

CONFIRM:

B. BRINK

AK PUBLIC

DEFENDER



Official Business

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Rm 214
Juneau, AK 99801-1182
(907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: January 31, 1997

TO: Judiciary Committee

FROM: Suzi Lowell *SL*
Chief Clerk

SUBJECT: Governor's Appointr ents

Speaker Phillips referred the following Governor's appointment to the Judiciary Committee:

ALASKA PUBLIC DEFENDER
Barbara Brink

Attached is her resume for your use.

Attachment as noted.



Alaska State Legislature House of Representatives

Official Business

Date: January 31, 1997

The Honorable Gail Phillips
Speaker of the House
State Capitol
Juneau, AK 99801


Dear Madam Speaker:

In accordance with AS 39.05.080, the Judiciary Committee has reviewed the qualifications of the following and recommends that the appointment be forwarded to a joint session for consideration:

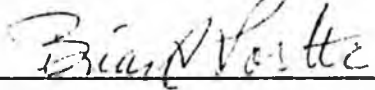
**Alaska Public Defender
Barbara Brink**

This does not reflect an intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.


Rep. Joe Green, Chair


Rep. Con Bunde, Vice Chair


Rep. Jeannette James


Rep. Brian Porter


Rep. Norman Rokeberg


Rep. Ethan Berkowitz


Rep. Eric Croft

BARBARA K. BRINK

810 W. 16th Ave. Anchorage, Alaska 99501
 (907) 258-4666; Barbara_Brink@Admin.state.ak.us

EXPERIENCE**The Alaska Public Defender Agency**

Acting Director September 1996 - present.

Administer state agency of 13 offices with 108 employees who provide legal services in over 17,000 cases per year. Duties include personnel oversight, preparation of annual budget in coordination with Department of Administration, testimony before the legislature on substantive and procedural criminal bills, service on various boards, task forces and committees that deal with criminal justice issues.

Deputy Public Defender October 1988 - September 1996.

Assisted director in all phases of administration as well provide direct attorney services in all types of cases as needed in urban and rural courts.

Assistant Public Defender August 1982 - October 1988.

Started service as an appellate lawyer, have worked as misdemeanor trial lawyer, felony trial lawyer, appellate supervisor, felony intake lawyer and investigator. Have handled every type of case at every level including delinquency, CINA and involuntary civil commitments.

The Supreme Court of the State of Alaska

Law clerk to Justice Roger Connor August 1981 - July 1982.

Researched and drafted bench memoranda prior to oral argument, summarizing and evaluating litigant arguments. Drafted and edited opinions.

Contra Costa County Public Defender Agency

Law clerk June 1980 - July 1981.

Initial client interviews re' financial eligibility and case information. Researched and drafted pleadings, argued motions in court and conducted criminal non-jury trial.

EDUCATION

J.D.	1981 Hastings College of the Law - University of California Jessup International Moot Court Competition Team Public Interest Law Association
B.A. with honors	1978 The University of Chicago Maroon Key Honor Society - Dean's List Four Years Gertrude Dudley Scholar Order of the C - varsity volleyball, basketball, softball

PROFESSIONAL

Alaska Bar Association State Bar of California National Association of
 Criminal Defense Lawyers National Legal Aid and Defenders Association Alaska
 Academy of Trial Lawyers California Public Defenders Association Southern Poverty Law
 Center Northwest Women's Law Center

PERSONAL

Anchorage Women's Hockey League Anchorage Sports Association

BARBARA K. BRINK
810 W. 16th Ave. Anchorage, Alaska 99501
(907) 258-4666; Barbara_Brink@Admin.state.ak.us

REFERENCES

Justice Dana A. Fabe
Alaska Supreme Court
303 K St. 5th floor
Anchorage, AK 99501
(907) 264-0622

Judge Michael L. Wolverton
Alaska Superior Court
825 W. 4th Ave. room 342
Anchorage, AK 99501
(907) 264-0655

Brant McGee
The Office of Public Advocacy
900 W. 5th Ave., suite 500
Anchorage, AK 99501
(907) 269-3501

Philip M. Pallenberg
718 5th Street
Juneau, Alaska 99801
home (907) 586-1180 work (907) 465-4911

February 3, 1997

Representative Joe Green
Chairman,
House Judiciary Committee

RE: Appointment of Barbara Brink as Public Defender

Dear Senator Taylor:

I am writing to give my unqualified support for the confirmation of Barbara Brink as Public Defender.

I am the supervising attorney for the Juneau office of the Public Defender Agency. I have been a lawyer since 1983, and have been with the Public Defender Agency since 1990 (with the exception of a short time that I was back in private practice in Juneau). I have supervised both the Kodiak and Juneau public defender offices. During this time, I have developed a very high regard for Barb as an advocate and an administrator.

Barb is, to my knowledge, universally well liked and respected in the agency. She is a zealous advocate for her clients, and is dedicated to the mission of this agency. She is one of the most capable lawyers I know. I think she is the ideal person for the job of Public Defender.

For most of the time that I have known Barb, she has been Deputy Director of this agency. Her predecessor was very much a "hands off" manager. During the months that Barb has been Acting Director, I have seen a noticeable -- and beneficial, in my opinion -- tightening up of management. I think that, with Barb as Director, there will be a continued improvement in the administrative functioning of this agency.

As compared with any other similar organizations, this agency has a uniquely high morale on the part of its staff. This is essential if this agency is to continue to perform its constitutionally required function. The job of an Assistant

February 3, 1997

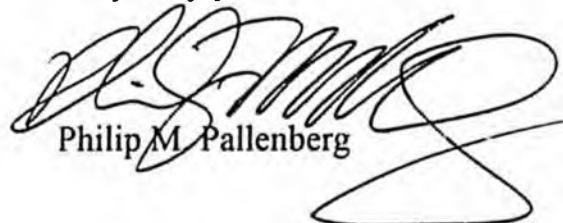
Public Defender is a very difficult one, which must be performed in high volume with very limited resources. I think the strong and fair leadership which Barb has exercised both as Deputy Director and Acting Director has a great deal to do with the high morale of the lawyers in this agency.

The job of Public Defender is a vital counterweight to ensure that the criminal justice system operates fairly. As the Legislature responds to political demands to resolve perceived problems with the criminal justice system, it is particularly important that the Public Defender Agency continue to provide effective representation to indigent people accused of crimes. This is the only way to ensure that the system operates fairly, as well as effectively, and to ensure that innocent people are not convicted along with the guilty.

The Public Defender should be a strong and effective advocate for the mission of this agency. I do not think this is a matter of politics or ideology. Barb Brink will fulfill this responsibility.

I would urge you and, through you, the members of the Judiciary committee to act favorably on this appointment. If you have questions or would like to discuss any issues relating to this appointment, I would be delighted to meet with you or testify before the committee.

Very truly yours,



Philip M. Pallenberg



U.S. Department of Justice

3919

United States Attorney
District of Alaska at Anchorage

Federal Building & U.S. Courthouse
222 West 7th Avenue, #9, Room 253
Anchorage, Alaska 99513-7567

Commercial: (907) 271-5071
Fax Number: (907) 271-3224

January 13, 1997

The Honorable Tony Knowles
The Governor of Alaska
P.O. Box A
Juneau, Alaska 99811-0101

RECEIVED
JAN 17 1997
OFFICE OF THE GOVERNOR

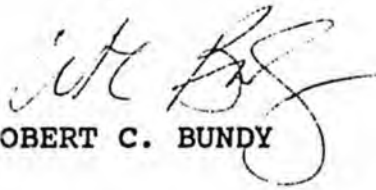
Re: Candidacy of Barbara Brink for State Public Defender

Dear Governor Knowles:

This will convey my support for Barbara Brink for the position of the State Public Defender.

Over the past 12 years, as a State prosecutor and lawyer engaged in private practice and as United States Attorney, I have had occasion to become familiar with Ms. Brink's professional abilities and reputation. She is very highly regarded among all who know her in the legal community. She is exactly the kind of person that will maintain the high reputation of the Alaska Public Defender Agency among judges, prosecutors and defense lawyers.

Very truly yours,


ROBERT C. BUNDY

RCB:kjm

BOARDS & COMMISSIONS

JAN 2 1997

public defender
3530

FEDERAL PUBLIC DEFENDER
for
THE DISTRICT OF ALASKA

BOARDS & COMMISSIONS
JAN 14 1997

Rich Curtner
Federal Public Defender

550 W. Seventh Avenue, Suite 1600
Anchorage, AK 99501

(907) 271-2277/FAX (907) 271-2271

January 7, 1997

The Honorable Tony Knowles
Governor for the State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

RECEIVED
JAN 10 1997
OFFICE OF THE GOVERNOR

Re: Acting Public Defender Barb Brink

Dear Governor Knowles:

The purpose of this letter to encourage you to appoint Barb Brink Public Defender for the State of Alaska. In our view, Ms. Brink's years of experience as the chief deputy public defender and as a line public defender especially qualify her for this position.

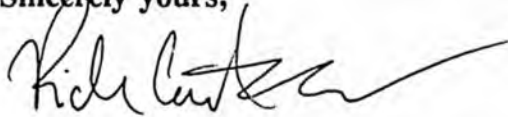
The Alaska Public Defender Agency has provided this state with a widely respected tradition of excellent representation to its indigent citizens. Ms. Brink is dedicated to this tradition and will insure that it continues. Ms. Brink has demonstrated her ability both as a trial lawyer and as an administrator. She is well-respected by her peers and has the confidence of the attorneys who work for her throughout the state.

Equally important is the courteous and professional working relationship Ms. Brink maintains with the Alaska Court System, with the Department of Law, and with the various police agencies. Alaska Citizens and the Alaska Criminal Justice System will be well served by Ms. Brink's appointment as Alaska's Public Defender.

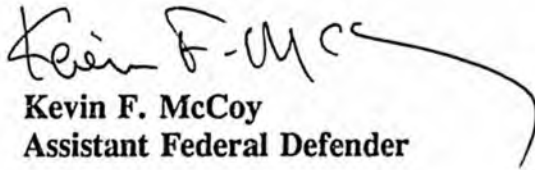
The Honorable Tony Knowles
January 7, 1997
Page 2

For all these reasons, we urge you to appoint Barb Brink to this important position.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Rich Curtner", with a long horizontal flourish extending to the right.

Rich Curtner
Federal Defender

A handwritten signature in cursive script, appearing to read "Kevin F. McCoy", with a long horizontal flourish extending to the right.

Kevin F. McCoy
Assistant Federal Defender

/kfm

Post-it brand fax transmittal memo 7671		# of pages > 2
To <i>Cindy Smith</i>	From <i>Sulemi</i>	
Co. <i>GUV</i>	Co. <i>FPD</i>	
Comm.	Phone # <i>871-2277</i>	
Fax # <i>465-3532</i>	Fax #	

January 10, 1997

Governor Tony Knowles
Office of the Governor
Juneau, Alaska

Re: Barbara Brink/Public Defender application

Dear Governor Knowles:

I enthusiastically support the candidacy of Barbara Brink for the position of Director of the Alaska Public Defender Agency.

Ms. Brink and I worked together in the Anchorage Public Defender office for approximately 15 years. In the early years we were both staff lawyers. After I was appointed to the Director position for the agency, I immediately named Barbara as Deputy Public Defender. I chose her because of her strong legal skills, the respect she enjoyed among our colleagues, and the commitment she had to the mission of the Public Defender. Choosing Barbara for this position was among the wisest administrative decisions I made during my tenure.

Barb was given considerable administrative duties as Deputy. Her performance in discharging same was always outstanding. Barb is organized, highly intelligent and possessed of good judgment and people skills. People respond very well to her style of leadership and management. Because she demonstrates such a strong work ethic, she also provides a fine example for all staff.

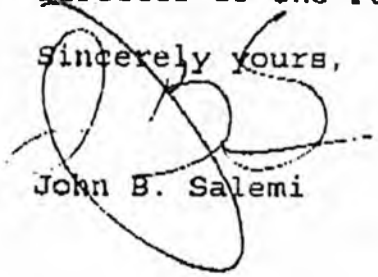
As you may know, the function of the Public Defender in the criminal justice system is often misunderstood, and for the most part unappreciated. A strong director is crucial as concerns representation of the agency to the judiciary, the executive and especially the legislative branch of government. Barb possesses that strength of character which will make her an excellent spokesperson for the agency. She is a principled person who has a clear vision of the importance of the agency mission. She is also very articulate and persuasive, and has a very professional approach to her work.

I think it is critical to understand that although Ms. Brink was an important part of my management team, Barbara is an independent thinker who has a new vision for the agency. I am proud of my accomplishments during the time I was Director of the Public Defender Agency. I recognize, however, that "change" is part of the landscape of an institution such as the Public Defender Agency. I

am convinced Barb will be very successful in managing change which affects the agency from the legal environment, and in initiating change as a management tool to create an even better agency.

In summary, I highly recommend Barbara Brink for consideration as Director of the Public Defender Agency.

Sincerely yours,



John B. Salemi

Public file / file
3853LAW OFFICES OF
RICE, VOLLAND, TAYLOR & HENSLEY
A PROFESSIONAL CORPORATIONWILSON A. RICE
PHILIP R. VOLLAND
R. SCOTT TAYLOR
DAN A. HENSLEY

January 15, 1997

211 H STREET
ANCHORAGE, ALASKA 99501
(907) 276-5231
FAX (907) 276-6328

BOARDS & COMMISSIONS

JAN 24 1997

Honorable Tony Knowles
Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001*Re: Appointment of Barbara K. Brink as Public Defender*

Dear Governor Knowles:

As you may recall, I have practiced law in Anchorage for twenty years and am a past president of the Alaska Bar Association. Through my practice and years of work with the Bar Association, I believe I have come to recognize the characteristics of a lawyer that result in wide respect from both the bench and the bar. Barb Brink is one of those rare lawyers who stands out because of the measure of respect she receives from her colleagues.

