace and desist order (Communications Act, Sections 4 (i) & 312 (b).

c) Direction to appropriate U.S. Attorney to prosecute violators of the Act (Communications Act, Section 401).

V. Section 2511 of the U.S. Code (18 U.S.C. section 2511) prohibits interception and/or disclosure of any "wire communication" (as defined by 18 U.S.C. section 2510) without authority and provides for a fine up to $10,000 and/or up to five (5) years imprisonment as a sanction. (Section 2510 defines "wire communication" broadly enough to include MDS reception.)

STATE LAW

VI. Alaska Statutes section 42.20.030 makes it a misdemeanor for someone who "with intent to defraud or to aid and abet another to defraud a person of the lawful charge, in whole or in part, for a telecommunication service, including cable television, obtains or attempts to obtain, or aide and abets another to obtain or to attempt to obtain a telecommunication service..... (4) by any trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device or means; or (5) by the unauthorized connection of wires or cable to cable television service lines."
and provides for a penalty of a fine up to $1,000 and/or imprisonment up to one (1) year.

PUBLIC NOTICE

Federal Communications Commission ■ 1919 M Street, NW. ■ Washington, D.C. 20554

For recorded listing of releases and texts call 632-0002

For general information call 632-7260

11850

January 24, 1979 - CC

UNAUTHORIZED INTERCEPTION AND USE OF MULTIPOINT DISTRIBUTION SERVICE (MDS) TRANSMISSIONS

In response to a few informal inquiries and complaints, this Notice is a reminder that the unauthorized reception and beneficial use of addressed communications in the Multipoint Distribution Service (MDS) is a violation of Section 605 of the Communications Act of 1934 (47 U.S.C.§605).

MDS is a common carrier service which utilizes an omnidirectional radio transmission to distribute addressed broadband communications (usually forms of television information) for simultaneous reception at multiple fixed receive points by the members of commerical, or other institutional, subscribers in accordance with their specific transmission, reception and informational requirements.

MDS stations are not television broadcasting stations. They operate on microwave radio frequencies (2150 - 2162 MHz) which are allocated for common carrier service between fixed points, and which, because of their high frequency, are not receivable by conventional television or other receivers. Additional equipment is required to down convert or to demodulate the microwave signal before it can be utilized by those television receivers, facsimile terminals, or computer data display terminals authorized to receive the communication by its sender.

Nor are MDS stations disseminating radio communications intended to be received by the general public. MDS station transmissions generally consist of various forms of private television, high speed computer data, facsimile, control information, or other forms of addressed broadband communications. This programming is provided to the station by its institutional subscriber and is intended to be received only by members of the subscriber organization located at the multiple receive points. The MDS station transmits this programming pursuant to a federally regulated tariff and is responsible

(OVER)

for both its transmission and reception under Section 21.903 of the Commission's Rules and Regulations (47 C.F.R. § 21.903). Although this rule permits the station's institutional subscriber the option of owning the microwave receiving equipment, such equipment must be installed, maintained, and operated pursuant to the carrier's instruction and control.

Section 605 of the Communications Act makes it unlawful:

- for a person not authorized by the sender to intercept radio communications and divulge or publish the existence, contents, substance, purport, effect or meaning thereof to any person; or,

- for a person not entitled thereto to receive radio communications and use such communication or any part thereof for his own benefit or for the benefit of another who is not entitled thereto (Emphasis added).

Because material transmitted over stations is not intended to be "broadcast" material within the meaning of Section 605, authority for its reception and use must be given by the sender. Therefore, persons will be in violation of the law if they divulge, publish, or use for their own benefit any MDS communications which they were not authorized to receive.

Violations of Section 605 can result in either criminal prosecution, or civil lawsuit, or both. See KMLH Broadcasting Corp. v. Twentieth Century Cigarette Vending Corp., 264 F. Supp. 35 (C.D. Calif. 1967).

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

604 Barnette, Rm. 228

FAIRBANKS 99701

CONSUMER ALERT

PAY-TV INTERCEPTORS WARNED

The Alaska Attorney General's Office, has issued a warning to the public concerning sales of devices intended to allow users to receive "pay T.V." programs without subscribing to the program service. The Office's Consumer Protection Section has learned that persons selling antenna and decoding equipment may not be informing customers that they are also legally required to pay the televising company for reception of its programs. Intercepting pay Television signals without paying the authorized subscriber's fee is a violation of both state and federal law.

The Attorney General's Office urges anyone who has knowledge of persons selling such equipment to report the information to the Consumer Protection Section, Office of the Attorney General, 604 Barnette Street, Fairbanks (456-8588).

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

420 'L' STREET, SUITE 100
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-0428

August 8, 1980

PRESS RELEASE

Consumer Alert

Baily & Mason

The Consumer Protection Section of the Alaska Attorney General's Office has issued a warning to consumers and potential distributors or dealers about "Microwave Vacuum Cleaners" or other pirate microwave television antenna devices. These devices are advertised as being "legal to advertise and sell." However, the consuming public is not informed that it is not legal for the consumer to intercept and convert the local multi-directional radio transmission (microwave).

