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ATTORNEY

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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December 23, 1985

The Honorable Patrick Rodey
Alaska State Senate
2335 Lord Baranof
Anchorage, AK 99503

The Honorable M. Mike Miller
Alaska House of Representatives
P. O. Box 1494
Juneau, AK 99802

Dear Senator Rodey and Representative Miller:

In addition to our normal presentations, department-by-department, the Criminal Justice Working Group believes it would be helpful to meet jointly with the Senate and House Judiciary Committees, at a convenient date in January in Juneau to discuss the overall operation of the justice system at present, and in the future. If you agree we would appreciate hearing from your staff so that a specific date and time can be arranged. We anticipate the meeting will take approximately one and one-half hours, and will be attended by representatives from each of our offices.

The group is requesting a similar joint meeting with the Senate and House Finance Committees.

We look forward to your response

Sincerely,

Criminal Justice Working Group

8.

Harold M. Brown

Department of Law
Harold M. Brown, Attorney General
Chair

Arthur H. Snowden, II

Alaska Court System
Arthur H. Snowden, II
Administrative Director

Brian D. Porter

AK Association of Chiefs of Police
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CONSULTING ENGINEERS



BOX 200345

COUNCIL OF ALASKA

ANCHORAGE ALASKA 99520

Patrick Rodey
2335 Lord Baranof Drive
Anchorage, Alaska 99503

Dear Senator Rodey:

The architectural, engineering and land-surveying societies in Alaska have been working with the members of the past three legislatures in an attempt to obtain passage of legislation which would mandate the competitive selection process of governmental agencies when contracting for professional services. Such legislation is also known as a "mini-Brooks" act, since it has its genesis in the Federal Brooks Act.

The enclosed 18 minute VHS tape was prepared by American Consulting Engineers Council as an explanation of consultant-selection procedure which is embodied in Senate Bill 204, "an Act relating to contracts for architectural, engineering and land surveying services". We urge you to spend a few minutes watching this presentation.

A mini-Brooks act will require the selection of a professional consultant on the basis of qualifications to perform the required services, with cost of services considered only in negotiations with the selected firm. If no agreement can be reached between agency and consultant, negotiations may be terminated and consideration given to the second-placed firm.

The negotiation process provides an opportunity to discuss the desired scope of the project and to eliminate any misunderstandings there may be, since it is an impossibility, short of designing the project, to write a scope of work which will be understood in the same way by all proposers. It is important to note that there are now over thirty-five states which have legislation similar to the Brooks Act, but not one which has a requirement for price-bidding of professional services contracts.

We have been told many times by legislators that what we propose is "special interest" legislation. We agree, with the exception of a definition of the "special interest" involved. Instead of a few beneficiaries, there will be over a half-million, the entire population of the State. The benefits are passed on to the general public in the form of better design,

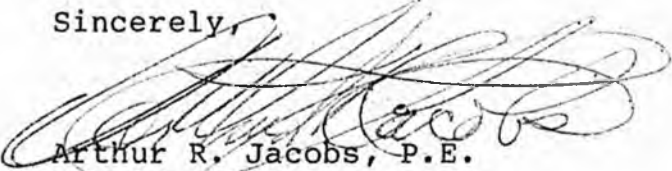
better and less expensive construction completed on schedule with fewer change orders, and lower maintenance costs.

Those who advocate price-bidding of professional services will argue that it would result in lower first costs. This we do not contest, but we also point out that, because of unavoidable ambiguities in the description of the scope of work (on which a bidder must base his offer), and without a "meeting of minds" prior to determination of cost of services, there is created a marvelous opportunity for the consultant to add to his compensation, as the job progresses, by way of contract change orders. Worse, the low bidder will scrimp on research during the design process, the result being lower quality, more expensive construction. With price-bidding, the professional consultant is taken from his traditional role of agent and advocate for the Owner and placed in an adversarial position, interested more in getting the job done than in doing it the correct or best way. Since repeat business will depend on low bid alone, and not on a developed reputation, there would be no incentive to perform at any more than minimum level.

Recently, engineering projects in Fairbanks and Anchorage were bid. In each case the low bid was just over \$19,000, while the high bids were \$126,000 and \$142,000, with several bids between in each case. Quite obviously, the scope of work was not defined clearly enough for all bidders to understand in the same way. That is the kind of situation which will be avoided by a mini-Brooks act.

We of the engineering, architectural and land-surveying professions urge you to vote in favor of Senate Bill 204, as originally proposed.

Sincerely,



Arthur R. Jacobs, P.E.
President

PRESS RELEASE

December 5, 1985

Contact: Pat Rodey

FOR IMMEDIATE RELEASE

276-6731

Senator Pat Rodey (D-Anchorage) today announced his intention to file a supplemental appropriation to cover the budget shortfall in the operating funds of the Department of Law's Criminal Division.

"As Chairman of the Senate Judiciary Committee I am naturally concerned if there are inadequate funds available to prosecute violators of the law," Rodey said. "It's not advisable from a public policy perspective to ignore offenses simply because the checkbook is empty. It's a sure way to insure that laws become deadletters."

Rodey declined to specify the amount he will seek in the appropriation at this time. "We need to refine the figure before we submit it," Rodey said, but noted that the division had projected a shortfall of between \$300,000 and \$400,000 for F.Y. 1986. "Of course, that only covers current operations, with no increase for priorities that the legislature has set such as child sexual assault prosecutions. We may want to address those needs in the same bill."

Rodey cited the increase in total criminal filings, as well as the increasing complexity of cases as reasons for the shortfall in the division's funds. "A complex case, such as the Peel prosecution in Ketchikan, is a real drain on an agency, and difficult to plan for when budgets are being prepared a year in advance."

Noting the rising cost of the criminal justice system and declining state revenues, Rodey indicated that the legislature was in for some tough decisions in the future. "We are going to have to decide which state programs will be discontinued, but protection of the public is among the most fundamental obligations of government. I just can't justify cutting back on criminal prosecutions when we are debating the size of swimming pools in Anchorage."

Dec. 3 1985 NEWS

DAs cut back in face of budget shortage

By JOHN LINDBACK
Daily News reporter

JUNEAU — A projected budget shortage this year of \$300,000 to \$400,000 may force state prosecutors to cut back on the number of misdemeanor defendants they take to court.

Dean Guaneli, acting chief of the state Department of Law's criminal division, said Monday that district attorneys throughout the state are being told to cut back on expenses such as travel for witnesses, fees to hire expert witnesses and overtime for division workers.

And job vacancies within the criminal division will remain open in order to save money, Guaneli said.

"We're in a terrible situation. Every year we have some problems, but not like this," he said.

The spending cuts are likely to be directed at misdemeanor cases that will be expensive to prosecute because of witness travel costs or other factors, he said.

"We are not going to cut back on felony cases," he said. "If it's a misdemeanor, we are going to have to take a real hard look at the case and

dismiss it if it means spending that kind of money."

Guaneli said he asked Attorney General Hal Brown and Gov. Bill Sheffield to consider sending the legislature a request in January to bail the criminal division out of its budget shortage for fiscal year 1986, which ends June 30 of next year.

Last session the legislature did not approve a Sheffield request to increase the number of criminal division attorneys from 74 to 81 in order to cope with an 18 percent increase in criminal cases — particularly child sexual as-

sault and narcotics defendants.