Although I have not practiced criminal law in many years, I know well the demands Barb has faced in her present position. As the former supervisor of the Anchorage Office of Alaska Legal Services, I understand the administrative demands of supervising, hiring, training, and coping with fifteen lawyers and their associated staff. As someone married to a former public defender, I know of the incessant personal pressures that arise from the extremely busy trial and hearing schedule a public defender must handle. I also know from my own personal work how demanding, and sometimes depressing, it can be to work with clients who are angry about their arrest and incarceration, often alcoholic or mentally ill, and usually poor and uneducated. Barb has risen above all of these pressures as the well deserved and well respected leader of the public defender's office.

I have known Barb both personally and professionally for ten years. Barb and I worked together frequently on Bar Association affairs and I on matters related to my work with Alaska's prison system. She and I have both taught and trained together at various trial practice seminars. We have argued about each other's cases and have laughed at each other's foibles. These experiences have only led me to trust Barb more and to seek her counsel and advice more often. I would ask Barb to be my lawyer any day.

Honorable Tony Knowles
Governor, State of Alaska
January 15, 1997
Page 2

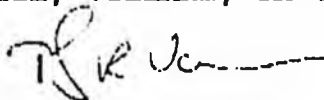
Barb is one of the best public defenders I know. She has poised trial skills, many, many years of experience with rural Alaskan communities, sound judgment, and integrity. Even after 15 years of demanding practice, she has compassion for her clients and a forever kind heart for her friends.

Although these are all reasons enough to appoint Barb as Public Defender, Barb is the most qualified for the job simply because she is the best administrator. The Public Defender job is one that demands tact and patience in dealing with the Legislature over funding and criminal law issues. It requires recruitment, hiring, and training skills for new lawyers, and the ability to manage and allocate a statewide budget. It also requires someone who can both control and motivate that special breed of lawyer driven to criminal defense practice. Barb does all this well, and better than anyone I know.

She's the best one for the job; it's no more complicated than that.

Sincerely,

RICE, VOLLAND, TAYLOR & HENSLEY, P.C.



Philip R. Volland

PRV/sf

2762

RECEIVED
DEC 23 1996

December 20, 1996

GOVERNOR'S OFFICE

Honorable Tony Knowles
Governor, State of Alaska
Box 110001
Juneau, AK 99811

DUARDS & COMMISSIONS
JAN 08 1997

RE: Appointment of Barbara K. Brink as Public Defender

Dear Governor Knowles:

I write to voice my support of Barbara Brink for appointment as public defender. I originally worked with Barb back in 1982-1983 when I was first hired as a secretary in the misdemeanor unit. I returned to the agency in 1990 and currently work in the felony unit.

The agency is a wonderful and caring place to work because of people like Barb in management. Besides being an excellent administrator and skilled attorney, Barb has always been very approachable, and takes seriously all secretarial concerns that are brought to her attention. Because of the atmosphere, the secretaries are very loyal and motivated. As a result, the turnover rate for secretaries is low and the work output is high.

I have never worked with a professional who is so compassionate, sensitive and respectful when dealing with clients and staff. Please don't pass on a gem like Barb. State government needs administrators like her.

Sincerely,

Maria Ward

Maria Ward
1604 Otter Street
Anchorage, AK 99504

December 18, 1996

Tony Knowles
Governor, State of Alaska
120 4th
Juneau, Alaska 99801

Re: Public Defender

Dear Governor Knowles:

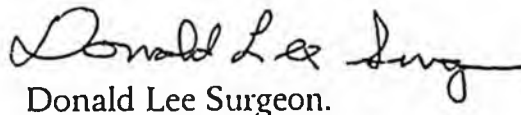
Barb Brink is an excellent candidate for the job of Public Defender. The Bar poll shows that she has commanded respect from her fellow lawyers. Clients of the Agency are very pleased when she is their assigned attorney.

I worked for the Agency from 1985 to 1988 and am acquainted with Ms. Brink. She is an excellent attorney who serves her clients honestly and well. She is likeable, direct, and able. Although reasonable in her approach and goals, she is a forceful advocate for her clients and for the Agency.

Ms. Brink's considerable professional attainments make her the best person for the job of Public Defender, a job she already knows and, as shown from the Bar poll and her reputation in the Alaska legal community, is doing well.

Ms. Brink should be the next Public Defender.

Sincerely,


Donald Lee Surgeon.



Don Surgeon
312 Islander Dr
Sitka, AK 99835

Public Defender

3123

BOARDS & COMMISSIONS

JAN 08 1997

RECEIVED

DEC 30 1996

OFFICE OF THE GOVERNOR

Fairbanks

3198

P.O. Box 83350
Fairbanks, AK 99708
30 December 1996

RECEIVED

JAN 2 1997
BOARDS & COMMISSIONS
OFFICE OF THE GOVERNOR

Hon. Tony Knowles, Governor
P.O. Box 110001
Juneau, AK 99811-0001

Re: Barbara Brink, candidate for Public Defender

Governor Knowles;

I am writing in to urge you to appoint Barbara Brink as Public Defender.

Ms. Brink is the most qualified candidate of the three candidates for the position. She has years of experience at all levels of public defender practice, from misdemeanors to family law cases to unclassified felonies, and from urban Anchorage practice to practice in such bush areas as Bethel and Kodiak.

By virtue of her years as Deputy Public Defender, Ms. Brink has experience in administering the statewide agency and has an appreciation for the vagaries of life, and work, in more rural areas of the state. She also has experience in preparing and administering a budget in these cost-conscious times, and she has travelled many times to Juneau to meet with and speak before the legislature and its committees.

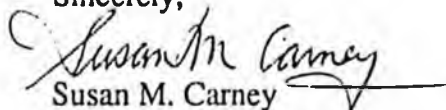
Ms. Brink is also an unusually skilled supervisor. An agency of trial attorneys is full of large egos, and Ms. Brink manages to impose order and keep the agency running smoothly, without bruising those egos. Her own experience as a "front-line" attorney allows her to understand the pressures and demands under which her staff labors, and to do what she can to accomodate their needs within the constraints of the budget.

She also maintains smooth working relationships between the non-attorney staff and the attorneys they have to work with. Her attention to detail ensures that the Public Defender Agency works as efficiently as possible.

Finally, Ms. Brink's personal and professional integrity are exceptional. She is intelligent, compassionate, and congenial. Her ability to get along with people in all walks of life qualifies her as an exceptional candidate for any position that requires daily contact with many people.

I am honored to count Barb Brink among my friends, and am proud to work in the Public Defender Agency. Appointing her as the Public Defender can only improve the Public Defender Agency. I urge you to appoint her Public Defender.

Sincerely,


Susan M. Carney

LAW OFFICES
DILLON & FINDLEY
A PROFESSIONAL CORPORATION

3457

Dennis C. Bailey
Ray R. Brown
Caroline Crenna
Paul L. Dillon
Thomas W. Findley
Mauri Long
Richard D. Monkman
Arthur H. Peterson
Kristen D. Petterson
Peter K. Putzier

510 L Street, Suite 603
Anchorage, Alaska 99501
Telephone (907) 277-5400
Facsimile (907) 277-9896

JUNEAU:
350 North Franklin Street
Juneau, Alaska 99801
Telephone (907) 586-4000
Facsimile (907) 586-3777

January 7, 1997

BOARDS & COMMISSIONS
JAN 1 1997

Tony Knowles, Governor
State of Alaska
P. O. Box 110001
Juneau, Alaska 99801-0001

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JAN 9 1997

OFFICE OF THE GOVERNOR

Re: Public Defender Appointment

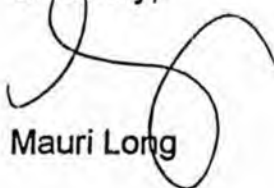
Dear Governor Knowles:

I am writing in support of Barb Brink for the position of Public Defender. I have known Barb since 1990 when I began work as an Assistant Public Defender in Anchorage. In my time with the Agency, I found Barb to be the single most helpful, patient, organized and talented person at the Agency. She always found the time to answer questions, find research memorandums, brainstorm ideas on cases, and offer support when things were not going well or I felt completely overwhelmed. I found that she was available to everyone who sought her out and often recognized when people needed some assistance even though they didn't ask.

I think one of Barb's strongest assets is that she is very well organized and, as a result, is able to accomplish a great deal of work in less time than it would take other folks. She is a good administrator and has the experience to lead an incredibly independent group of people in a direction that is good for all of them, their clients and the public. Barb has the ability to effectively communicate with individuals holding widely divergent interests and to make each understand her position. As Deputy Public Defender, Barb has worked effectively with each Administration to educate them on the Agency's needs and to assure that those needs are met as completely as possible. Of the candidates, she is the only one who has the kind of experience necessary to effect a seamless transition.

Despite the fact that Barb's appointment would make for an easy transition, she does have some great ideas for change and growth within the Agency. She would not let the Agency stagnate and I know that the vast majority of employees of the Agency would welcome Barb's appointment. I highly recommend Barb for the position of Public Defender.

Sincerely,



Mauri Long

RECEIVED
DEC 23 1996

GOVERNOR'S OFFICE

AUDREY BROGHAMMER
12901 Aro Circle
Anchorage, AK 99515
(907) 345-4828
(907) 264-4444

BOARDS & COMMISSION
JAN 08 1997

Honorable Tony Knowles
Governor, State of Alaska
P.O. Box 110001
Juneau, AK 99811

Re: Public Defender Director Appointment

Governor Knowles:

As a secretary for the felony section of the Public Defender Agency I have worked with Barbara Brink in her capacity as a defense attorney and administrator. She is organized, well versed in the law and compassionate to her client's needs. Ms. Brink has a thorough understanding of the unique workings of the agency - its small branch offices, large caseloads and diverse cultural clientele. More importantly, she has a working knowledge of the job duties and functions of clerical staff, accounting, and professional positions.

Barbara Brink makes excellent use of her negotiating skills as an attorney and administrator. She has researched and educated herself in the accounting and budgeting aspects of administration.

In my 25 years as a legal secretary, I have never worked with an administrator as capable and competent as Barbara Brink. Please appoint her to the office of Public Defender.

Sincerely,

Audrey Broghammer

AB

December 30, 1996

Dear Governor Knowles:

I am writing in support of Barb Brink for Public Defender. I imagine a more qualified person for this position.

I have known Barb for over fifteen years. During most, if not all of our friendship Barb has worked as a public defender. I consider her an extremely responsible and capable person, who has always worked hard for the agency.

I have never heard Barb speak unfavorably about anyone in the agency. She seems to maintain an open and honest relationship with even the most difficult of clients. Barb has always maintained a professional manner when discussing her work.

What amazes me is how someone with such a positive outlook and optimistic spirit can remain in this job without becoming cynical and faded. Her care and dedication are infectious and is reflected in the quality of her staff.

My children, who have known Barb since birth, adore her. She is a valued and treasured friend.

To work for the public defender agency requires not only a deep understanding of the law, which Barb has, but a belief in the value and justice of our legal system. She is deeply committed to the idea that all people are equal under the law and deserve equal representation.

Those ~~who~~^{who} choose to remain public defenders over the long term are to be commended. These attorneys serve as role models for others in the agency. And in this case give continuity to an already successful program.

As a friend I can attest to her caring nature and moral character. As an Alaskan concerned about our legal system, I believe Barb Brink exemplifies the model public defender and should be appointed as head of the agency.

Thank you for your consideration.

Sincerely,

Jane Yckoyama

J. Yckoyama
2240 Culver Place
Anchorage, AK
99503

RECEIVED

JAN 6 1997

OFFICE OF THE GOVERNOR

3307

BOARDS & COMMISSIONS

JAN 0 1997

Matthew W. Claman
Attorney at Law
814 West 2nd Avenue
Anchorage, Alaska 99501
(907) 277-0772
FAX (907) 279-0972

23 December 1996

Governor Tony Knowles
PO Box 110001
Juneau, AK 99811-0001

RE: Barbara Brink

Dear Governor Knowles:

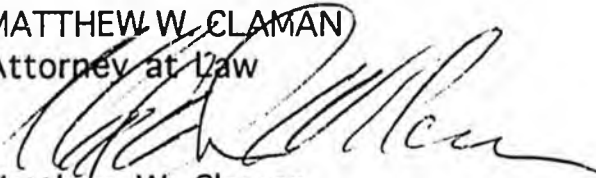
As one of your long-time supporters, I write to express my support for the appointment of Barbara Brink to direct the Public Defender Agency.

Barb Brink has worked for the public defender with tireless dedication to legal work that many lawyers are unwilling to perform. She has a consistent and well-reasoned approach to representing her clients and has earned the respect of lawyers, judges, and individuals in all facets of the criminal, family, and juvenile process. In her work as Deputy Public Defender and Acting Public Defender, Barb has demonstrated the organizational and administrative skills that are necessary to effective management of this state-wide agency. Finally, as her teammate in city league ice hockey, I know she leads the kind of balanced life that all Alaskans have come to expect from our leaders in state government.

With my thanks for considering my support for Barbara Brink, I remain,

Very truly yours,

MATTHEW W. CLAMAN
Attorney at Law


Matthew W. Claman

3/31

DEC 30

OFFICE OF THE GOVERNOR

BOARDS & COMMISSIONS

JAN 08 1997

2657

Teresa Blakeslee-Cobb
8651 Kathleen Drive
Anchorage, Alaska 99502

BOARDS & COMMISSIONS
DEC 23 1996

December 20, 1996

RECEIVED
DEC 23 1996

Honorable Tony Knowles
Governor, State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

Re: Public Defender Director Appointment

GOVERNOR'S OFFICE

Dear Governor Knowles:

Although I have only worked at the Public Defender Agency for a year as a paralegal, it is the best career move I have ever made.