A January 24, 1979, Federal Communications Commission public notice reminds consumers that unauthorized reception and use of microwave communications is a violation of federal law. "Microwave" television is a form of private television provided to its institutional subscribers for payment, like cable T.V. These broadcasts are intended to be received only by members of the subscriber organization located at the multiple receiver points. The licensed microwave distributor in each community transmits pursuant to a federally regulated tariff, and is legally responsible for both its transmission and reception. Visions, the local microwave distributor, has filed a lawsuit to enjoin the selling of these so-called "pirate" antennas. The state cautions consumers that while ads may claim these devices are legal to sell and manufacture, they are not legal to use without permission from the local sender of the broadcast.

Another similar device, but which works in a different way and costs up to $2,000, are the so-called backyard satellite earth stations. These intercept microwave transmissions and are also not legal for the above reasons.

If you have already invested in one of these devices, please contact the Consumer Protection Office. In Anchorage the telephone number is 279-0428.

03-C9LH

DC/CJS/aw

BAILY AND MASON
LAWYERS
A PROFESSIONAL CORPORATION
510 L STREET, SUITE 312
ANCHORAGE, ALASKA 99501

DOUGLAS B. BAILY
JULIAN L. MASON III
CABOT CHRISTIANSON
MICHAEL J. FRANK

TELEPHONE
AREA CODE 907
276-4331

August 1, 1980

Gentlemen:

Enclosed is a copy of the Stipulation signed by the parties and Ordered by Judge Ripley this week. Basically, the defendants caved in, giving us all the relief demanded in our Motion, and more. Their counsel now seeks settlement, and promises cooperation in our pursuit of the manufacturer, Pirate Electronics of Phoenix.

The Attorney General's Consumer Protection Division promised me yesterday to investigate the problem, and may issue a warning, comparable to the one issued in Fairbanks, against sale and use of pirate devices.

Should you have questions about the Stipulation, please call.

Sincerely yours,

BAILY & MASON

Mike

Michael J. Frank

MJF/nw

cc: Robert Uchitel
Robert Gould
James R. Hendershot
Jack Bradshaw
John D. Pellegrin, Esq.
Jeff Laird Jr., Esq.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRI

JAMES R. HENDERSHOT d/b/a MDS SYSTEMS, and VISIONS, LTD., an Alaska Corporation,

Plaintiffs,

vs.

VIDEO CONCEPTS, INC., an Alaska Corporation, RONALD OPALINSKI, DANIEL APTED, and JOHN DOES 1 thru 75,

Defendants.

No. 80-5095

STIPULATION IN LIEU OF HEARING ON PRELIMINARY INJUNCTION

COME NOW the parties, through counsel, and stipulate, in lieu of the August 1, 1980 hearing on plaintiffs' Motion For Preliminary Injunction, as follows:

1. The defendants Video Concepts, Inc., Ronald Opalinski, and Daniel Apted agree not to, pending the final resolution of this action:

a. Advertise for public or private sale in Alaska any devices capable of intercepting plaintiffs' multipoint distribution service microwave signal, including but not limited to such devices as are called "Pirate TV Microwave Antennas" and/or "Microwave Vacuum Cleaners", or

b. Sell at any public or private sale any devices capable of intercepting plaintiffs' multi-point distribution service microwave signal, including but not limited to such devices as are called "Pirate TV Microwave Antennas" and/or "Microwave Vacuum Cleaners",

and further agree to release to plaintiffs' counsel the names and addresses of all Video Concepts, Inc.'s customers who have purchased such intercept devices from said defendants and release to plaintiffs' counsel the exact address of the location of all such devices as such customers' names and addresses and locations of such devices become known to said defendants.

2. The names and addresses of the aforementioned

AND MASON
WYERS
ONAL CORPORATION
SUITE 818
L STREET
AGE, AK 99501
276-4331

customers of defendant Video Concepts, Inc. shall not be published in the Court file, absent the Court's permission, in order to preserve such customers' right to privacy, if any; however, the foregoing sentence shall not be construed so as to forbid plaintiffs from contacting said customers either informally or through formal discovery in this action, nor shall it prevent plaintiffs from naming said customers as defendants in this action without leave of Court.

3. The named defendants shall be made available for purposes of plaintiffs' discovery pursuant to Alaska Civil Rules 26 through 37, including depositions within 30 days of the date of plaintiffs' Complaint, without regard to the time limits or prohibitions of said rules.

4. No bond shall be required to secure performance by any party in this action under this Stipulation, and defendants agree to permit plaintiffs to get return of the $1,000 bond currently posted with the Clerk of the Court.

5. The named defendants agree to seek release from any of the provisions of this Stipulation only by Motion, with adequate and appropriate time for response under Alaska Civil Rule 77 by plaintiffs, filed with the Court.

DATED THIS 31st day of July, 1980.

/s/ Michael J. Frank

FREDERICK LEDBETTER
Attorney for the named Defendants

MICHAEL J. FRANK
Attorney for Plaintiffs

ORDER

IT IS SO ORDERED this _____ day of _____, 1980. The Clerk of the Court shall refund the $1,000 bond currently posted with the Court by plaintiffs to plaintiffs' counsel of record forthwith.

_____
SUPERIOR COURT JUDGE

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NYERS
...al Corporation
...ite 312
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...GE, AK 99501
276-4331