In the \$11.4 million operating budget the legislature approved for the criminal division was enough money to hire just one new attorney. The criminal division is authorized to hire 179 people in 15 offices across the state.

In 1984, about 22,000 cases were handled by the criminal division. In 1985, the total increased to 26,000.

The number of felony cases brought to the division by law enforcement agencies increased from 3,600 in 1984 to 4,300 in 1985, Guaneli said.

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

December 2, 1985

BILL SHEFFIELD, GOVERNOR

REPLY TO:

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The Honorable Patrick M. Rodey
Alaska State Legislature
2335 Lord Baranof
Anchorage, Alaska 99503

Dear Senator Rodey:

This is in response to your letter of October 10, requesting data on the increase in caseload for the Criminal Division between FY 84 and FY 85. I apologize for the delay, however our computerized case tracking system is not currently set up to provide statistics in the way you requested, so it has taken some time to pull things together.

The chart below shows felony defendants,^{1/} by offense type, referred for prosecution. The numbers reflect the most

1/ A universal problem in compiling prosecution statistics is whether to focus on the number of cases (i.e., potentially involving more than one defendnt, each charged with more than one offense), the number of separate defendants, or the total number of offenses. In Alaska most co-defendants can obtain severance and separate trials, therefore it does not make much sense to keep track of "cases." Keeping track of total offenses as the sole measure of workload is misleading because, although a two-count indictment may involve more work than a one-count indictment, it does not take twice as much effort. We therefore count separate defendants, listed by the most serious charge, sometimes referred to as the "primary" charge.
(Footnote Continued)

serious charge for each defendant, so that a person charged with two counts of murder and one count of robbery will show up as a single murder defendant. Similarly, someone charged with ten counts of child abuse will show up as a single defendant under the category "Sex Assault-Child Victim." As you can see, we have had significant increases in child sexual assault and other serious crimes. This will be discussed in more detail later.

FELONIES

<u>Offense (Increase in Referrals)</u>	<u>FY 84</u>		<u>FY 85</u>	
	<u>Referrals</u>	<u>Declined</u>	<u>Referrals</u>	<u>Declined</u>
Murder (36%)	50	8%	68	10%
Manslaughter/Neg Hom (-35%)	46	59%	34	35%
Assault (13%)	714	20%	810	30%
Kidnapping (47%)	19	16%	28	43%
Sex Assault-Adult Victim (9%)	227	38%	248	51%
Sex Assault-Child Victim (57%)	343	34%	537	40%
Robbery (5%)	116	33%	122	16%
Arson (231%)	13	23%	43	37%
Theft/Bad Checks (18%)	570	29%	673	32%
Burglary (17%)	558	28%	652	26%
Criminal Mischief (-1%)	184	24%	182	28%
Forgery (65%)	91	32%	150	24%
Weapons Offenses (10%)	40	18%	44	20%
Drug Offenses (9%)	505	28%	551	24%
All Other Felonies (14%)	<u>168</u>	<u>45%</u>	<u>191</u>	<u>33%</u>
TOTAL (19%)	3,649	31%	4,333	31%

(Footnote Continued)

We also keep a total of all other charges, sometimes called "secondary" charges, although we do not find that information to be particularly useful, especially since many of these secondary charges are simply alternate legal theories for a single offense.

The next chart shows misdemeanor defendants, by offense type, referred for prosecution. For convenience, I have consolidated many similar offenses into large categories.

MISDEMEANORS

<u>Offense (Increase in Referrals)</u>	<u>FY 84</u>		<u>FY 85</u>	
	<u>Referrals</u>	<u>Declined</u>	<u>Referrals</u>	<u>Declined</u>
DWI (14%)	4,042	4%	4,619	4%
DWLS (33%)	2,235	26%	2,983	29%
Assault (27%)	1,640	36%	2,077	32%
Other Driving Offenses (-13%)	2,138	8%	1,867	12%
Trespass/Crim Mis/DC (16%)	1,595	27%	1,856	28%
Liquor Offenses (45%)	791	19%	1,150	16%
Theft/Bad Checks (7%)	961	31%	1,026	31%
Fish & Game (9%)	881	7%	958	12%
All Other (-6%)	<u>1,319</u>	<u>26%</u>	<u>1,235</u>	<u>27%</u>
TOTAL (14%)	15,602	18%	17,771	18%

In FY 84 the Criminal Division also opened files on 2,853 other matters including probation revocations, appellate matters, juvenile proceedings, etc. In FY 85, 3,956 such files were opened (an increase of 39%), the greatest increases being in probation revocations.

Both of the above charts also show the declination rate for each type of offense, thus providing some measure of the number of cases actually filed.^{2/}

Just as an aside, I feel that the case "screening" function is one of the most important aspects of our prosecution program. It is something that defense lawyers and judges seem to forget about, because they never have to bother with cases that are "screened out," i.e., declined for prosecution. However, it takes an enormous amount of time to review a case and research the law, to be able to make an intelligent decision about whether or not to decline a case or to accept it at a lower level. Declining cases also means that

2/ It is often difficult to decide when a "case" has been "declined." If the most serious charge referred to us is ultimately charged as a lesser included offense, we do not treat it as a declined prosecution. For example, if the police bring us a case that they believe to be a first degree murder, we do not list it as a declination even if it is ultimately charged as criminally negligent homicide. On the other hand, if the most serious charge is declined, it is listed as a declination even if some other secondary offense is charged. For example, if the police arrest someone for murder and robbery, and the prosecutor decides that only the robbery can be proven, then we will list that as a declined murder prosecution. The robbery will be counted in our statistics as a secondary offense which was accepted for prosecution, but it will not appear on the above charts. Thus you must view this declination figure with caution. Although most charges are accepted for prosecution at the same level they were referred, some obviously are charged at a lower level and are not counted as declined. Conversely, a few cases listed as "declined," will nonetheless result in a prosecution for some secondary offense.

prosecutors must spend a great deal of time with victims and the police, who are usually not particularly pleased about the result. Therefore, although not every one of the 4,300 felony defendants referred to us in FY 85 resulted in a prosecution, I think that the number 4,300 fairly represents our felony caseload for the year.

In addition to all these quantitative measures, I think that some qualitative remarks are also appropriate. When I was a young public defender intern in Juneau in 1975, I recall that serious felony cases were very rare. It was very unusual to have homicides, sexual assaults or felony assaults in Juneau, and we hadn't had an armed robbery in many years. Now, such crimes are a weekly occurrence. The same thing is happening all over the state--the crimes are becoming much more violent, and cases of all sorts are becoming more complex.

Because of the overall increase in numbers of crimes, and the increase in the seriousness of crimes, we have had to set some priorities on the cases we prosecute. For example, in Anchorage we have begun to focus on large-scale drug trafficking, with very good results. However, these large drug investigations and prosecutions have a price. They are extremely labor intensive and, because our narcotics prosecution unit has not been funded, very few of them can be pursued and other cases suffer when we do in fact pursue one.