My feelings in part come from working with Ms. Barb Brink who is on your list of candidates for the appointment of Public Defender Director. I have found Ms. Brink to be warm, compassionate, ethical and thoroughly knowledgeable in her field. Ms. Brink values her staff's input and ideas. She is fluent in reaching to the heart of the matter and handles even the most difficult clients with ease and understanding.

I worked as a legal secretary for the district attorney's office for five and one-half years prior to my position here. While working the other side of the fence, so to speak, I witnessed first hand how an office functions when the workers do not see eye to eye or have no input with the higher ups. Morale takes a nose dive and everyone is constantly watching their backs, anxious to move to other positions outside the department.

This is not the working environment with the Public Defender Agency. The Public Defender Agency values their entire staff; all personnel are encourage to express their ideas and give input on any given subject. Ms. Brink will be able to step into the director's position and keep this office running smoothly without concerns. Please appoint Ms. Brink to the position of Public Defender Director.

Thank you for taking the time to read my letter. If you would like to speak to me personally, I can be reached at 248-2122 after working hours.

Sincerely,


Teresa Blakeslee-Cobb

knowles defen
2476

BOARDS & COMMISSIONS
DEC 19 1996

December 17, 1996

GOVERNOR'S OFFICE

Governor Tony Knowles
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: Barbara K. Brink

Governor Knowles:

This letter is to urge you to hire Acting Public Defender Barbara Brink as the Public Defender.

I am the office manager of the Fairbanks Public Defender Agency, and perform the administrative duties for that office. In the past this has been problematic because all paperwork (personnel documents, billings, requests for funds, statistics, supply orders, travel authorizations, time sheets, etc.) must go to the Anchorage office for processing, and there were often no clear guidelines. Ms. Brink has initiated record-keeping procedures which have made performing administrative duties much easier and more efficient. She has the inherent ability to understand what may be a problem for outer offices, then design procedures accordingly.

When Ms. Brink became Acting Public Defender, she visited the Fairbanks office to familiarize herself with the office and the employees, and to request input from the Fairbanks employees. Ms. Brink immediately began an ongoing dialogue between Anchorage and the other offices, and she continues to make herself available to all employees. She allows the Fairbanks office autonomy while still providing leadership.

Ms. Brink initiated regular supervisor meetings to open communication between herself and the outer offices and among those offices. In my mind, the biggest problem the Agency faces is lack of communication, and Ms. Brink is working to correct that.

Ms. Brink is attempting to bring uniform standards to all offices, and has been working on ethics guidelines to be used throughout the Agency. All indications are that she is an even-handed, responsible administrator, and I look forward to the positive changes she will bring to the Agency, and to working with her in the future.

Sincerely,

Carolyn Kelly
Carolyn Kelly
3284 Adams Drive, 101
Fairbanks, Alaska 99709

Memorandum

To: Governor Knowles
From: Valerie Leonard
Date: January 15, 1997
Subject: public defender appointment

BOARDS & COMMISSIONS

JAN 24 1997

This is written to urge the appointment of Barb Brink to be Alaska Public Defender. I have the highest regard for her. I hope that you have learned enough about her through the evaluation/investigation process to reach the same conclusion.

By way of background, I will tell you that I have known Barb for about ten years. I first got to know Barb when I was working as a Staff Attorney for the Alaska Court of Appeals in Anchorage and Barb was working at the Public Defender Agency. However, I first knew her, not professionally, but through the Anchorage city league women's basketball program. There I learned that Barb is an all around athlete and a genuine good sport. She is fast, has great coordination and has a dead-eye outside shot. We had a friendship of some years through basketball before I ever knew Barb through working together in the Public Defender Agency.

More recently I have worked with Barb with both of us being in offices of the Agency. Six years ago I worked in the Kotzebue office, and now I am the supervising attorney in the Bethel Office. It is in my most recent capacity that I have come to appreciate Barb as the deputy Public Defender and now as the Acting Public Defender.

I want to tell you that there is no attorney that I respect more than I do Barb Brink. She has well rounded and very informed knowledge of criminal law and of court issues, in fact, so much so that I rely on her absolutely with my problems or questions. I also have complete faith in her ethical instincts and values. And, not unimportantly, I trust her to support me in my sometimes lonely and daunting job as a bush office defense lawyer. I always know that Barb is there in the Anchorage office and that she will bring to bear the full resources of the Agency to make sure that the defendants of Bethel get the same vigorous defense as the big city clients do.

This is an amazing combination of good qualities. You have a candidate for

Public Defender who has the intelligence and learning to do an excellent job. In fact, she has already demonstrated that to all of us who have had the pleasure of working under her. And she has the highest moral and ethical standards which I believe she adheres to without regard to her own convenience or short term interests.

In short, Barb is a tremendous asset to the Agency, and she should be appointed to the job. She will assure a stable Agency with happy staff attorneys and well served clients. Please don't let us down by appointing someone other than Barb.

My best wishes to you and your administration.

Sincerely,

Valerie Leonard
Supervising Attorney
Bethel Public Defender Office

*WOWC Defender Fund

2656

BOARDS & COMMISSIONS
DEC 23 1996

December 11, 1996

Honorable Tony Knowles
Governor, State of Alaska
Post Office Box 110001
Juneau, Alaska 99811

RECEIVED
DEC 23 1996

GOVERNOR'S OFFICE

Re: Public Defender Appointment - Barbara Brink

Dear Governor Knowles:

As staff attorneys in Public Defender offices throughout the state, we are writing to urge you to appoint Barbara Brink to the position of Director of the Alaska Public Defender Agency.

All of us know and work with Barb. Those of us who have been at the Agency for more than a decade worked with her when she was a trial lawyer in the office. The more recently hired lawyers know her as the Deputy Public Defender, a job she has held for the past seven years. All of us can say without qualification that she is one of the best criminal defense attorneys in the state. She is a tenacious litigator who understands the importance of delivering quality legal services to her clients. As Deputy Director, she consistently monitors the staff lawyers to ensure that every attorney in the office provides that same quality of service.

In addition to being a highly regarded trial lawyer, Barb is also a very good administrator. Given the nature and temperament of criminal defense attorneys in general, and public defenders in particular, being the Deputy Director can be a thankless task. Barb has a very innovative approach to systematic problems. She includes people in the decision-making process in an effort to achieve consensus--a trait shared by all those who understand the importance of management issues. In addition, Barb is known throughout the Agency for her ability to work with the most difficult clients and lawyers--a skill that serves her well in her current position as Acting Director of the Agency.

Finally, a letter of support for Barb is not complete without mention of her commitment to work on behalf of Alaska's indigent citizens. She is truly the hardest working lawyer in the Agency. She can be found in the office any time of the day or night, weekends as well as during the work week. She is available to help over-committed staff attorneys with projects and always willing to act as a sounding board if an attorney needs to discuss a legal issue. Her judgement is always sound and temperate. Barb has the proven ability to

administer the office. She also has a satisfied staff of lawyers, and a demonstrated commitment to the effective representation of Alaska's indigent citizens. We urge you to appoint her to the position of Director of the Alaska Public Defender Agency.

Sincerely,

THE ALASKA PUBLIC DEFENDER AGENCY

John De
A. Jensen
David R. Reineta
Dan Denny
Les Hart
Julia Moody
Jay Mumble
Bridget Doherty
Vicki Carlson
Linda Murphy
Elizabeth Poren
H. Druska
Scott Purden
Valene Leonard
Suzanne Weller
Bethany P. Spalding

Nancy Groszek
Philip Wallenberg
Keri Thors
Joan Sorensen
Dan B. Smyke
W. Tetlow
Burt Dahl
Allan R. Thelen
D. M. S.
Sharon Barr
Sandy Luke
Eric Mills
Robert C. Jensen
Paul E. Matin
Catherine A. Rector
Karin E. Aleneak

Barbara Kessner

Mary Deaver

Cory Dunt

Colleen A. Kasluchan

Jill C. Wetherhead

~~Erin~~

Kristen By
The Tsey

Karen Potnow

Jessy B. Wilbur

Hedie K. Gind

M. Baker

Linda K. Wilson

~~M. Baker~~

Paul D. Whitney

J.W. Mahl

Margaret G. Wilson

Nory A. Clarke

Theresa Blakely Cole

Jessie E. Farrell
M. Mahl

Mil O.

Ms. Galen Paine
312 Islander Dr.
Sitka, Alaska 99835

Public Defender

2692

December 18, 1996

RECEIVED
DEC 23 1996

Tony Knowles
Governor, State of Alaska
120 4th
Juneau, Alaska 99801

GOVERNOR'S OFFICE

Re: Public Defender

Dear Governor Knowles:

I have worked for the Public Defender Agency for twelve years and currently practice in Sitka. I have known Barb Brink for twelve years through both professional and some personal contacts. I am not a close personal friend.

I have great respect for her

- integrity
- administrative ability
- lawyering skills
- personal discipline
- people skills
- experience

She commands both affection and respect from the people she works with and who work for her.

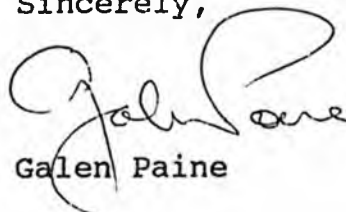
Barb Brink has the administrative skills to handle a decreasing budget efficiently while maintaining the best legal service possible. Few people have her ability to remain personable and likeable, yet make the hard decisions which affect employees and the Agency. She manages by working for continuous improvement, a style which gets results with Agency personnel. She has the ability to enlist people to voluntarily "get with the program".

Because of her experience as the Deputy Public Defender she has been able to become an immediately-effective Acting Public Defender. She already knows the job and is making needed changes. One of her priorities is better service to our clients through higher efficiency, including financial efficiency. She has initiated supervising attorneys meetings once per month to

keep the offices better connected and has made communication between the offices a real priority. She put together an "economy" Public Defender conference, which turned out to be one of the best conferences ever.

Barb Brink is the candidate with the most experience, the disciplined personality and the administrative skills to run this Agency. She is a fine person, an excellent lawyer and good administrator. She is a genuinely well-rounded person and is making an excellent Public Defender. Please let her continue her good work.

Sincerely,

A handwritten signature in cursive script, appearing to read "Galen Paine". The signature is written in dark ink and is positioned above the printed name.

Galen Paine

Public def. fend

ALASKA PUBLIC DEFENDER AGENCY
P. O. Box 929
Dillingham, Alaska 99576
PH: (907) 842-4582 • FAX: (907) 842-4782

January 24, 1997

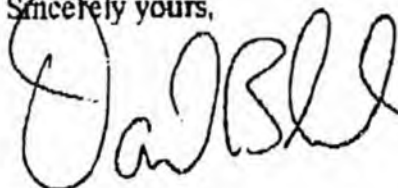
Robert King
Office of the Governor
Juneau, AK 99801
FAX: 465-3533

RE: Public Defender

Dear Bob:

I am writing to let you know that Barbara Brink is by far the most qualified applicant for the position of Public Defender. I have worked with her directly for the past five months and can assure you that she has done an outstanding job. She has the confidence, and respect of her colleagues and everyone within this agency. She is a dedicated lawyer and public servant and she has the highest legal ability and ethical standards of our profession.

Sincerely yours,



David B. Snyder
Assistant Public Defender

BOARDS & ...

JAN 24 1997

DBS:mmj

FILED BY MAIL

CINDY BREWSTER
2812 Leawood Drive
Anchorage, Alaska 99515
(907) 243-1848

3447

January 1, 1997

Honorable Tony Knowles, Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

RECEIVED
JAN 8 1997
OFFICE OF THE GOVERNOR

Re: Barbara Brink, Acting Public Defender

Dear Governor Knowles:

I am a legal secretary for the Anchorage Public Defender Agency. For the past eight years I have had the pleasure of working with Barbara Brink. I am writing in support of her appointment as the Public Defender.

I was initially hired as the receptionist for the Public Defender Agency. It was my first state job and the first time I had worked for or interacted with lawyers. I was somewhat apprehensive about dealing with such reputedly large egos. Barb Brink quickly put me at ease. Not only did Barb and her predecessor John Salemi treat the staff as though we were working with them and not for them, but they fostered the same attitude in their fellow attorneys. This unspoken doctrine is just one of the many things that assures the support staff's continued loyalty and commitment to the agency and stimulates our enthusiasm and pride as state employees.

Barb is a tireless and dedicated public servant. As a state official, you can surely imagine the mass volume of phone calls our office receives daily. I have witnessed, as only a receptionist can, the various methods in which attorneys deal with client phone calls. In my eighteen months as the receptionist, Barb Brink NEVER refused a phone call or turned away a walk-in client. Since I am no longer responsible for the switchboard, I confirmed this fact with the current receptionist and the other secretaries. Everyone agreed that Barb continues to take ALL of her phone calls.

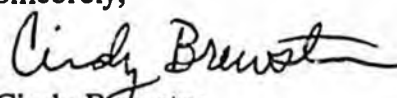
Barb is a natural leader. She possesses the unique ability to be extremely approachable and compassionate, while remaining completely professional and authoritative. The ability to counsel and discipline in a neutral, fair manner is a skill far too many people in supervisory positions are lacking and one which earns Barb great respect with clients and staff alike.

Barb Brink is a true humanitarian. When staff attorney Marlis Heinemann became terminally ill and adamantly expressed her wish to die at home, Barb took charge. Never preachy or pushy, she organized a sign-up chart which she monitored diligently and without complaint, filling in her name whenever there was a blank spot or cancellation. The months began to drag on and the care of Marlis became overwhelming and depressing while her physical and mental condition deteriorated before our eyes. Toward the end when she became increasingly abusive, Barb would step in for the weaker folks who could no longer bear the strain. Even after finishing a lengthy stay with Marlis, Barb would advise her relief person of her availability if needed. She inspired us by example and taught us the true meaning of giving, especially when she spent Christmas Day with Marlis. Thanks to Barb, Marlis was able to pass away peacefully a month later in her own home.