Major narcotics rings are always carefully planned and organized and it requires the same degree of planning and organization to put them out of business permanently. A good example is the single big drug case that the state was able to pursue in FY 85 -- the "Black Gold" heroin ring in Anchorage. It was indeed a big case: 29 separate individuals, most charged with selling heroin, almost all of whom were granted separate trials, thus creating 29 cases out of a single operation. So far there have been no acquittals, although a few have fled the state and are now fugitives. In addition, some defendants have cooperated with federal authorities in the prosecution of their Seattle source. These good results are merely the end-product of thousands of hours of work.

The "Black Gold" investigation required the "full-time" (12 hours a day, 6 or 7 days a week) direction and legal assistance of two experienced prosecutors for over two months. In addition to obtaining over 25 search warrants, the prosecutors consulted on a daily, sometimes hourly, basis with and guided the efforts of three teams of officers: a "surveillance" team varying from 10-20 officers to keep track of the members of the ring; a "buy" team of 4-8 officers working closely with informants to purchase narcotics; and an "investigation" team of 2-6 officers who compile telephone records and other evidence in order to discover links between individuals and organizations.

This type of effort is the only way that big drug rings are broken up. But the investigation requires 2-3 months, the actual prosecution (grand jury, pretrial hearings and trial) takes 6-8 months, and forfeiture proceedings (to confiscate drug money and other property) can drag on for even longer. Thus a single prosecutor can manage at most only one of these operations per year. More of these operations could be run out of business if more prosecution resources were available.

For FY 85 the legislature created 2 additional attorney positions (plus a paralegal and secretary) to form a major narcotics unit in Anchorage. However, the unit was seriously short-funded and could not be created. Although the Governor requested funding in FY 86, none was forthcoming.

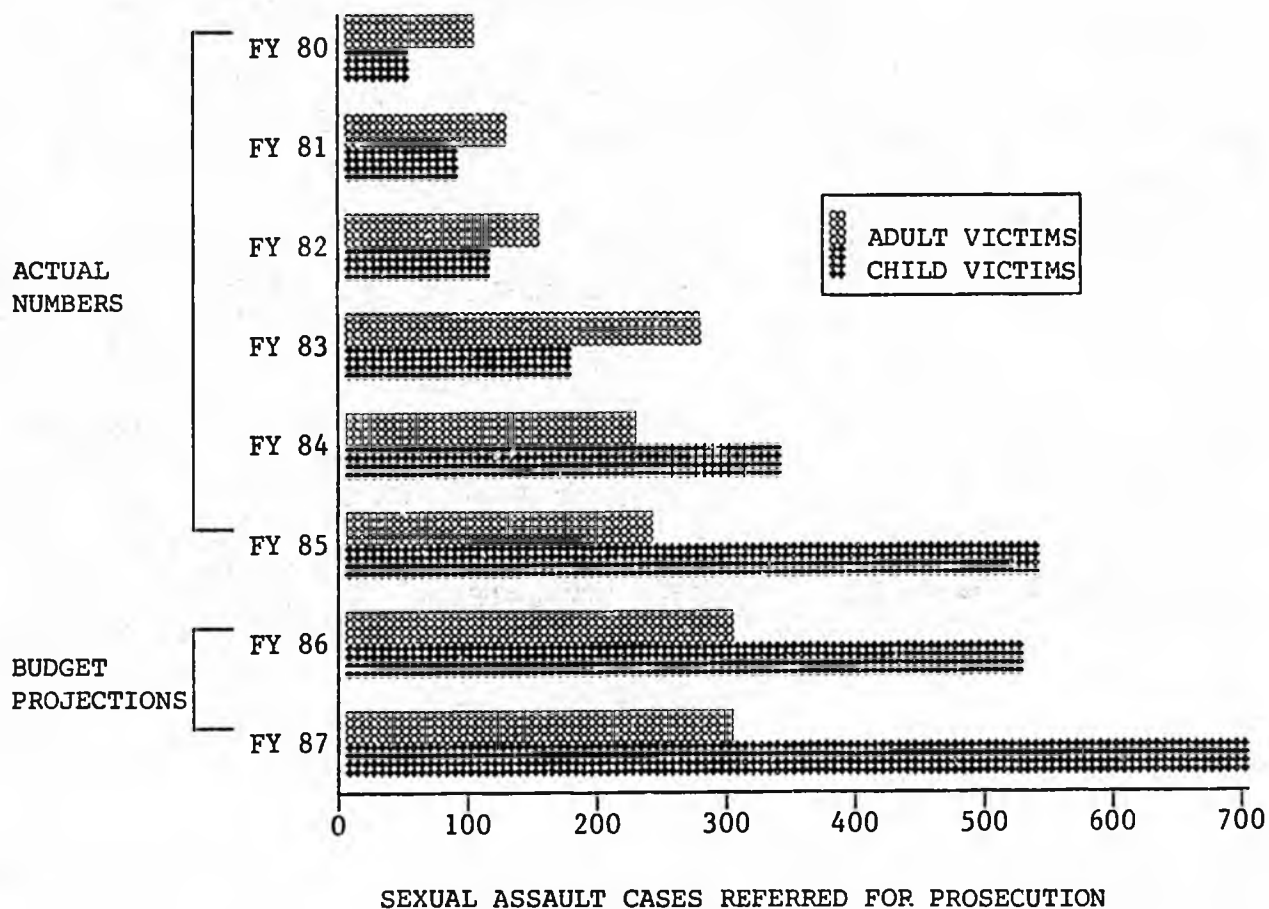
A narcotics prosecution unit is critical. With the opening of the international wing at the Anchorage airport, there has been an increase in the number of international flights with passengers "off-loading" in Anchorage. With new routes of access to Alaska, and new types of drugs to deal in, traffickers will have a field day. The time to strike is now, before new organizations get established in Alaska to fill in the void left by the prosecution of the Resek-Marin family (FY 84), the Black Gold ring (FY 85) and, most recently, the Azzarella-Serra organizations (FY 86).

Another priority that we have set is for the prosecution of sexual offenses. A number of years ago we placed emphasis on the problem of adult rape; the emphasis has now shifted to child sexual abuse.

The problem of criminal child abuse (both sexual and physical abuse) was partially addressed last session in House Bill 88, which resulted in significant FY 86 fiscal note funding increases for social workers (Division of Family and Youth Services) and criminal defense attorneys (Public Defender and Public Advocate), but inadequate increases for prosecution services. The increase in child abuse described in last year's budget has continued to the point where the budget estimate of the number of cases anticipated in FY 86 was exceeded a year early in FY 85 and the Criminal Division has been forced to turn away more child abuse cases than ever before.

Several years ago the legislature devoted specific resources to the problem of adult rape. As a result, the Criminal Division formed special rape prosecution teams and provided training for prosecutors in rape cases. The number of rape cases had been growing rapidly and the Anchorage Daily News called Anchorage "Rape City, U.S.A.". However, perhaps as a result of this focus on the rape problem, the number of adult rapes has levelled off at about 250-300 cases per year since

FY 83, as can be seen on this chart. There are no such encouraging signs with child sexual abuse.



Because of the shame and embarrassment felt by sexual assault victims of all ages, it is not surprising that when one child victim comes forward, others are encouraged to do so. It is often the case that when one case of abuse is discovered, other children in the same family or same school will disclose that they, too, have been victimized. Just a few years ago, adult victims of rape started to come "out of the closet." Now it is the children's turn.

Child abuse takes many forms: physical abuse, neglect, and sexual abuse (including commercial exploitation such as child prostitution rings and pornography). Child abuse feeds on itself, because a person who was physically or sexually abused as a child will often abuse his or her own children. A "ripple effect," is thus created, with each generation containing more abusers. This in turn increases the amount of public funds which must be spent on family counseling, juvenile delinquency, mental health, and a range of criminal justice programs.

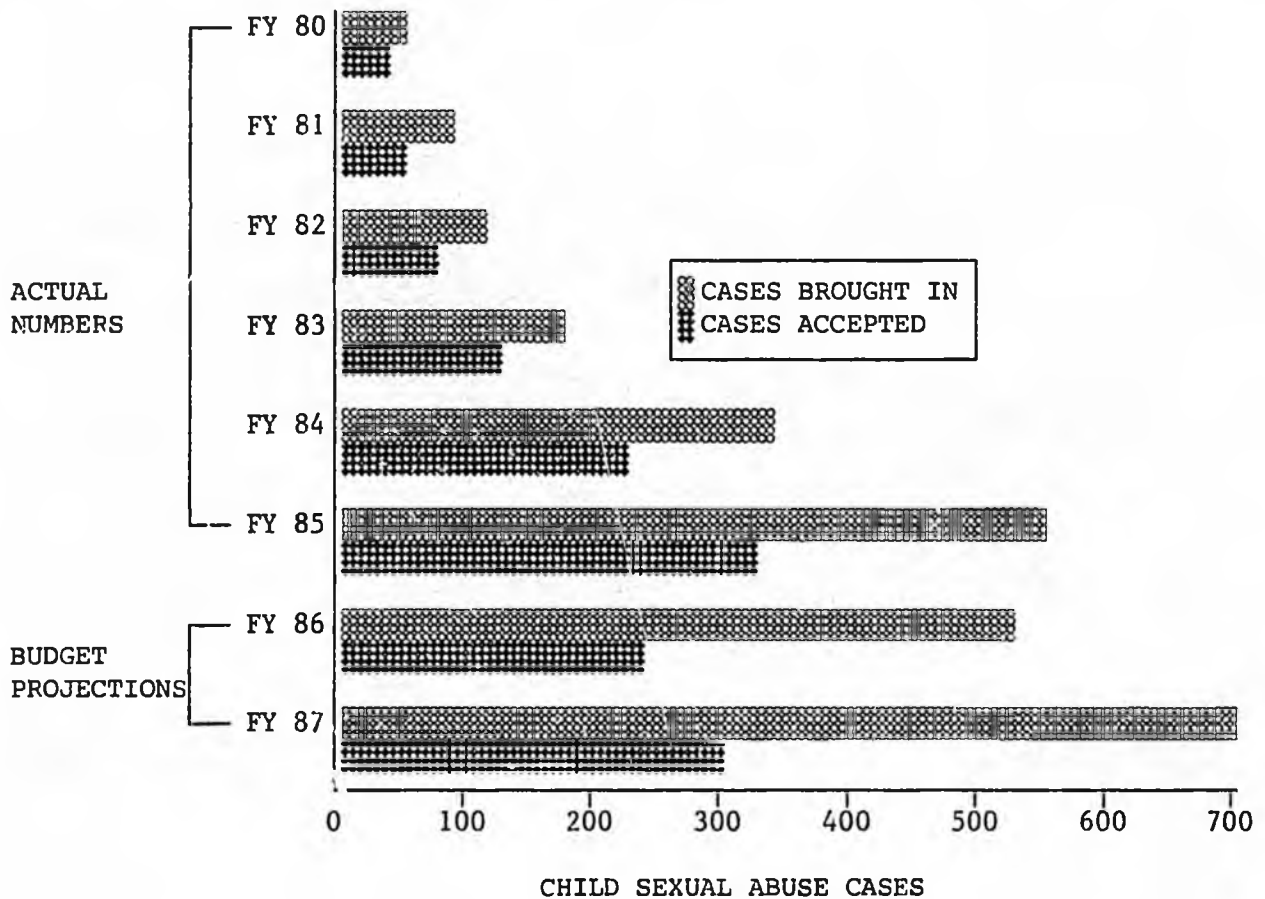
As it turned out, a number of paralegal positions requested, but not funded, for FY 86 have now been provided by way of a federal grant. These positions will assist in interviewing and counseling victims and non-offending parents, in order to help them overcome the trauma often associated with the abuse. However, the number of prosecuting attorneys must be increased, particularly in Anchorage, Barrow, Juneau, and Kenai. In many areas, such as Barrow and Kenai, the criminal division is also responsible for handling civil actions, often on an emergency basis, to place abused children in the care of the state or foster parents, to terminate the parental rights of abusers, to obtain child support enforcement, or to handle juvenile delinquency proceedings.

In FY 87 it is estimated that 700 child sexual abuse cases will be brought to Criminal Division offices for prosecution. Because many cases involve multiple victims, the total number of abused children who came into contact with the criminal justice system is likely to approach 1000 or more in a single year. That is more than 1% of the total Alaska population of children -- both boys and girls -- from age 5 to 14, the age group most victimized. (Department of Labor statistics show about 86,000 children in this age group as of July 1, 1984.) This means that within a ten-year period more than 10% of all Alaskan children will be the victim of child abuse serious enough that the case will be reviewed by the Criminal Division. This realization is particularly disturbing because only a percentage of reported abuse cases ever reach a prosecutor's desk, and only a much smaller percentage ever get reported at all. (The Kinsey Report, completed over three decades ago, found that 1 out of every 4 girls, and 1 out of 8 boys, had been the victim of sexual abuse before adulthood, although the results of the report have been doubted by many until just recently.)

Statistics from the Division of Family and Youth Services confirm this frightening trend. Reported abuse and neglect cases more than doubled between FY 78 and FY 83.

During that same period, the number of reports of child sexual abuse increased by nearly 300 percent. In addition, probably as a result of better training and investigative techniques, the number of substantiated cases increased sixfold. (Child Abuse and Neglect in Alaska: A Report to Governor Bill Sheffield, August 28, 1984.)

As can be seen on the chart below, the actual number of criminal child abuse cases in FY 85 exceeded even the pessimistic budget projections for FY 86. Currently in Anchorage alone, a new child abuse case is brought in for prosecution every working day! Child abuse cases are legally and factually complex, and take a tremendous emotional toll on attorneys and victims alike. Each case usually involves multiple "counts" (separate incidents) of child abuse by the offender. In most cases the victim has been assaulted many times; often there are several victims; sometimes there are both multiple incidents and multiple victims. Even if a case is not prosecuted, it takes an enormous amount of time interviewing victims and families, researching the law, and reviewing police reports, to be able to make that determination.



The number of child sexual abuse cases brought in to Criminal Division offices for prosecution in FY 82 was about 100. In three short years that number has swelled to almost 550 in FY 85, far outstripping available prosecution resources. From 1979-84, the division rejected (i.e., declined to prosecute) about 32% of all sexual assault cases. In FY 85, because of the crush of child sexual abuse, the division was forced to reject 44% of all sex cases. The only thing about child sexual abuse that has leveled off is the division's ability to prosecute any more cases.