A person of Barb's caliber is a rare find. If you haven't yet had the chance to meet her, I hope you will soon. My only concern is that you will be so impressed with her that you will decide to find a position for her on your own staff, thus depriving the Agency of our most important asset.

In closing I would like to say that I have always considered myself a very good judge of character. In the eight years I have worked with Barb I have never known her to lose her temper or denigrate another person -- client or colleague. To know and work with Barb is a privilege beyond explanation. I consider her character to be of the highest quality. Barb has consistently demonstrated that she is a devoted and magnanimous leader in public advocacy. In my estimation, the State of Alaska would be extremely fortunate to have Barbara Brink as its Public Defender.

Sincerely,


Cindy Brewster

Alaska Public Defender Agency

529 Fifth Avenue, Suite 1
Fairbanks, Alaska 99701
Phone: (907) 452-1621
Fax: (907) 452-1684

+ would recommend

3317

RECEIVED

JAN 6 1997

OFFICE OF THE GOVERNOR
BOARDS & COMMISSIONS
JAN 0 8 1997

January 3, 1997

Governor Tony Knowles
P.O. Box 110001
Juneau, Alaska 99811-0001

Re: Barb Brink

Governor Knowles:

I urge you to appoint Barb Brink as the Public Defender. There are many reasons for this recommendation; three are primary.

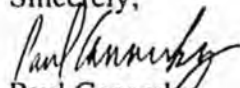
First, Ms. Brink is clearly the most qualified candidate. Although both of the other candidates have worked for the Agency in the past, Ms. Brink, by her tenure with the Agency, has shown both a commitment to the Agency and the ability to do this demanding work at a high level over an extended period of time. I have worked with all three candidates; I have followed their careers; I have talked to all three candidates about cases and how to win them; and I have worked as a teacher/facilitator at conferences with both Ms. Strout and Ms. Brink. Ms. Brink is, by a significant margin, the best and brightest candidate.

Second, Ms. Brink has the best experience for the position of Public Defender. The Agency is in a unique position; we are a State Agency, yet our mandate is to provide quality legal representation for people who are often difficult, always disenfranchised, and usually disliked. As budget considerations become more critical, it becomes more important to have top level administrators who have shown they can manage a large staff, allocate resources, work with the Department of Administration and the Legislature, and continue to provide the services required by statute and court rule. Ms. Brink has worked with the Legislature, Ms. Brink has been involved in training Agency attorneys, Ms. Brink has tried difficult cases, and Ms. Brink has run the Agency, as Deputy Public Defender, with John Salemi for the last several years. Ms. Brink has not only done all of those things, she has proven she can do them well. This is a time to assure stability and continuity; please appoint Ms. Brink.

My third reason is somewhat more personal. I am the Supervising Attorney for the Fairbanks Office of the Agency; our office also provides support to the offices in Barrow, Nome, and Kotzebue. I have worked with Brian Shortell, Dana Fabe, John Salemi, and Barb Brink. The Agency has been fortunate to have highly capable leaders in the past; those of us in the outlying offices need significant support from the Anchorage Office in order to do our jobs well day to day. While John Salemi was Public Defender, and Ms. Brink was Deputy, Ms. Brink had many responsibilities, and was in charge when Mr. Salemi was on leave, so I know what she would be like as Public Defender. Ms. Brink would be an outstanding Public Defender, in the tradition of Judge Shortell and Justice Fabe.

You and I met, briefly, in my office here in Fairbanks and talked, among other things, about coming from the Midwest and the value of hard work and doing a job well. Ms. Brink will do her job well. I urge you to appoint Ms. Brink as Public Defender.

Sincerely,


Paul Canarsky

T WOLLE 3112

December 26, 1996

DEC 30 1996

RECEIVED
OFFICE OF THE GOVERNOR
BOARDS & COMMISSIONS
DEC 30 1996
JAN 08 1997
OFFICE OF THE GOVERNOR

Honorable Tony Knowles, Governor
State of Alaska
P.O. Box 110001
Juneau, Alaska 99811

RE: APPLICATION OF BARBARA BRINK FOR PUBLIC DEFENDER

Dear Governor Knowles:

I am writing to express my support and urge you to appoint Barbara Brink as Director of the Public Defender Agency.

I have known and worked with Barb at the agency since 1983. When I was first hired at the agency I worked as a legal secretary when Barb was a staff attorney in our felony department. Since 1985 I have been the administrative assistant for the agency. In this capacity I have worked closely with Barb for the past seven and a half years while she has been Deputy Public Defender.

Barb is a compassionate person who is a zealous advocate for the agency clients. Her commitment to the clients and to the agency is unwavering. This commitment is reflected by her many years of service with the agency.

I have never worked with a more organized and efficient attorney. Barb gets things done and she gets them done on time. It has been a pleasure working along side Barb during legislative and budget sessions. She is considerate of staff time and deadlines.

Barb Brink has good judgment. I have discussed numerous personnel issues/complaints/problems with Barb and have always been given helpful advice. She is the best listener, does not judge and comes up with a fair resolution of most issues or problems. She involves people in the process and her door is always open to attorneys and staff alike.

Barb is an excellent administrator. She has handled the duties of Deputy Director in a calm and adept manner. Since being appointed Acting Director, she has instituted monthly telephonic supervising attorneys meetings with our 12 branch offices. This has provided a good means for communicating new policies, soliciting feedback and providing a sense of unity within the agency. She has many innovative ideas for the agency in the future. I hope to be able to assist her in seeing these plans to fruition.

In my opinion, Barb Brink is clearly the best choice for the position of Public Defender. She is dedicated and committed to the agency's mission. Her hands on approach to the administration

of the agency is appreciated by all employees. She is an effective representative of the agency before the legislature. Her personnel hiring, promoting and disciplining techniques are always fair and well thought out. She is experienced in the budget process and will do what is necessary to ensure our agency's funding. Her staff, both lawyers and support staff, are behind her looking forward to working together and improving the efficiency of the agency. I urge you to appoint Barb Brink as Director of the Alaska Public Defender Agency. Thanks for the opportunity to show my support.

Sincerely,

Sue Hedge

Sue Hedge

HEDGE
2009 W. 32ND AVE.
ANCHORAGE, AK
99517-2077

sh

Public Defender
3585

January 10, 1997
1307 Chena Ridge Road
Fairbanks, AK 99709
(907) 479-5008

Hon. Tony Knowles
Governor
P.O. Box 110001
Juneau, AK 99811-0001

BOARDS & COMMISSIONS
JAN 16 1997
RECEIVED

RE: Candidacy of Barbara Brink for
Appointment as Public Defender

JAN 13 1997

OFFICE OF THE GOVERNOR

Dear Governor Knowles:

As I understand it, you will soon be making a decision concerning the appointment of our next Public Defender. I strongly support Barbara Brink's candidacy for that position. I am hopeful that you will recognize that Ms. Brink's intelligence, experience, and strength of character render her the best-qualified applicant.

I am an Assistant Public Defender, and have served in that capacity in Fairbanks since 1981. Barb Brink's many years of service in the Public Defender Agency's Anchorage Office have resulted in our getting to know each other quite well.

I have been impressed with Ms. Brink's intelligence and with her skill as an attorney throughout our long association. She has an excellent understanding of the law, and has represented her clients extraordinarily well during her tenure with the Agency. Since Barb knows what it takes to provide effective representation to those charged with crimes, she is remarkably well-qualified to head an organization which exists for that purpose.

Barbara Brink's ability to achieve favorable results for her clients is evidence of more than just technical expertise. She has shown good judgment in weighing the realities of the cases in which she has been involved, and in conveying realistic alternatives to her clients. Her pragmatism is further proof of her suitability for the job which she seeks, given the Public Defender's need to balance many competing concerns in order to insure effective representation of the Agency's clients.

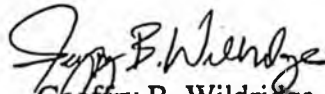
It is of no small significance that Barb Brink's long tenure with the Public Defender Agency has made her keenly aware of the realities of administering that organization. As Acting Public Defender during the months since John Salemi's resignation, and as Deputy Public Defender during the several immediately preceding years, Barb has worked tirelessly to insure the Agency's continuing effective operation. She has been extraordinarily supportive of those with whom she works in carrying out her administrative responsibilities; and I can report from my personal experience that this has meant a great deal.

January 10, 1997
Candidacy of Barb Brink
Page -2-

Ms. Brink's honesty is unquestionable. Her integrity and genuine commitment to the people she has been responsible for representing have made her a shining example to others in our profession. By virtue of the respect that others feel for her, Barb has proven herself an effective leader. And as a consequence of her integrity, I have confidence that, if appointed, she will lead us in a principled way.

Barbara Brink is the best candidate for the position of Public Defender. While I know and am fond of the other applicants, Barb's experience and proven effectiveness within the Agency leave little doubt in this regard. Her intelligence, integrity, and common sense have been amply demonstrated during her years with the Agency, as have her kindness and commitment. If you select Ms. Brink, you will see why these attributes have generated the respect of those who know her; for I believe that she will earn your appreciation and respect, as well.

Sincerely,


Geoffry B. Wildridge

RAWL WAVE
9106 W. PARDWINE
EAGLE RIVER, AK 99577

Public Defender / end
3443

RECEIVED

JAN 8 1997

OFFICE OF THE GOVERNOR

January 3, 1997

Governor Tony Knowles
PO Box 110001
Juneau, AK 99811-0001

BOARDS & COMMISSIONS

JAN 17 1997

Dear Governor Knowles:

I am writing on behalf of Ms. Barbara Brink, the Acting Public Defender for the Alaska Public Defender Agency. I have been the Chief Investigator for the agency since 1987. During that time I have worked under the directorship of Ms. Dana Fabe and Mr. John Salemi. In the past nine years I have worked with Ms. Brink while she was on the felony trial staff and during her appointment as the Deputy Director under Mr. Salemi. I have had the opportunity to judge her abilities as a trial lawyer and administrator. In my opinion she excels at both. However, at issue now is her ability to guide the agency for the next four years. It is without question she is the best qualified for numerous reasons.

Ms. Brink has the respect of her staff. It is not an easy task to lead such divergent and oftentimes dominant personalities which exist in the agency. It is the combination of energy and dedication that enables the office to be respected in the legal community. Unfortunately, it is impossible to make everyone happy all of the time but the agency staff and our clients have few complaints about our efforts. It is in part because Ms. Brink's leadership is demonstrated through dedication and example. She is frequently in the office long after others have called it a day. She is meticulously organized and always prepared.

The Director frequently makes unpopular decisions about issues involving personnel or financial requests for professional expenditures outside the office. When those painful decisions are made, Ms. Brink's decisions are not questioned or challenged. Having been such a force on the trial staff for many years she has gained our respect in such matters.

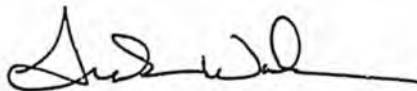
I have worked with Ms. Brink on numerous felony trials and marvel at her ability to sift quickly through legal or factual details both in and out of the courtroom. She is never at a loss for words even in the darkest of moments. She is both creative and convincing having thoughtfully analyzed her opponent or position. Those skills will serve her well in the period ahead.

Ms. Brink will also serve the State and our clients well. She is fair and honest. Both are attributes not frequently mentioned in the legal profession.

Ms. Brink's long tenure in the office qualifies her as the best candidate for the position. I would therefore respectfully recommend that she be appointed the next Director of the Alaska Public Defender Agency.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank Wake", with a long horizontal flourish extending to the right.

Frank Wake

PUBLIC DEFENDER /-net
3581

January 8, 1997

Governor Tony Knowles
P.O. Box 110001
Juneau, AK 99811-0001

BOARDS & COMMISSIONS
RECEIVED JAN 16 1997
JAN 13 1997
OFFICE OF THE GOVERNOR

Re: Public Defender Appointment

Dear Governor Knowles:

As you currently are considering the Public Defender appointment for the State of Alaska, I would like to express my support for Barb Brink, one of the three candidates under consideration.

As was indicated by the Judicial Council, the three candidates under consideration all have excellent reputations in the legal community. I have had professional contact with all three candidates and respect the legal work of each. However, Ms. Brink brings with her not only superior legal skills and commitment to the work of the Public Defender Agency, but also brings demonstrated ability to effectively administer a complex state agency. Not only has she been involved in the day-to-day running of the Public Defender Agency for several years as the Deputy Public Defender under John Salemi, but she has demonstrated both during that tenure and, more recently, during her tenure as Acting Public Defender, that her administrative skills equal or even surpass her well-respected skill as a trial attorney.

I have been employed at the Public Defender Agency for approximately eleven years. I am the supervising appellate attorney in the Fairbanks office, as well as the Deputy supervising attorney for the Fairbanks office under Paul Canarsky. I serve on two supreme court standing committees and one Alaska Bar Association standing committee and, in doing so, come into regular professional contact with judges, prosecutors, and private criminal defense attorneys. Because of these contacts as well as my employment at the Agency, I have been afforded insight into the public's perception of the Public Defender Agency, as well as the unique problems which the Agency faces, different than those of the court system, the Department of Law or private practitioners. During my employment with the Agency, I have come to appreciate that the position of Public Defender requires a person who is skilled at wearing many hats in order to facilitate the running of the Agency as well as to deal with the unique concerns of such an Agency. Like her predecessors (John Salemi and Justice Dana Fabe), Barb Brink has demonstrated her ability to do so.