In addition to the specific problems described above of more violent crime, more sophisticated drug trafficking, and more reported child abuse, there is also the problem of there being simply more and more cases of all types to be prosecuted. As a result of the population increase in certain areas of the state, as well as an increase in the number of judges and public defenders, we need additional attorney positions and pretrial diversion counsellors in order to maintain basic prosecution services.

The expanding population base in Alaska has meant more cases to be prosecuted. Much of this population increase is made up of young adult males in the age bracket that is most likely to commit crimes. The problem is most acute in Anchorage, Juneau, and Kenai. The planned military build-up in Fairbanks will only intensify the situation. In a single year, the number of cases brought to Criminal Division offices increased 18% -- from just over 22,000 (FY 84) to over 26,000 (FY 85). Felony cases were up 19%, misdemeanors up 14%, and other cases (appeals, probation revocations, etc.) up 39%.

The Criminal Division simply cannot prosecute any more cases -- it is currently turning them away in record numbers. (Last year the Division was brought over 4,300 felony cases, but prosecuted only 3,000 -- 31% were declined for prosecution.) In order to keep up with the staggering number

of cases the Division must (1) continue to turn away more and more cases or (2) be given additional prosecutors and pretrial diversion counsellors. New attorneys are needed, not only to prosecute those cases deserving of prosecution, but also to carefully review the thousands of extra cases brought in every year in order to make an intelligent decision about whether to prosecute. New pretrial diversion counsellors will be able to handle additional offenders in the pretrial diversion program, thus freeing up valuable attorney time to be devoted to more serious cases. This program is one of the most successful new Criminal Division services, last year collecting over \$190,000 in restitution and arranging over 23,000 hours of community work service.

Census figures show that the Anchorage Borough population increased 38% between 1980 and 1984, and that well over 60,000 more people are now living there. This population increase represents much more than the population of places like Juneau and Ketchikan, each of which have three full-time prosecutors. However, the Anchorage office has not received any additional positions designed to allow the office to keep pace with this population increase, and thus has the lowest prosecutor-to-population ratio of any office in the state, with Kenai a close second. Despite the need for prosecutors, the Anchorage office is regularly called on to assist in outlying offices, thus further reducing its prosecution capability.

The last time that the Juneau District Attorney's office received an attorney position was over 9 years ago, in 1975. Since that time the population and caseload have doubled, the number of superior court judges has doubled, and the number of state public defenders now equals the number of prosecutors. (Since criminal defense work is handled partly by public defenders and partly by private counsel, the total number of full-time defense attorneys in Juneau now far exceeds the number of prosecutors.) In addition, the typical felony case in Juneau has become much more serious and complex, thus resulting in a significant increase in pretrial proceedings. Service to the bush areas of Southeast Alaska has also increased due to increased crime in those areas.

The caseload of the Kenai District Attorney's Office has also doubled since the last attorney position was added 5 years ago, particularly drunk driving and fish and game cases caused primarily by the heavy recreational use of the Peninsula by Anchorage area residents. In FY 85 the small three-attorney Kenai office prosecuted 780 DWI cases -- 25% more than the entire Anchorage office. (In Anchorage a large percentage of DWI cases are handled by the municipal prosecutor.) The public defender agency in Kenai has added a third position, thus putting the prosecutor's office at a disadvantage compared with the number of available defense attorneys. Moreover, recent population increases make the Kenai prosecutor-to-population

ratio the second lowest in the state, only slightly ahead of Anchorage.

The Barrow office has been open for the last three years and is staffed with a resident prosecutor. However, the continued increase in serious felony cases in Barrow has reached the point that Fairbanks must provide additional attorney assistance to Barrow on nearly a full-time basis, thus reducing the number of prosecutors in Fairbanks. The single resident attorney in the Barrow office simply cannot provide adequate service to the North Slope area in light of the overall caseload and the need to devote more resources to child protection (including child support enforcement and juvenile delinquency proceedings). Moreover, the recent addition of a second public defender position means that Barrow has twice as many public defenders as public prosecutors.

One of your specific questions related to the impact of additional court resources on Criminal Division operations. As we have always said in the past, more judges means we must have more prosecutors. If we do not, then our prosecution efforts will suffer. Let me explain why.

The criminal justice system, like any other system, works best when it reaches a state of equilibrium; that is, the number of cases that move through the system must be able to

be adequately handled by the resources available in each criminal justice agency. If one agency increases its productivity, it affects the "balance" in the system. Cases begin to move through the system either more quickly or more slowly, and both results affect our ability to effectively prosecute the cases.

For example, if more cases come into the system, either because the police increase the number of field officers, or if the prosecutors reduce their screening standards and accept more cases, or if crime simply increases, then more and more cases must be processed. If the system (courts, prosecutors, public defenders) is not prepared to meet this increase, then there will be long delays, cases will stack up and there will be more cases pending adjudication. This means that more and more cases will approach the four-month rule deadline, and available civil judicial resources will have to be diverted to criminal cases to avoid dismissals. Every good lawyer knows that delay benefits the defense; witness frustration and attrition being one of the primary reasons.

Conversely, if because of the addition of judicial resources, cases start moving more quickly through the system, then there may not be enough trial attorneys to go around and they may not have adequate time to prepare for trial. Currently in Anchorage so many cases are going to trial that

several prosecutors have been required to appear in two courtrooms at one time because two of their cases were called to trial at once. Under these circumstances, it is unreasonable to expect that another prosecutor who is unfamiliar with the facts can simply step in and take over the case--they are not, after all, fungible commodities. As a result, prosecutors have been sanctioned, and in some instances have been ordered out of another judge's courtroom to be present for a different judge's case. This kind of helter-skelter practice does not allow enough time for proper trial preparation, and is bad for office morale. In addition, the frequent schedulings and reschedulings make it difficult to coordinate witnesses and other trial logistics.

If I had to make an assessment as to which agency is out of sync, I would have to say it is the Criminal Division. The number of judges in most areas of the state is probably adequate, with the possible exception of Palmer and Kenai. Cases are for the most part moving through the system within the four-month rule limit. The number of defense counsel is also adequate. In most areas of the state the number of public defenders now equals the number of public prosecutors. With the creation of the Office of Public Advocacy and the availability of private retained counsel, prosecutors in this state are definitely out-manned. Prosecutors are therefore forced to carry a much higher caseload than the average defense attorney and, in addition, must review and screen a large percentage of cases that never get filed. (We are currently so

backed up in Anchorage in reviewing child abuse cases that it will probably take several months to catch up, if we ever do.)

I understand that the court system will request additional superior court judges this year in Palmer, Kenai, Dillingham, and Ketchikan. Obviously any such increase in judicial resources must be matched by a corresponding increase in prosecution resources. For example, additional judges in Palmer and Kenai will at a minimum require one additional prosecutor in each area. In addition, Anchorage judges who currently travel to Kenai and Palmer will now be able to devote more attention to Anchorage cases, thus necessitating at least one extra prosecutor in Anchorage. Without these increases, the Criminal Division simply will not be able to keep up. Our screening standards cannot get much higher consistent with adequate public protection, and we cannot maintain the current pace of trials in Anchorage without decreasing the conviction rate and contributing to the high turnover of experienced prosecutors that we have undergone over the last two years.

You also specifically asked about position increases since FY 84. As you can see from the chart below, since FY 84 the Criminal Division has only received legislative funding for two attorney positions (in Palmer and Dillingham) that were not directly related to the fiscal impact of new criminal justice

legislation. (I will be glad to supply you with information on paralegal and clerical positions should you so desire.)

Position/LocationFunding Source

FY 86

Attorney IV (Anchorage)

HB 88 (Child protection legislation)

FY 85

Atty V (Dillingham)

Regular budget

Atty III (Palmer)

Regular budget

2½ Atty III (Anch & Fairbanks)

HB 7 (Mandatory Auto Insurance)^{3/}

Atty V (Anchorage)

HB 571 (Increasing the number of judges)

2 Atty IV (Anchorage)

Narcotics prosecution unit approved
without funding

FY 84

2 Atty III (Ketchikan & Bethel)

HB 270, HB 6, HB 214^{4/}

½ Atty III (Anchorage)

HB 10 (Imitation Controlled Substances)

In short, there have been no new attorney positions given to the Criminal Division to keep pace with the sophistication and complexity of large-scale drug trafficking in Alaska, and only a single position (by way of the HB 88 fiscal note) to address the explosion in child abuse cases. There has only been one attorney position (the FY 85 Palmer attorney) to address the increase in caseload due to the ever-expanding population base.

3/ Currently about 60% of the misdemeanor caseload in Anchorage is for Driving With A Suspended or Revoked License, much of which is a result of failure to have insurance or failure to prove financial responsibility.

4/ These fiscal notes relate to new laws on drunk driving (HB 6), child pornography (HB 270) and a superior court judgeship in Valdez (HB 214).

Finally, I would like to call your attention to another budgetary problem that we have been experiencing in recent years. As you know, there have been a number of very serious, highly publicized crimes that have required lengthy (and very expensive) trials. These kinds of cases force us to divert scarce resources from our normal caseload. Currently State v. John Peel is just such a case in point. In the past few years we have absorbed all the costs of major prosecutions of this sort: Meach (four teenagers killed in Anchorage), Stumpf (contract killing in Anchorage), Mortgage Company of Alaska (fraud in Anchorage), and Resek-Marin (about 25 drug trafficking cases in Anchorage). The Mackay case is likely to be the next one in line. In other cases, such as Hastings (6 killed in MacCarthy) and Hansen (17 women killed in Anchorage), we save a lot of time and money if the defendants plead guilty, but we can't always count on that happening.

However, the complexity of the Peel case has made it far more expensive than any of these others. In short, it is simply draining us this year. We have had to divert personnel from Anchorage, Juneau, and Sitka to help out with the normal Ketchikan-Petersburg-Wrangell calendars, and we have diverted large amounts of witness travel and contractual money from the central office in Juneau. If we are to continue to vigorously pursue these kinds of cases without completely disrupting the rest of our operations, there must be some recognition of the

need for a special appropriation (similar to the special funds available for oil and gas litigation) for these completely unanticipated major cases.

We are appreciative of your longstanding support of the Criminal Division. If we can be of further assistance, please let me know.

Very truly yours,

HAROLD M. BROWN
ATTORNEY GENERAL

By: Dean J. Guaneli

Dean J. Guaneli
Acting Chief of the
Criminal Division

DJG/gb-70

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503



DURING SESSION:
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

✓ KB copy

F.Y.I.

October 10, 1985

Dean Guaneli, Section Supervisor
Legal Services Section
Criminal Division
Department of Law
Pouch KC
Juneau, Alaska 99811

*P.M.R. - I'm TRYING
TO GET SOME BASELINE
DATA TO JUSTIFY YOUR
REQUEST ON ADDITIONAL
PROSECUTORS. KB*

Dear Mr. Guaneli:

I have been approached by some members of the Department of Law who have expressed a concern that the legislature has not allocated sufficient funds for the criminal prosecution function, especially in light of recent Title 11 amendments. As Chairman of the Senate Judiciary Committee, I am naturally concerned if there are inadequate resources to devote to priorities that the legislature has established.

Accordingly, I would appreciate receiving from your agency some statistical information on case processing that I understand is available through the P.R.O.M.I.S. system. Specifically, I would like to know:

- 1) The number of misdemeanor and felony cases (by offense types) forwarded to the D.A.'s office for prosecution during FY 84, and FY 85.
- 2) The number of cases (by offense types) actually filed on for the same fiscal years.
- 3) All position increases for FY 84 and FY 85 by District Attorney Office.
- 4) Offense category increases and decreases noted by your office.
- 5) Your impressions of the impact of additional court resources on the criminal division's operations.

I appreciate your assistance in this matter, and please let me know if you need any clarification of my request.

Sincerely,

Pat
Patrick M. Rodey

PATRICK M. RODEY
3271 MONTCLAIRE CT.
ANCHORAGE, AK 99503



V KB copy

DURING SESSION
POUCH V
JUNEAU, AK 99811
(907) 465-3717

ALASKA STATE SENATE

October 10, 1985

Dean Guaneli, Section Supervisor
Legal Services Section
Criminal Division
Department of Law
Pouch KC
Juneau, Alaska 99811

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- 5) Your impressions of the impact of additional court resources on the criminal division's operations.

I appreciate your assistance in this matter, and please let me know if you need any clarification of my request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Pat", enclosed within a large, loopy circular flourish.

Patrick M. Rodey

PAT RODEY

Red Room AT 12:00
B-CLUB

When young people confront our juvenile justice system, injustice is a frequent result. The system seldom provides the justice that is so desperately needed, it does not always help the non-criminal youth who fall into its domain and it frequently fails to protect society from the violence of the few truly dangerous juveniles that are outside the law. It is this last problem that we are addressing today, the truly dangerous youth who more rightfully fall within the jurisdiction of the adult court rather than under juvenile procedure.

Before we examine the specific issue of legislative waiver of certain youthful offenders to adult court we should review the purpose of the juvenile justice system. Simply stated, juvenile justice is based on the obvious notion the juveniles are young and therefore their culpability for criminal acts is diminished. Furthermore, research indicates that much of delinquency may be a symptom of adolescence that will be outgrown in most circumstances. Accordingly, the juvenile system seeks to rehabilitate youths and protect them from the stigma of conviction through treatment, supervision and confidentiality. As you may know, the law currently allows minors to be prosecuted as adults if the state can show by a preponderance of the evidence that a juvenile is not amenable to treatment.

I do not quibble with the purposes of this system, and I do not believe that legislative or automatic waiver of certain juveniles does harm to the overall purposes of juvenile justice. My bill would automatically waive 16 and 17 year old juveniles from juvenile court into adult court if there is probable cause to believe that they have committed murder, kidnapping or sexual assault in the first degree. My proposed bill addresses acts that are clearly unacceptable in any society, offenses that are so heinous that any 16 or 17 year old juvenile knows that they have clearly and irrevocably stepped beyond the notion of delinquency and have entered the realm of criminality. Murder, rape, and kidnapping are adult offenses and deserving of an equal level of response from society.