Specifically, Ms. Brink has been long-committed to the Agency's goal of bringing quality representation to its clients, such quality representation publicly recognized throughout the state which sets the Alaska Public Defender Agency apart from the majority of similar agencies in other states. In order to facilitate such service, Ms. Brink has been active in promoting continuing legal education for those employed by the Agency. Her commitment to this activity is greatly appreciated by the Agency attorneys and contributes to the quality and efficiency of Agency representation.

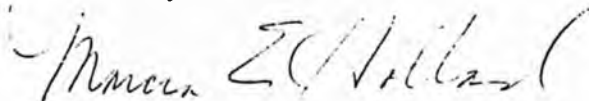
Additionally, Ms. Brink has been actively involved in working with the state legislature on the Agency's behalf for several years, a critical function of the Public Defender, and is familiar with the legislative process. Ms. Brink alone would bring to the position this important experience. In a similar fashion, Ms. Brink has been the liaison between the Agency and the Department of Administration, which department supervises the Agency. Ms. Brink has markedly improved the relationship between the Agency and the Department. She has facilitated the Department's understanding of the unique function of the Agency while insuring that the Agency complies with necessary Department requirements. Following from this, Ms. Brink has demonstrated that she can successfully administer an agency which is often faced with limited allocation of state resources and (as with many state agencies) budgetary constraints. Ms. Brink is not afraid to say no when necessary to insure that the Agency as a whole is able to function within its budgetary limits, while at the same time zealously representing the Agency's interests before the legislature and with the Department of Administration.

Ms. Brink also has unique first-hand experience as to the complexity and diversity of the Agency (and the competing concerns and needs of the individual Agency offices). The many faces of the Public Defender Agency include the more urban larger Anchorage office, and the offices in Fairbanks and Juneau, as well as offices in remote locations such as Barrow, Dillingham, Kodiak and Sitka. Because Ms. Brink has actually worked in the smaller remote offices of the Agency, she has first-hand experience as to the similarities and differences which are found among the thirteen Agency offices throughout the state. This insight is critical if a Public Defender is to be able to insure that Agency as a whole is to function efficiently and effectively.

As you may expect, working at the Public Defender Agency is a job which involves working with clients who often are distrustful, difficult, and disliked by the public, and working under a demanding caseload which involves long hours and significant stress. In light of these factors, it is critical to the efficient running of the Agency that the person appointed by you as the Public Defender bring to the job proven administrative and legal skills which would provide continued stability which in turn will insure that the Agency functions at its highest and most efficient level. Barb Brink has

such skills and would be well-suited to be appointed as Public Defender. Please consider my support for Ms. Brink and my comments in making your decision.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marcia E. Holland". The signature is written in dark ink and is positioned above the typed name.

Marcia E. Holland
Assistant Public Defender

FRIDAY
JOHN M. HOLMES,
ATTORNEY AT LAW
(ALASKA BAR ASSOC. NO. 7811103)

C/O:
CHANG CHUN WAI GUO YU XUE XIAO
CHANGCHUN FOREIGN LANGUAGES SCHOOL
46 HONGQI STREET
CHANGCHUN, JILIN PROVINCE
CHINA 130012

→ TEL. - MORNINGS, CHANGCHUN TIME,
- DIRECT DIAL:

011-86-431-595-3201

AFTER CHINESE RECORDING ANSWERS,
DIAL EXTENSION 3074.

CHANGCHUN IS 17
HOURS AHEAD OF
JUNEAU
IF IT IS 1:00 PM
MON. IN JUNEAU,
IT IS 6:00 AM
TUES. IN
CHANGCHUN,
A GOOD TIME
TO CALL.

→ E-MAIL C/O: (SMALL LETTERS)

j.barreca@public.cc.jl.cn

(JBARRECA@PUBLIC.CC.JL.CN)

→ FAX C/O: CITY OF CHANGCHUN
FOREIGN AFFAIRS OFFICE:
DIRECT DIAL:

011-86-431-565-2740

TEL: 011-86-431-565-2741

MRS. SUN LI HONG, GEN. MGR.

MS. TRACY ZHANG

MR. WANG WEI

(ENGLISH SPEAKERS)

TO:
CHAIR, JUDICIARY COMMITTEE,
STATE HOUSE
ALASKA STATE LEGISLATURE
JUNEAU, ALASKA 99801

P. 2
CHAIR, HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

RE: APPOINTMENT,
STATE PUBLIC DEFENDER

DEAR MADAM OR SIR:

THIS LETTER RELATES TO THE APPOINTMENT,
AND LEGISLATIVE RATIFICATION, OF THE NEXT
ALASKA STATE PUBLIC DEFENDER. THIS IS
A MAJOR APPOINTMENT TO A MAJOR POST.
THE APPOINTMENT WILL INFLUENCE THE DIRECTION
OF THE CRIMINAL JUSTICE SYSTEM FOR YEARS
TO COME.

I HAVE OPPOSED THE APPOINTMENT OF
BARBARA BRINK IN THE ENCLOSED MATERIALS.
IT MAY AS WELL BE SAID THAT I OPPOSE
THE APPOINTMENT OF ALL THREE CANDIDATES
~~THE~~ WHO WERE RECOMMENDED BY THE
JUDICIAL COUNCIL. I DON'T THINK THAT ANY
OF THEM IS UP TO THE DEMANDS OF THE
POST, FOR THE DEFENSE IS BEING
CRIPPLED BY THE CRIMINAL JUSTICE SYSTEM.
CONSTITUTIONAL DUE PROCESS IS BEING
DENIED. THE STATE PUBLIC DEFENDER MUST
BE PREPARED TO TAKE ON THE CHALLENGE
OF FIGHTING TO EQUALIZE THE ROLES OF
THE STATE AND THE DEFENSE. THIS IS A PERVASIVE,
SYSTEMIC PROBLEM THROUGHOUT THE CRIMINAL JUSTICE SYSTEM.

P. 3
CHAIR, ^{P. 3} HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE
- - - - -

THE LEGISLATURE IS IN A DIFFICULT POSITION. ON THE ONE HAND IT MUST LISTEN TO ITS CONSTITUENTS, AND THEY ARE PSYCHOLOGICALLY ATTUNED TO LAW-AND-ORDER POSTURING. ON THE OTHER HAND, THE LEGISLATURE HAS AN EVEN LARGER, HISTORIC RESPONSIBILITY TO THE CONSTITUTION AND TO THE PRINCIPLES OF JUSTICE. IT IS IN RECOGNITION OF THOSE LARGER PRINCIPLES THAT WE DO NOT CONDONE VIGILANTISM AND LYNCH LAW WHEN A PUBLIC OUTRAGE OCCURS, AND IT IS IN RECOGNITION OF THOSE ^{SOME} PRINCIPLES THAT THE LEGISLATURE ^{USE} MUST PROMOTE THE CONSTITUTIONAL RIGHTS OF THE DEFENSE. IT DOES SO IN THIS ^{PRESENT} CONTEXT BY A THOROUGH EXAMINATION OF THE APPOINTEE AND ^{A THOROUGH} ~~THE~~ EVALUATION OF THE NEEDS OF THE POST. THIS SHOULD NOT BE AN AUTOMATIC APPOINTMENT.

ENCLOSED ARE THE FOLLOWING MATERIALS WHICH SET OUT MY VIEW OF THE SITUATION. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT ME AT ANY TIME. IT IS EASY TO DO SO, AND NOT VERY EXPENSIVE. I WILL BE OUT OF CHANGCHUN, BUT HERE IN CHINA FROM JAN. 20 TO ABOUT FEBRUARY 15. HOWEVER I

P.4

CHAIR, HOUSE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

WILL KEEP IN CONTACT WITH THE FAX
AND E-MAIL ADDRESSES. THE PEOPLE AT
THE E-MAIL ADDRESS (IN THE BUILDING
WHERE I LIVE) WILL BE GONE FOR 2
WEEKS, ^{STARTING FEB. 11,} BUT I WILL BE BACK IN CHANGCHUN
ABOUT FEBRUARY 15 AND CAN BE PERSONALLY
CONTACTED THEN. (AND WILL CHECK FAX/EMAIL BEFORE THEN.)

THANK YOU FOR CONSIDERING THE VIEWS EXPRESSED
IN THIS LETTER AND THE FOLLOWING, ENCLOSED
MATERIALS.

- 1) 01-10-97: LETTER FROM J. HOLMES TO PUBLISHER
AND EDITORS, ANCHORAGE DAILY NEWS.
- 2) 12-18-96: LETTER TO J. HOLMES FROM TERESA
CARUS, SENIOR STAFF ASSOCIATE,
ALASKA JUDICIAL COUNCIL, RE APPT.
- 3) 11-24-96: LETTER FROM J. HOLMES TO
ALASKA JUDICIAL COUNCIL, RE APPT.
- 4) 12-08-95: LETTER FROM J. HOLMES TO ALASKA
JUDICIAL COMMITTEE ON FAIRNESS
AND ACCESS.
- 5) 11-02-95: MEMO ENTITLED "A COLONIAL SYSTEM"
FROM J. HOLMES TO ALASKA PUBLIC
DEFENDER AGENCY, RE ALASKA CRIMINAL
JUSTICE SYSTEM.

(IN JAN. 1996 KOTZEBUE JUDGE RICHARD
ERLICH DISTRIBUTED A MONOGRAPH
ACKNOWLEDGING THAT THE SYSTEM IS
COLONIAL BUT ADVOCATING NOTHING
TO CHANGE IT.)

SINCERELY,
John M. Holmes
JOHN M. HOLMES
ATTORNEY AT LAW



alaska judicial council

1029 W. Third Avenue, Suite 201, Anchorage, Alaska 99501-1981 (907) 279-2526 FAX (907) 276-5046
http://www.state.ak.us/local/akpages/COURTS/AJC/home.htm E-Mail: 72302.1261@compuserve.com

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December 18, 1996

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Supreme Court

John Holmes, Attorney
46 Honggi Street
English Teachers' Office
Changchun Foreign Languages School
Changchun, JiLin Province
China 130012

Dear Mr. Holmes:

Thank you very much for your recent letter regarding the application of Barbara Brink for the Public Defender position. Unfortunately, your letter arrived after the Council had met and made its nominations, so the members did not have a chance to consider it. I read it with great interest, because I had seen your earlier comments about the rural justice system in the context of the Court's Advisory Committee on Fairness and Access. The Council just in the past week agreed (at the court's request) to take over the work of staffing the grant that funds the committee. Thus, your remarks *are* timely, in that context.

Because we have done a substantial amount of work on charging and sentencing practices in the context of our evaluations of the ban on plea bargaining, we understand the points that you are making about charging practices. If you are interested and have not seen it (and it doesn't cost too much to send!), I'll be happy to send you the 1991 re-evaluation of the ban. We haven't had as much opportunity to study some of the other issues that you raise, such as search warrants, *Miranda* rights, and grand jury presentations.

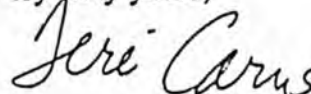
To keep you up to date, I should let you know that the Council voted to nominate Barb Brink, Sidney Billingslea and Cynthia Strout for the PD position. The governor has 45 days in which to make his appointment; then the legislature must confirm (majority, in joint session).

1-15-97
COPY TO HOUSE
JUDICIARY COMMITTEE,
AK. LEGISLATURE
John Holmes

We very much appreciate the time that you have taken in the past year, to set down your thoughts and experiences with the justice system, particularly because you have compared practices in different parts of the state. You have contributed a great deal to our understanding of the effects of the various practices on different parts of the system. Please let us know if you have other comments that you believe would assist us.

Best wishes for your holidays, and for your stay in China.

Very truly yours,



Teresa W. Carns
Senior Staff Associate

JANUARY 10, 1997

JOHN M. HOLMES,
ATTORNEY AT LAW

(ALASKA BAR ASSOC. NO. 781103)

1-15-97
COPY TO AK. HOUSE
JUDICIARY COMMITTEE
CHAIR, JAMES HOLMES
LEGISLATURE

C/O:

CHANG CHUN WAI GUO YU XUE XIAO
CHANGCHUN FOREIGN LANGUAGES SCHOOL
46 HONGQI STREET
CHANGCHUN, JILIN PROVINCE
CHINA 130012

CHANGCHUN IS
1.7 HOURS AHEAD
OF ANCHORAGE.
IF IT IS 1:00 PM MONDAY
IN ANCHORAGE, IT
IS 6:00 AM TUESDAY
IN CHANGCHUN.

--- MORNINGS
TEL. ~~EVENINGS~~: DIRECT DIAL
011-86-431-595-3201
AFTER CHINESE RECORDING ANSWERS,
DIAL EXTENSION 3074.

E-MAIL C/O: (SMALL LETTERS)
jbarreca@public.cc.jl.cn
(JBARRECA@PUBLIC.CC.JL.CN)

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011-86-431-565-2740

PUBLISHER AND EDITORS,
THE ANCHORAGE DAILY NEWS
ANCHORAGE, ALASKA 99501

RE: APPOINTMENT OF
ALASKA STATE PUBLIC DEFENDER

DEAR PUBLISHER AND EDITORS:

PAGE 2

PUBLISHER AND EDITORS,
ANCHORAGE DAILY NEWS
JAN. 10, 1997

THE STATE OF ALASKA IS CURRENTLY IN THE LATTER STAGES OF THE PROCESS OF SELECTING THE NEXT STATE PUBLIC DEFENDER. THE ALASKA JUDICIAL COUNCIL HAS NOMINATED BARBARA BRINK, THE CURRENT DEPUTY DIRECTOR OF THE PUBLIC DEFENDER AGENCY, SIDNEY BILLINGSLEA, AND CYNTHIA STROUT FOR THE POSITION. I DO NOT KNOW WHETHER THE GOVERNOR HAS MADE AN APPOINTMENT. I HAVE ASKED BUT HAVE NOT RECEIVED A REPLY. I'M SURE HE WILL HAVE DONE SO BY THE TIME YOU RECEIVE THIS LETTER BECAUSE THE 45-DAY PERIOD FOLLOWING JUDICIAL COUNCIL NOMINATIONS EXPIRES ANY DAY NOW.