I recognize and acknowledge that a troublesome aspect of this approach is what to do with the youthful defendant before, during and, assuming conviction, after trial. My bill would allow the Division of Family and Youth Services to retain custody of the defendant throughout this procedure and would only transfer the defendant to adult corrections when the defendant reached their 19th year, and only if more than a year remained on their sentence. The state should obviously protect the offender from possible victimization and I would oppose throwing any juvenile, regardless of their offense, in with adult offenders.

~~Finally,~~ I also realize that, even given the seriousness of these offenses, that there may exist mitigating circumstances because of the offender's age that argue against the imposition of a presumptive sentence. Accordingly, my bill would remove the stipulation that presumptive and mandatory minimums apply in these cases, and therefore give a sentencing judge the widest latitude in fashioning the most appropriate sentence. For instance, a conviction under Murder in the First Degree carries a minimum term of 20 years. This would not apply to juveniles waived under my proposal.

Actually, Alaska is fairly fortunate, for our problems with youthful offenders are far less serious than for the nation as a whole. The Division of Family and Youth Services reports that juvenile arrests for serious, violent crime averages 2%, as compared to 4.2% nationally. In calendar year 1983 that translated out to 116 arrests in the most serious category of offenses. Some would say that indicates a success that shouldn't be ~~expected~~ ^{timid} with, I don't agree. The possibility of deterring some juveniles from committing these types of offenses by broadcasting a clear message cannot be overlooked. In one particularly brutal murder a 18 year old offender told his 16 year old companion to club the victim to death because he was a juvenile and wouldn't be prosecuted for it. Make no mistake, the majority of juveniles in this age category are cognizant of the legal

ramifications of their acts, and they are aware that if they remain within the juvenile system they are released when they become adults.

Another argument used against automatic waiver is the belief that the current system of waiver works sufficiently. Again, I don't agree. Unfortunately, we do not have very reliable data on its use and misuse but know that it has been applied in cases ranging from murder in the first degree to minors consuming alcohol. At a recent legislative hearing on this topic an opponent of automatic waiver cited the following statistics; of 17 waivers requested over a three year period 11 were approved, 1 was withdrawn, 4 denied and 1 was pending. Because of a records failure we don't know what each of the cases represented, but if attempts have been made to waive juveniles for consuming alcohol I'm not surprised that some have been denied. More important, if only 17 waivers were attempted over a three year period, what of the approximately 300 remaining cases of serious juvenile crime? Are we to assume that they were all amenable to treatment? I think not. Current waiver hearings can be quite complex and consume the resources of defendant and prosecution alike. In some cases I have been told that a waiver has not been pursued because there were inadequate resources to devote to the task, not because they were not warranted.

As Ted Kennedy once said on this issue, "...the major problem confronting the juvenile justice system is fundamental, and can be traced to an unrealistic myth; that juvenile courts are somehow equipped to rehabilitate and treat all juveniles...". "Age cannot justify treating the 17 year old rapist or murderer differently from his adult counterpart. The poor, the elderly - those most victimized by crime - do not make those distinctions. Nor should the courts."

I believe Senator Kennedy is right, an automatic waiver for 16 and 17 year old defendants in major crimes cases is not only appropriate, but the best course.

MEMORANDUM OF AGREEMENT

The Alaska Court System and the Division of Risk Management, Department of Administration, agree that the State of Alaska will provide liability coverage for employees of the Alaska Court System, under the terms of this memorandum.

I Coverage.

The State of Alaska will pay on behalf of any employee of the Alaska Court System all sums which the employee becomes legally obligated to pay as damages because of any claim or claims, including claims for personal injury, made against the employee and reported to the Division of Risk Management, by reason of any act, error or omission of the employee in the employee's official capacity (including but not limited to judicial, ministerial, administrative and management acts). Coverage includes exemplary and punitive damages awarded in conjunction with any covered claim.

II Defense and Settlement.

(a) The State of Alaska has the duty upon request from an employee covered under this memorandum to defend any suit against an employee alleging acts, errors or omissions covered under this memorandum. In addition, the State of Alaska will defend and pay all fees, costs and expenses incurred in the defense of claims made in conjunction with disciplinary proceedings arising from an act, error or omission of the employee in the employee's official capacity.

(b) The State of Alaska has the right to investigate the facts underlying the claim and to settle any claim as it deems

expedient. However, the State of Alaska will not settle a claim without first advising the employee and considering the employee's concerns, if any, about whether a settlement should occur.

(c) The State of Alaska will select and retain counsel to represent the employee in any action associated with a claim under this memorandum. An employee's preference about which attorney should be selected will be taken into account by the division in selecting counsel if the employee informs the division of the preference.

III Persons Covered.

Persons covered include all employees of the Alaska Court System, whether full-time or part-time, while acting in the scope of their employment for the State of Alaska. A person formerly employed by the Alaska Court System is covered under this memorandum for acts, errors or omissions which occurred while the person was employed by the Alaska Court System.

IV Territory Covered.

This policy applies to acts, errors or omissions occurring anywhere in the world.

V Claim Reports.

A claim is considered to be reported to the State of Alaska only when the Division of Risk Management, or its designee, first receives verbal or written notice of the claim or of an event which could reasonably be expected to give rise to a claim.

VI Exclusions.

Coverage under this memorandum does not apply:

(a) to any claim arising from the intentional violation of a penal statute or ordinance by an employee; however, this exclusion does not effect the coverage to any other employee;

(b) to any damages arising out of a claim or claims alleging a conflict of interest between the employee's official capacity and any of the employee's activities as a director, officer, partner, investor or trustee of any private, public or charitable organization; however, the State of Alaska will defend any such claims until a final adjudication of liability.

VII Definitions.

(a) "Personal Injury" means

(1) an injury arising from false arrest, detention or imprisonment, wrongful entry or eviction or other invasion of private occupancy, malicious prosecution, or abuse of process;

(2) an injury arising from the publication or utterance of a libel or slander or other defamatory or disparaging material, or a publication or an utterance in violation of any individual's right of privacy;

(3) any claim for bodily injury, sickness, disease or death of any person or for injury to or destruction of any tangible property, including loss of use, when the claim arises from an act, error or omission in the employee's official capacity;

(4) any claim for damages brought pursuant to 42 U.S.C. section 1983.

(b) "Claims Expense" means

(1) fees charged by an attorney(s) selected to represent the employee;

(2) all other fees, costs and expenses resulting from the investigation, adjustment, defense and appeal of a claim, suit or proceeding arising in connection with a claim.

(c) "Claim" means a demand received by an employee for damages or equitable relief and includes the service of suit on the employee, any form of communication addressed to and received by the employee which makes demand for damages or equitable relief, or the institution of arbitration or disciplinary proceedings against the employee. Any written form of communication which the employee has knowledge of and indicates an intent to sue the employee shall be treated as a claim.

(d) "Disciplinary Proceedings" means proceedings before the Judicial Conduct Commission, the Alaska Bar Association, the Alaska Public Offices Commission, or any similar entity, but does not include grievances under the Alaska Court System personnel rules.

VIII Notice of Claim or Suit.

If claim is made or suit is brought against an employee, the employee shall immediately forward to the General Counsel for the Alaska Court System every demand, notice, summons or other process received by the employee or the employee's representative. The General Counsel shall immediately forward these documents to the Division of Risk Management.