ENCLOSED IS A COPY OF A LETTER THAT I RECEIVED SEVERAL DAYS AGO FROM MS. TERESA W. CARNS, SENIOR STAFF ASSOCIATE OF THE ALASKA JUDICIAL COUNCIL. MS. CARNS NOTES THAT THE LEGISLATURE MUST STILL CONFIRM THE APPOINTMENT BY MAJORITY VOTE IN JOINT SESSION, FOLLOWING THE APPOINTMENT.

THE EXTENSIVE SELECTION PROCESS, INVOLVING JUDICIAL COUNCIL NOMINATIONS,

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PUBLISHER AND EDITORS,
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JAN. 10, 1997

THE GOVERNOR'S APPOINTMENT, AND LEGISLATIVE CONFIRMATION DEMONSTRATE THE IMPORTANCE OF ALASKA STATE PUBLIC DEFENDER POSITION UNDER THE ALASKA CONSTITUTION AND ALASKA STATUTORY LAW. THE APPOINTMENT DIRECTLY AFFECTS THE COURSE OF THE CRIMINAL JUSTICE SYSTEM FOR YEARS TO COME.

FOR MANY YEARS WE HAVE HEARD CALLS FROM POLITICIANS AND THE PUBLIC FOR "LAW AND ORDER". NO RESPONSIBLE PERSON WOULD ARGUE AGAINST LAW AND ORDER. BUT SOMEBODY MUST REMIND THE PUBLIC - AND THE JUDICIAL SYSTEM ITSELF - OF THE EQUALLY CRUCIAL PRIORITY OF PROMOTING DUE PROCESS AND HUMANE TREATMENT. OTHERWISE OUR SOCIETY COULD ULTIMATELY TEND TOWARD THE OPPOSITE EXTREME FROM THE CHAOS OF A BREAKDOWN IN "LAW AND ORDER"; OUR SOCIETY COULD EASILY IN THE NOT-TOO-DISTANT FUTURE MOVE TOWARD THE OPPOSITE EXTREME OF RIGID TOTALITARIAN

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997.

CONTROL, WITH COMPLETE RELINQUISHMENT OF JUDICIAL INDEPENDENCE AND DELEGATION TO MORE "EFFICIENT" FORMS OF ADMINISTRATIVE ACTION, ALL IN THE NAME OF "LAW AND ORDER". JUSTICE WOULD BE SACRIFICED ON THE ALTAR OF EFFICIENCY.

I THINK WE ARE ALREADY MOVING IN THAT DIRECTION. ANYONE CLOSE TO THE JUDICIAL SYSTEM KNOWS HOW HARD IT IS FOR A DEFENDANT TO DEFEND HIMSELF (AND HERSELF TOO). THE SYSTEM IS BIASED - STACKED - AGAINST THE DEFENDANT. AND PROSECUTORS WILL INCREASE THE BIAS MUCH FURTHER IF POSSIBLE. THEIR INTEREST IS IN AS EFFICIENT A PROSECUTION AS POSSIBLE, WITH LITTLE REGARD FOR DUE PROCESS.

I DON'T BELIEVE THAT THE PUBLIC DEFENDER AGENCY IS FIGHTING THIS TREND. I DON'T BELIEVE THAT IT HAS THE PSYCHOLOGY AT WORK TO DO IT. THAT IS NOT TO CRITICIZE PEOPLE FOR LACK OF TALENT, COMMITMENT, AND DEDICATION.

PAGES

PUBLISHERS AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

THE LAWYERS IN THE AGENCY ARE HIGHLY TALENTED, HARDWORKING, AND SACRIFICING. THEY HAVE LARGE CASELOADS, FAR TOO MANY DEMANDS AND TOO LITTLE TIME, AND LIVE UNDER THE CONSTANT PRESSURE OF DOING UNPOPULAR WORK IN WHICH THEIR CLIENTS REGULARLY GO OFF TO SPEND YEARS IN JAIL.

MY POINT IS THAT THE PROSECUTION AND THE JUDGES HAVE PUT THE DEFENSE IN AN IMPOSSIBLE ~~POS~~ POSITION, THE PROSECUTION BY ITS OVERCHARGING AND THE JUDGES BY COURT RULES AND INDIVIDUAL ACTIONS THAT CRIPPLE THE DEFENSE AND DENY THE RIGHT TO DUE PROCESS AND HUMANE TREATMENT UNDER THE U.S. AND ALASKA CONSTITUTIONS.

I BELIEVE THAT THE PUBLIC DEFENDER AGENCY MUST FIGHT TO REVERSE THIS DESTRUCTIVE TREND. THE PUBLIC DEFENDER AGENCY

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PUBLISHER AND EDITORS
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JAN. 10, 1997

PROBABLY REPRESENTS 85% OF THE DEFENDANTS IN ALASKA WHO ARE REPRESENTED BY COUNSEL; MOST OF THE REST ARE PROBABLY REPRESENTED BY THE OTHER STATE DEFENSE AGENCY, THE OFFICE OF PUBLIC ADVOCACY. THESE AGENCIES' LAWYERS ARE IN COURT EVERY COURT DAY DOING CRIMINAL LAW. THE COURSE OF THE PUBLIC DEFENDER AGENCY DETERMINES THE DIRECTION OF THE DEFENSE EFFORT IN THE CRIMINAL JUSTICE SYSTEM.

HOWEVER I ALSO BELIEVE THAT MOST PEOPLE IN THE AGENCY ARE TOO CLOSE TO THE SYSTEM TO BREAK OUTSIDE ITS LIMITS, TO HOLLER ON BEHALF OF JUSTICE WHEN THERE IS NO PRECEDENT ON THE POINT OR PRECEDENT AGAINST IT, TO CONFRONT JUDGES WHEN THEY ACT UNREASONABLY OR TREAT DEFENDANTS WITHOUT

PAGE 7

PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

RESPECT. I DOUBT THAT THE MOST EFFECTIVE NEW STATE PUBLIC DEFENDER WILL COME FROM THE PUBLIC DEFENDER AGENCY. WHAT IS NEEDED IS A HIGHLY EXPERIENCED, HARD-BITTEN LAWYER WHO SEES WHAT NEEDS TO BE REFORMED AND WILL PUSH FOR IT, WHATEVER THE OBSTACLES. I THINK AN AGGRESSIVE, ORGANIZED, AND - IF POSSIBLE - CHARISMATIC - PRIVATE LAWYER, FROM INSIDE ^{ALASKA} OR FROM ELSEWHERE IN THE LOWER 48, IS NEEDED.

IN OCTOBER I RECEIVED AN ALASKA JUDICIAL COUNCIL SURVEY CONCERNING APPLICANTS FOR THE STATE PUBLIC DEFENDER POSITION. I RESPONDED CONCERNING BARBARA BRINK, THE CURRENT DEPUTY PUBLIC DEFENDER. I OPPOSED HER, NOT FOR

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

LACK OF PROFESSIONAL ABILITY BUT
RATHER BECAUSE SHE WILL NOT TAKE
THE ACTIONS NECESSARY TO SHAKE
THE CRIMINAL JUSTICE SYSTEM ON
BEHALF OF ~~THE~~ DEFENDANTS.

I DON'T BELIEVE THAT CYNTHIA
STROUT COULD DO IT EITHER.

I DON'T KNOW SIDNEY BILLINGSLEA,
BUT I WOULD WANT TO KNOW
THE APPLICANT BEFORE ENDORSING.

THE ENCLOSED (LONG) NOVEMBER
24, 1996 LETTER TO THE ALASKA
JUDICIAL COUNCIL SETS OUT ^{MY} ~~THE~~ ~~THE~~
EXPERIENCES IN THE ALASKA PUBLIC
DEFENDER AGENCY THAT LED TO
THE OPINIONS EXPRESSED IN THAT
LETTER AND THIS ONE. I WORKED
AS A PUBLIC DEFENDER FROM 12-18-88
TO MARCH 1989 IN ANCHORAGE,
PRIOR TO BEING TRANSFERRED TO
BARROW. I WORKED IN THE BARROW
OFFICE FROM 3-89 TO 3-90 AND
THEN WORKED IN THE KETCHIKAN

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

OFFICE FROM 3-90 TO MID-SEPTEMBER 1991.
AFTER RECOVERING FROM SURGERY FOR
7 MONTHS, I TAUGHT ENGLISH IN RUSSIA
FROM 1992-JULY 1994. I THEN WORKED
IN THE KOTZEBUE PUBLIC DEFENDER
OFFICE FROM 8-94 TO MID-JULY 1996.

PRIOR TO THIS I HAD WORKED AS A LAWYER
IN MINNESOTA FROM 8-74 TO 9-77,
IN THE FAIRBANKS ALASKA LEGAL
SERVICES OFFICE FROM 12-77, ^{TO 8-78,} IN
THE BARROW ALASKA LEGAL SERVICES
OFFICE FROM 8-78 TO 11-84, AND ON
YAP ISLAND IN THE MICRONESIAN
LEGAL SERVICES CORPORATION OFFICE FROM
1-85 TO MID DECEMBER 1988.

MY CRIMINAL LAW EXPERIENCE
IN ALASKA TOTALS ABOUT 4 YEARS
AND 9 MONTHS WITHIN THE PUBLIC
DEFENDER AGENCY, IN ANCHORAGE,
BARROW, KETCHIKAN, AND KOTZEBUE.

I AM WRITING YOU, AND
FORWARDING THESE MATERIALS
BECAUSE THESE ARE IMPORTANT
PUBLIC ISSUES THAT GO TO THE
HEART OF THE CRIMINAL JUSTICE

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS

JAN. 10, 1997

SYSTEM AND AFFECT THE SECURITY
AND WELL-BEING OF OUR SOCIETY.

THEY DESERVE TO BE AIRED IN
PUBLIC - BUT I DON'T SEE THE
LEGAL SYSTEM DOING THE AIRING.

TO SOME EXTENT, THIS IS AN
INSIDE PEEK INTO THE SYSTEM.

PROBABLY MOST LAWYERS AND JUDGES
WOULD DISAGREE WITH ME, AND
MANY WOULD FIND THIS EFFORT
IRRESPONSIBLE, IF NOT TRAITOROUS.

BUT THESE IDEAS GREW FROM MY
EXPERIENCES WITHIN THE SYSTEM.

I EXPRESSED SOME OF THIS
IN A NOVEMBER 1995 MEMO
WITHIN THE PUBLIC DEFENDER
AGENCY (COPY ENCLOSED). ONLY ONE
LAWYER IN THE ENTIRE AGENCY
RESPONDED, THE SITKA PUBLIC
DEFENDER. I ALSO EXPRESSED SIMILAR
OPINIONS IN A DECEMBER 1995
LETTER TO THE ALASKA JUDICIAL
COMMITTEE ON FAIRNESS AND ACCESS

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PUBLISHER AND EDITORS,
ANCHORAGE DAILY NEWS
JAN. 10, 1997

(WHICH WAS ORGANIZED IN NOVEMBER 1995 TO INVESTIGATE INEQUITABLE TREATMENT OF MINORITIES WITHIN THE ALASKA JUDICIAL SYSTEM), ENCLOSED A COPY OF MY NOVEMBER 1995 PUBLIC DEFENDER AGENCY MEMO; I RECEIVED NO RESPONSE FROM THE JUDICIAL COMMITTEE ON FAIRNESS AND ACCESS.

I THOUGHT LONG AND HARD ABOUT WHETHER TO SEND YOU THE LONG 11-24-96 LETTER OPPOSING BARB BRINK'S APPOINTMENT. I LIKE BARB AND RESPECT HER. I KNOW THAT THE LETTER WILL BE DIFFICULT FOR HER AND WILL SEEM TO HER TO BE UNFAIR IF NOT IRRESPONSIBLE. BUT I KNOW THAT THE CRITICISM IS FAIR AND THAT HER ABILITIES AND PROFESSIONALISM ARE ALSO ACKNOWLEDGED IN THE LETTER; MY

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

LETTER CONCERNS WHAT I SEE AS A
LIMITATION CONCERNING NECESSARY
EFFECTIVENESS AS STATE PUBLIC
DEFENDER UNDER THE CIRCUMSTANCES.
MY COMMENTS ARE IN DIRECT RESPONSE
TO THE ALASKA JUDICIAL COUNCIL SURVEY
THAT WAS SENT TO ME, WITH ITS
REQUEST FOR EVALUATION OF
APPLICANTS.

IN DECIDING TO SEND THE 11-24-
96 LETTER TO YOU, I FINALLY FOCUSED
ON THE FACT THAT BARB BRINK HAS
APPLIED FOR A MAJOR STATE POST
REQUIRING THE GOVERNOR'S APPOINTMENT
AND JOINT-SESSION LEGISLATIVE
APPROVAL. AS SUCH, THIS IS A MATTER
OF PUBLIC INTEREST AND CONCERN.
THE PUBLIC DESERVES A LOOK INTO
THE WORKINGS OF THE AGENCY WHEN
SUCH AN APPOINTMENT IS IMMINENT
(AND AT OTHER TIMES AS WELL).

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

IT DOES NOT SERVE THE PUBLIC
~~THE~~ INTEREST IF I BELIEVE THAT
THE PUBLIC DESERVES TO BE
INFORMED BUT ^{THEY} WATER-DOWN THE
ISSUE BY WRITING A GENERALIZED
STATEMENT WITHOUT CONNECTING THE
ISSUES TO THE APPLICANT. ON THE
OTHER HAND, I HAVE REWRITTEN
PAGES 15 AND 16 OF THE 11-24-96
LETTER TO PROTECT THE PRIVACY OF
TWO FORMER CLIENTS; THE 11-24-96
LETTER WENT TO THE ALASKA
JUDICIAL COUNCIL, ~~AS~~^{TO} A CONFIDENTIAL
PROCEEDING.

WITH REGARD TO ANY QUESTION, ~~WITH~~
~~REGARD TO THE~~ REGARDING THE
CREDIBILITY OF THE 11-24-96 LETTER,
I WOULD REFER YOU TO PAGE TWO
OF THE ENCLOSED 12-18-96 LETTER TO
ME FROM MS. ~~THE~~ TERESA CARNS,

P. 14
P. B

PUBLISHER AND EDITORS,
ANCHORAGE DAILY NEWS
JAN. 10, 1997

SENIOR STAFF ASSOCIATE, ALASKA
JUDICIAL COUNCIL, IN WHICH SHE

SAID:

WE VERY MUCH APPRECIATE THE TIME THAT YOU
HAVE TAKEN IN THE PAST YEAR, TO SET DOWN
YOUR THOUGHTS AND EXPERIENCES WITH THE
JUSTICE SYSTEM, PARTICULARLY BECAUSE YOU
HAVE COMPARED PRACTICES IN DIFFERENT
PARTS OF THE STATE. YOU HAVE CONTRIBUTED
A GREAT DEAL TO OUR UNDERSTANDING
OF THE EFFECTS OF THE VARIOUS PRACTICES
ON DIFFERENT PARTS OF THE SYSTEM. PLEASE
LET US KNOW IF YOU HAVE OTHER
COMMENTS THAT YOU BELIEVE WOULD
ASSIST US.

SOME OF THE ISSUES REFLECTING
THE EROSION OF CONSTITUTIONAL
DUE PROCESS AND HUMANE TREATMENT
OF DEFENDANTS, CITED IN THE 11-24-96
LETTER, INCLUDE:

1. STEADY RESTRICTION OF MIRANDA
NOTICE REQUIREMENTS AND APPELLATE
DECISIONS ENCOURAGING - AND SPECIFICALLY
PERMITTING - THE STATE TO MANIPULATE
TO AVOID THE PRINCIPLES AND

P. 15
~~11~~

PUBLISHER AND EDITORS,
ANCHORAGE DAILY NEWS
JAN. 10, 1997

REQUIREMENTS OF NOTICE.

[2.] ROUTINE OVERCHARGING BY THE PROSECUTION, CREATING A LOGJAM OF CASES IN THE SYSTEM — UNLESS THE DEFENSE QUICKLY PLEADS OUT CASES, ^{USUALLY} ~~USUALLY~~ TO THE DISADVANTAGE OF THE CLIENT. I SAY, ~~TO~~ HOLD OUT ON THE CASES. IT CREATES CHAOS IN THE SYSTEM, BUT THE CHAOS ORIGINATED WITH THE PROSECUTION, NOT THE DEFENSE.

[3.] MANIPULATION OF THE GRAND JURY BY THE PROSECUTION, TAKING CASES TO GRAND JURY FOR FELONY INDICTMENTS WHEN THE CASES COULD AND SHOULD BE HANDLED AS MISDEMEANORS. SOMETIMES THE PROSECUTOR WILL TAKE CASES TO GRAND JURY JUST TO SEE IF THEY WILL INDICT ON A FELONY,

P. ¹⁶~~E~~

PUBLISHER AND EDITORS,
ANCHORAGE DAILY NEWS
JAN. 10, 1997

SOMETHING THAT VIOLATES ETHICAL
RULES - AND IS NO SPORT ANYWAY
SINCE THE GRAND JURY IS
VIRTUALLY GUARANTEED TO DO
WHATEVER THE PROSECUTOR SUGGESTS,
THERE BEING NO OTHER LEGAL
OFFICER PRESENT DURING
GRAND JURY PROCEEDINGS. IN JULY
AND DECEMBER¹⁹⁹⁵ THE KOTZEBUE DA
GOT THE GRAND JURY TO INDICT
APPROXIMATELY 13 DEFENDANTS
EN MASSE (IN JULY) AND
APPROXIMATELY 21 DEFENDANTS
EN MASSE (IN SEPTEMBER)
IN ALCOHOL / DRUG BUSTS,
WITHOUT EVEN AFFORDING THE
(NON-JOINABLE) CASES SEPARATE
GRAND JURY HEARINGS. THE JUDGE
DID NOT THROW OUT THE
INDICTMENTS IN THESE FLAGRANT
VIOLATIONS OF CONSTITUTIONAL

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PUBLISHER AND EDITORS,
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DUE PROCESS (REMINISCENT OF
GROUP PROSECUTIONS IN
TOTALITARIAN STATE.) UNTIL
THE PUBLIC DEFENDER AGENCY
HAD FULLY LITIGATED THE ISSUE;
TO MY KNOWLEDGE THE ATTORNEYS
REPRESENTING NON-PUBLIC
DEFENDER CLIENTS DID NOT EVEN
FILE MOTIONS ON THE ISSUE.
THESE MANIPULATIONS OF THE
GRAND JURY PROCESS REPRESENT
AN ABUSE OF STATE POWER,
ARE DANGEROUS, GREATLY STRESS
AND OVERBURDEN THE DEFENSE,
OVERBURDEN THE SYSTEM (ALTHOUGH
THE COURTS INDULGE IT AND FAIL
TO HOLD THE PROSECUTION
RESPONSIBLE FOR IT), AND
MISLEAD AND OVERWORK GRAND
JURY PANELS, PARTICULARLY IN
RURAL AREAS WHERE THE SAME
PEOPLE MUST SERVE ON JURIES
MORE FREQUENTLY.

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[4.] THE COURTS ROUTINELY TREAT PRETRIAL DEFENDANTS AS THOUGH THEY ARE PRESUMPTIVELY GUILTY BY THE JUDGES' DEMEANOR, BY PERMITTING GUARDS TO EXERCISE UNNECESSARY RESTRAINT, AND BY DENYING REASONABLE RELEASE PLANS AND BAIL REQUESTS. THE PUBLIC DEFENDER AGENCY IN KOTZEBUE PROBABLY SPENDS 20% OF ITS TIME CHASING AROUND TO FIND THIRD-PARTY CUSTODIANS AND OTHER BAIL PACKAGES THAT ARE ROUTINELY OPPOSED BY THE D.A. AND ^{MOST} OFTEN DENIED BY THE COURT. THE KOTZEBUE MAGISTRATE WILL ONLY VERY RARELY GO OUT ON A LIMB AND OVERRIDE THE D.A.'S OPPOSITION OF BAIL IN A CONTROVERSIAL BAIL HEARING. THE

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JUDGE

A REFUSES TO GRANT APPEARANCE
BAIL BONDS, DESPITE THE FACT
THAT THE ALASKA BAIL STATUTE

SPECIFICALLY PERMITS BAIL BONDS IN

AS 12.30. THERE ARE MORE KITCHEN THAN NOME
PRISONERS IN THE ANVIL MTR. CORRECTION CENTER AT NOME.

[5.] THE JUDGES CAN PREJUDICE A
JURY AGAINST THE DEFENSE AT TRIAL
BY THEIR ^{SCOWLING} DEMEANOR. I FILED A
MOTION FOR A MISTRIAL ON THAT GROUND
IN THE MIDST OF TRIAL IN KETCHIKAN
IN 1989. THE SAME JUDGE HAD A
WHOLE SET OF PISTOLS MOUNTED ON HIS
WALL IN HIS CHAMBERS, RIGHT BEHIND
HIS CHAIR; THEY WERE REPLICAS OF
PISTOLS USED BY 19TH CENTURY LAWYERS.
IMAGINE THE IMPRESSION ^{THAT} THAT LEFT
ON DEFENDANTS WHO WERE BROUGHT
INTO CHAMBERS DURING TRIAL ~~FOR~~
FOR HEARINGS OUTSIDE THE PRESENCE
OF THE JURY. THIS REMINDS ME OF A
RECENT BARROW NON-NATIVE

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PROBATION OFFICER (I THINK THEY ^{ARE} ALL
NON-NATIVE) ~~PROBATION OFFICER~~
WHO HAD A HUGE AMERICAN FLAG
TACKED TO THE WALL OF HIS
BARROW OFFICE, RIGHT BEHIND HIS
CHAIR, APPARENTLY SO HIS ESKIMO FELON,
PROBATIONERS AND PAROLEES COULD
EXPERIENCE A RIVETING MONTHLY
SHOW SIMILAR TO THAT EXPERIENCED ON A
LARGER SCALE BY MOVIE AUDIENCES IN
THE OPENING SCENE OF THE FILM ~~THE~~ SULTAN
PATTON, FEATURING GEORGE C. SCOTT
STRUTTING BEFORE A MAMMOTH AMERICAN
FLAG IN THE ROLE OF GENERAL
GEORGE PATTON.

[6.] JUDGES ROUTINELY FAVOR THE
PROSECUTION IN THE TECHNICAL
DECISIONS THAT ARISE THROUGHOUT
A CASE. IT IS NOT THE DEFENSE

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THAT ESCAPES ON A TECHNICALITY
IN MOST CASES; IT IS THE PROSE-
CUTION THAT IS FAVORED WITH
~~THESE~~ ^{THESE}. ON RULINGS INVOLVING FACTUAL
CALLS, THE APPELLATE COURT WILL
ALMOST NEVER REVERSE THE TRIAL
COURT'S RULING, WHICH ALMOST ALWAYS
FAVORS THE PROSECUTION. THE
COURT CAN TIP THE BALANCE AGAINST
THE DEFENDANT IN A MYRIAD OF
WAYS AT TRIAL, FROM RULINGS ON
OBJECTIONS, TO EVIDENCE CALLS,
TO THE SCOPE OF CROSS-EXAMINATION.
THE DEFENSE HAS TO FIGHT FOR
EVERY POINT BECAUSE THE JUDGES'
INCLINATIONS GENERALLY LIE
WITH THE PROSECUTION.
THE ^{JUDGES} ISSUE SEARCH WARRANTS -
WITHOUT SEARCHING EXAMINATION OF

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THE POLICE WHO APPLY FOR THE SEARCH WARRANTS. IT'S A RELATIONSHIP BETWEEN COURT AND POLICE THAT BECOMES TOO CLOSE, TOO FAMILY-LIKE. THE JUDGES RARELY QUASH A SEARCH WARRANT. SEARCHES AND SEIZURES ARE UPHOLD BY THE COURTS ON WHATEVER IMAGINATIVE GROUNDS THE PROSECUTION PROVIDES.

THE ALASKA DIGEST (A 14-VOLUME SET OF BLUE BOOKS) AND THE ALASKA CRIMINAL RULES OF COURT CONTAIN ANNOTATIONS (ONE OR TWO-SENTENCE SUMMARIES OF CASES ON PARTICULAR POINTS). TAKE A LOOK IN ALASKA DIGEST UNDER CRIMINAL LAW. YOU WILL SEE HUNDREDS OF ANNOTATIONS SUPPORTING THE PROSECUTION AND ^{ONLY} A SMALL MINORITY SUPPORTING

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THE DEFENSE. HAVE A LAWYER
SHOW YOU THE MIRANDA,
VOLUNTARINESS OF CONFESSIONS,
SEARCH AND SEIZURE,
INDICTMENT AND INFORMATION,
AND GRAND JURY.^{AMALTIATICS} YOU WILL SEE
A LITANY OF RATIONALIZATION THAT
PERMITS THE STATE ALMOST
UNLIMITED ENFORCEMENT AND
PROSECUTORIAL SCOPE. IT BECOMES
REALLY FLAGRANT WHEN, AS IN A
1980s CASE THAT IS STILL "GOOD"
LAW, THE APPELLATE COURT OPENLY
PERMITTED THE POLICE TO CONNIVE
TO INTERROGATE A DEFENDANT
IN SUCH A WAY SO AS TO AVOID
THE REQUIREMENT OF INFORMING HIM
OF THE MIRANDA WARNINGS. THIS
PARTICULARLY DISADVANTAGES VILLAGER
DEFENDANTS, BUT YOU COULDN'T EXPECT

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THE COURTS TO BE AWARE OF THAT.
A DISTINGUISHING FACTOR OF OUR LEGAL
SYSTEM IS THE JURY PROCESS. A JURY
CAN STOP A PROSECUTION COLD IN
ITS TRACKS. THE JURY SYSTEM GREW
OUT OF A DISTRUST OF JUDGES, A
GUT FEELING THAT JUDGES WERE TOOLS
OF THE STATE, WITH AN INHERENT
BIAS IN FAVOR OF THE STATE. AND
THAT IS STILL THE CASE. FEW JUDGES
ARE STRONG ENOUGH TO MAINTAIN
BALANCE IN THE SYSTEM. THERE IS
A NETWORK OF MUTUAL UNDERSTANDING
AMONG JUDGES, PROSECUTORS, COURT
PERSONNEL, POLICE, ^{TAIL} GUARDS, ^{AND TROOPERS,} PROBATION
OFFICERS, AND DEPARTMENT OF HEALTH
AND SOCIAL SERVICES, DIVISION OF
FAMILY SERVICES. IT IS, AFTER ALL,
A "SYSTEM", THE CRIMINAL LAW
"SYSTEM". THE QUESTION OF COURSE

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IS WHETHER THE DEFENSE IS SIMPLY
A COMPONENT OF THAT BACKSLAPPING
SYSTEM OR LOOKING OUT FOR
UNPOPULAR DEFENDANTS FIRST.