When an employee becomes aware of any act, error or omission, which could reasonably be expected to be the basis of a claim or suit covered under this memorandum, written notice shall be given by or on behalf of the employee to the General Counsel

for the Alaska Court System as soon as practicable, together with the fullest information obtainable. The General Counsel shall immediately forward the notice and information to the Division of Risk Management.

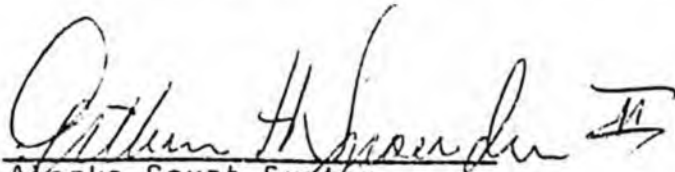
IX Assistance and Cooperation of the Employee.

The employee shall cooperate with the State of Alaska and, upon the state's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the employee because of acts, error or omissions with respect to which coverage is afforded under this memorandum, and the employee shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The employee shall not, except at the employee's own cost, admit liability, voluntarily make any payment, assume any obligation or incur any expense.

X Subrogation.

In the event of any payment under this memorandum, the State of Alaska shall be subrogated to all the employee's rights of recovery against any person or organization, and the employee shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The employee shall do nothing after loss to prejudice such rights.

This agreement is effective immediately.



Alaska Court System

Dated: 4-22-85

Attorney General

Dated: _____

Division of Risk Management

Dated: _____

Murder cases show increase

by Jim Springer
Times Writer

The number of murder cases sent to prosecutors in Alaska increased by 36 percent between fiscal years 1984 and 1985, paralleling a dramatic rise in nearly all felony categories, according to state Department of Law statistics.

From 1984 to 1985, the number of murder cases considered by state prosecutors rose from 50 to 68, acting Criminal Division Chief Dean Guaneli stated in a letter to Sen. Pat Rodey. Prosecution was declined in 10 percent of those cases, according to the division statistics released last week.

The number of child sexual abuse cases referred to prosecutors also soared, increasing by 57 percent to 537, Guaneli said, but prosecution was declined in 40 percent of those cases.

The overall rise in the number of felony referrals made between July 1984 and July 1985 amounted to 19 percent, with prosecutors handling about 4,300 felonies during that period, said Guaneli. In

his letter, a response to an inquiry by Rodey, Guaneli pleaded for additional money from the legislature. He said prosecutors are at the limit of their resources now and will not be able to take on greater workloads without more help.

"The Criminal Division simply cannot prosecute any more cases — it is currently turning them away in record numbers," he said. Of the 4,300 felonies seen by the division last year, 3,000 were prosecuted, he stated.

If murder cases are to be pursued vigorously without disrupting the division, "there must be some recognition of the need for a special appropriation," he stated. Contested murder cases require large amounts of cash for travel expenses, contractual fees and other needs, he said.

Rodey, who chairs the Senate Judiciary Committee, said he intends to file a supplemental appropriation to cover a projected shortfall of between \$300,000 and \$400,000 in the Criminal Division.

See Prosecutors, page A-8

Inside:

- Guatemala elects president
— page A-3
- Fans mourn John Lennon
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- OPEC action may cut prices
— page D-1
- Bengals thrash
wboys
— page E-1

Prosecutors try to cope with increasing number of cases

Continued from page A-1

"We are going to have to decide which state programs will be discontinued, but protection of the public is among the fundamental obligations of government. I just can't justify cutting back on criminal prosecutions when we are debating the size of swimming pools in Anchorage," said Rodey, referring to a controversy over the size of a proposed pool for Bartlett High School.

He said he will await a detailed analysis of budget needs by the division before drafting his bill. The division is drawing

on an \$11.4 million budget approved by the legislature last year.

Because of the increase in overall criminal charges, and the increase in the seriousness of the charges, district attorneys must screen and prioritize the cases that are pursued, said Guaneli.

A top priority of the division has been prosecution of sexual offenses, including adult rape and child sexual abuse, said the acting chief prosecutor.

Under existing trends, "... within a 10-year period more than 10 percent of all Alaskan children will be the victim of

child abuse serious enough that the case will be reviewed by the Criminal Division," he said.

In FY 1985, prosecutors had 537 child-abuse referrals sent to them, and Guaneli projected that number to rise to 700 cases by FY 1987. The division declined to prosecute 40 percent of the 1985 referrals, he said.

"Currently in Anchorage alone, a new child-abuse case is brought in for prosecution every working day . . . In most cases the victim has been assaulted many times; often there are several victims," said Guaneli.

"The only thing about child

sexual abuse that has leveled off is the division's ability to prosecute more cases."

Rodey and Sen. Jan Faiks, Finance Committee co-chair, said recent passage of a number of child-abuse bills has placed additional pressure on the Criminal Division, without providing additional funding to follow through with prosecution.

"It's a hollow promise if we don't provide the resources to prosecute those cases," said Rodey, D-Anchorage. "Put very simply, without efforts to enforce the law, any new laws won't be effective."

"It seems to me they (the Criminal Division) would be at the head of the list for additional funding," said Faiks, R-Anchorage. "They didn't get an increase when the child-abuse laws were passed. There has to be some strong looks at the Criminal Division."

District attorneys have also concentrated on cracking down on large-scale drug operations, but those efforts are extremely time-consuming and labor-intensive, said the chief prosecutor. "Because our narcotics prosecution unit has not been funded, very few of them can be pursued

and other cases suffer when we do in fact pursue one," he wrote.

The number of misdemeanor referrals to the Criminal Division rose by 14 percent in 1985, from 15,602 to 17,771, according to division statistics. Prosecutors declined to pursue 18 percent of those cases. Guaneli reportedly said last week that the number of misdemeanors prosecuted may be cut back in order to handle the increase in felony cases.

Rodey said the legislature will have to consider the plight of the Criminal Division and do some prioritizing of its own.

Dec 11, 1985 ANCHORAGE TIMES

Justice unfunded

THERE HAS TO BE another answer to the problem of too many crimes and too few prosecutors besides just throwing more money at a growing crisis.

Democratic Sen. Pat Rodey of Anchorage says he is going after a \$400,000 supplemental appropriation next month for the state Department of Law's criminal division.

That's on top of a 1985 budget of \$11.4 million, which officials say is simply not adequate for the manpower and resources required to take to court all the felony cases on file.

THERE'S NO END to that course. More prosecutions surely will mean an additional burden on the court system, which will need more judges, more support staffs, more courtrooms and more dollars to pay for juries and the costs that come with trials.

Assuming more convictions, we'll need money for more jail cells, more guards, more prison maintenance, more parole officers, and so

on and so on.

Despite the horrendous spectre such projections raise, surely anything is better than what state prosecutors say now is the case: felony charges, including murder and child sexual abuse cases, are being dropped because the rising tide of such ugly crimes has left the state without the manpower to prosecute.

OFFICIALS SAY 10 percent of the murder cases and 40 percent of the abuse cases are never taken to court.

That's awful. As a matter of fact, the whole situation is awful — that the crimes were committed in the first place and that the state can't seek justice in the courts because its existing prosecution forces are overloaded.

Society somehow must find a way to deal with these shocking increases in violent crime. But even at times of tighter budgets and declining revenues, there is no way for the state to avoid providing the necessary funds to prosecute those charged with murder and mayhem.