7. THE PRESUMPTIVE SENTENCING
SYSTEM IS A BRUTAL SYSTEM THAT IS
PRESUMPTIVELY UNFAIR. IT RELIES ON
THE MANIPULATION OF "AGGRAVATING" AND
"MITIGATING" FACTORS. SINCE THERE ARE
FAR MORE "AGGRAVATING" FACTORS THAN
"MITIGATING" FACTORS LISTED IN A.S. 12.55.
155, AND THE LOGIC FOR EMPLOYING THEM
IS SO ELASTIC, THE COURT CAN NAIL
A DEFENDANT ANY TIME IT DESIRES.
THERE IS ALL KINDS OF LEEWAY TO
EXTEND JAIL TIME, EVEN USING ^{Aggravating/Mitigating} ~~THESE~~
BY ANALOGY IN FIRST-TIME FELONIES
WHERE TECHNICALLY THEY DO NOT
APPLY.

IN STATE v. ROBLES, 2K3-95-1720K

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THE DEFENDANT WAS WAYLAIN ON THE BEACH ROAD OUTSIDE KOTZEBUE BY TWO MEN. HE WAS BADLY BEATEN. HE WAS DRAGGED TO THE OCEAN. HIS HEAD WAS FORCED UNDER WATER, AND HE WAS HIT IN THE HEAD REPEATEDLY WITH A ROCK. ^{HE THOUGHT HE WAS DROWNING.} HE WAS BITTEN TWICE ON THE BACK. ~~ONE~~ ONE OF THE MEN SMASHED THE BACK WINDOW OF HIS PICKUP WITH A ROCK. HE WAS SUBJECTED TO ETHNIC INSULTS. ^{IN HIS TRUCK} THE DEFENDANT, BADLY INJURED, IMMEDIATELY FOLLOWED THEM TO THEIR PLACE OF BUSINESS, HELD A RIFLE ON THEM AND TOLD THEM THAT HE WAS PUTTING THEM UNDER CITIZEN'S ARREST (A PROCEDURE THAT IS LEGAL UNDER A.S. 12 WHEN A FELONY INVOLVING INJURY IS INVOLVED). HE WAS PERSUADED TO PUT DOWN HIS GUN AFTER HE HAD FIRED SEVERAL WARNING

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SHOTS. THE TWO MEN PROMPTLY POUNCED ON HIM AND BEAT HIM AGAIN AND KICKED HIM UNTIL THE POLICE ARRIVED.

THE DA HAD MR. ROBLES INDICTED ON TWO COUNTS OF ASSAULT IN THE THIRD DEGREE, CLASS C FELONIES. THE GRAND JURY WANTED ~~THE~~ THE TWO "VICTIMS" INDICTED ON FELONIES ALSO, BECAUSE THEY ADMITTED MUCH OF THEIR OWN ASSAULTIVE BEHAVIOR, INCLUDING THE ASSAULT WITH ^{THE} ROCK, IN GRAND JURY TESTIMONY. HOWEVER THE DA REFUSED TO PRESENT INDICTMENTS ON THE TWO "VICTIMS". THE DA ARGUED AT TRIAL THAT THE ROCK WAS NOT AVAILABLE AT TRIAL AND THAT NO ONE KNEW HOW BIG IT WAS. DURING TRIAL THE JUDGE INTERRUPTED THE DEFENDANT, AS HE WAS

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DEMONSTRATING HIS POSITION IN THE WATER WHEN HIS HEAD WAS BEING FORCED UNDERWATER, AND HE WAS BEING HIT IN THE HEAD WITH THE ROCK, AND TOLD HIM TO RETURN TO HIS SEAT AT THE WITNESS STAND.

THE DEFENDANT WAS CONVICTED OF THE TWO FELONIES. THE DA HAD FINALLY CHARGED THE TWO MEN WITH A MISDEMEANOR ASSAULT, ~~THE~~ EACH. THEY PLED AND RECEIVED SIX-MONTH SUSPENDED IMPOSITIONS OF SENTENCE WITH NO JAIL TIME, ^{NO} FINE, AND ^{NO} PROBATION, ^{CONDITIONS} OR OTHER PENALTY EXCEPT TO REPLACE THE TRUCK WINDOW. THIS KIND OF DISPOSITION (A SIX-MONTH SIS INSTEAD OF A YEAR) (AND NO PENALTY AT ALL) JUST DOES NOT HAPPEN IN KOTZEBUE OTHERWISE.

AT MR. ROBLES' SENTENCING, THE JUDGE SAID THAT THE POLICE MAY HAVE LEARNED FROM THE CASE ~~TE~~ ABOUT

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INVESTIGATING BETTER. HE ALSO SAID THAT MR. ROBLES HAD BEEN PUT IN FEAR FOR HIS LIFE BY ~~THE~~ HAVING HIS HEAD FORCED UNDER WATER AND HIS HEAD BEATEN WITH A ROCK. HOWEVER THE KOTZEBUE JUDGE REFUSED TO GRANT MR. ROBLES A MITIGATOR, WHICH COULD HAVE REDUCED HIS PRESUMPTIVE SENTENCES AND SENTENCED HIM TO THREE YEARS IN JAIL, WHERE HE REMAINS, WITH CONTINUING ^{MEDICAL} PROBLEMS AS A RESULT OF BEING HIT IN THE HEAD WITH THE ROCK, WHILE HIS ^{CASE} ~~CASE~~ REMAINS ON APPEAL

8. THE KOTZEBUE COURT HAS A SUPERIOR COURT JUDGE AND A MAGISTRATE THE MAGISTRATE IS A NON-NATIVE FROM OUTSIDE THE REGION. THERE IS A KOTZEBUE NATIVE PERSON WHO HAS APPLIED TWICE

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THE MAGISTRATE WILL OCCASIONALLY LEAVE THE BENCH IN A HARD CASE, CHECK WITH THE JUDGE, AND THEN RETURN TO RULE AGAINST THE DEFENSE.

FOR THE POST. THE APPLICANT IS ROSS SCHAEFFER, WHO ^{WAS} KOTZEBUE MAGISTRATE FOR EIGHT YEARS AROUND THE 1970s AND EARLY 1980s AND IS PROMINENT IN THE REGION; THOUGH HE IS NOT A LAWYER, ROSS SCHAEFFER COULD TECHNICALLY EVEN APPLY FOR A SUPERIOR COURT POSITION DUE TO HIS EXPERIENCE. THE KOTZEBUE JUDGE HAS TWICE REJECTED ROSS SCHAEFFER'S APPLICATION FOR MAGISTRATE. THE CURRENT MAGISTRATE IS TIMID, RELIES ON THE JUDGE AND DA, AND DOES NOT KNOW THE VILLAGES EXCEPT IN THE NEGATIVE ASSOCIATION RELATED TO CRIMINAL CASES. UP TO JULY, 1996, WHEN I LEFT, SHE HAD NEVER CONDUCTED A TRIAL. (I PUSHED MANY MISDEMEANORS TO TRIAL, BUT THE DAs WOULD ALWAYS EITHER DISMISS THEM OR GIVE SUCH ATTRACTIVE OFFERS THAT THE DEFENDANTS WOULD

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TAKE THEM.) IN THE MEANTIME
ROSS SCHAEFFER, WHO KNOWS THE
ENTIRE KOTZEBUE REGION WELL AND
HAS EIGHT YEARS' EXPERIENCE THERE
AS THE MAGISTRATE, HAS A
DISCRIMINATION COMPLAINT PENDING
ON THE ISSUE BEFORE THE ALASKA
HUMAN RIGHTS COMMISSION.

9. UNDER RULE 18 OF THE
ALASKA RULES OF COURT, KOTZEBUE
HAS ABOUT 5 VILLAGE TRIAL SITES,
WHERE MISDEMEANOR TRIALS CAN
BE HELD. THE DAs WHO WORKED
IN BARROW WHILE I WAS THERE
BOTH ASKED THE COURT SYSTEM TO
ABOLISH THE VILLAGE TRIAL SITES
BECAUSE THEY DID NOT HAVE HOTELS,
RESTAURANTS, FLUSH TOILETS, AND
FORMAL TRIAL FACILITIES. DESPITE
THE FACT THAT THE RULEMAKERS OBVIOUSLY

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KNEW ABOUT THE LIMITED FACILITIES WHEN
ADOPTING THE RULE YEARS AGO, WHEN
~~FACIL~~ FACILITIES WERE EVEN MORE LIMITED,
THE PROSECUTION WOULD ~~FOR~~ ASK THE COURT
SYSTEM TO ABOLISH VILLAGE TRIAL SITES,
ELEVATING PERSONAL COMFORT OF COURT SYSTEM
PERSONNEL OVER THE NEED TO EXTEND THE
CRIMINAL JUSTICE SYSTEM INTO THE RURAL
AREAS OF THIS VILLAGE STATE. AS A MATTER
OF FACT, THERE ARE PLENTY OF FACILITIES
IN THE VILLAGES TO ACCOMMODATE VILLAGE TRIAL

110. THE ^{APPELLATE} COURTS APPLY NO OVERSIGHT
OVER THE LESSER STANDARDS OF PROOF IN
ALASKA LAW, PRINCIPALLY THE PREPONDERANCE
OF THE EVIDENCE STANDARD. THIS IS THE
LOWEST STANDARD OF EVIDENCE AND ALLOWS
THE COURT TO TAKE ACTION (JAIL) ^{TO} A
DEFENDANT IF IT FINDS IT SIMPLY "MORE
LIKELY THAN NOT" THAT SOMETHING OCCURRED
(51% PROBABILITY OUT OF 100%). THIS STANDARD
IS EMPLOYED IN PROBATION REVOCATION

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HEARINGS, THAT COULD RESULT IN MANY YEARS IN JAIL, AND IN MANY OTHER EVIDENTIARY SITUATIONS. FOR INSTANCE, UNDER ALASKA STATE LAW A JURY CAN FIND A DEFENDANT NOT GUILTY OF A CHARGED CRIME BUT GUILTY OF A LESSER-INCLUDED CRIME. IF THE JUDGE THINKS THE DEFENDANT ACTUALLY COMMITTED THE MORE SERIOUS CRIME THEN, BASED ON THIS EVIDENTIARY STANDARD, ^{AT HEARING} THE JUDGE CAN THEN SENTENCE THE DEFENDANT AS THOUGH HE HAD COMMITTED THE MORE SERIOUS CRIME DESPITE THE CONSTITUTIONAL ACQUITTAL BY THE TRIAL JURY. IN BRADY V. U.S., THE U.S. 9TH CIRCUIT COURT OF APPEALS ^{APRIL} (1991) CALLED THIS A "PERVERSION OF JUSTICE". THE 9TH CIRCUIT INCLUDES ALASKA.

WHEN THE STANDARD OF PROOF IS "PREPONDERANCE OF THE EVIDENCE", THE DEFENSE PRACTICALLY NEVER HAS A CHANCE OF PREVAILING - AND THIS STANDARD COMES UP EVERY DAY. THE JUDGE CAN CITE ANY SLIGHT FACTUAL JUSTIFICATION TO COVER

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HIS RULING. AND THE APPELLATE COURTS
WILL NEVER OVERTURN THESE RULINGS
ABSENT EXTRAORDINARY CIRCUMSTANCES
THAT ARE ALMOST IMPOSSIBLE TO
DEMONSTRATE. THE RULES ARE REFINED
TO CRIPPLE THE DEFENSE.

I HOPE THAT YOU WILL REVIEW THESE
MATERIALS AND INVESTIGATE THEM IN
CONNECTION WITH THE APPOINTMENT OF
A HARD-HITTING, STRONG STATE PUBLIC
DEFENDER. IN MY 11-24-96 LETTER TO
THE ALASKA JUDICIAL COUNCIL, I ALSO TALK
ABOUT THE DISPARITY IN CONDITIONS
BETWEEN URBAN AND RURAL OFFICES
IN THE PUBLIC DEFENDER AGENCY.

THE RURAL OFFICES ARE TREATED MORE
AS HARDSHIP POSTS TO BE ENDURED
WHILE HOPING FOR TRANSFER TO THE
CITY, RATHER THAN AS PLACES WORTH
SETTLING IN FOR A SIGNIFICANT PERIOD
OF TIME. BOTH THE BARROW AND SITKA

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PUBLIC DEFENDERS HAVE NEVERTHELESS BEEN IN THOSE COMMUNITIES FOR LONG PERIODS (6 YEARS IN BARROW), AND IT IS WORTH CHECKING WITH THEM ABOUT THESE ISSUES. THE BETHEL OFFICE, WITH ITS OUTRAGEOUS CASELOAD, HAS BEEN IN THE NEWS WITHIN THE PAST YEAR.

THE STATE PUBLIC DEFENDER APPOINTMENT IS HEADED TO THE LEGISLATURE. I HOPE ^{THAT} YOU WILL AIR THIS ISSUE NOW, WHILE IT IS ESPECIALLY RELEVANT. THE APPOINTMENT WILL AFFECT THE COURSE OF THE CRIMINAL JUSTICE SYSTEM IN ALASKA FOR YEARS TO COME, INTO THE NEXT CENTURY, YEA, EVEN UNTO THE NEXT MILLENNIUM!

I WILL BE OUT OF CHANGCHUN, BUT STILL IN CHINA, DURING THE LAST OF JANUARY, UNTIL ABOUT FEBRUARY 10. YOU CAN CONTACT ME THROUGH THE ABOVE FAX NUMBER AND, UNTIL ABOUT

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→ P.S. SINCE THIS IS GOING TO
A NEWSPAPER, FROM CHINA,
I WILL SEND IT UNDER
SEPARATE COVER TO MY RELAT
IN DULUTH, MINNESOTA AND
HAVE IT FORWARDED TO YOU
John Holmes

FEBRUARY 6 AT THE ABOVE E-MAIL ADDRESS.
(THE E-MAIL WILL THEN BE CLOSED FOR ABOUT
TWO WEEKS WHILE THE PEOPLE ARE OUT OF TOWN.
I WILL KEEP IN CONTACT WITH THE FAX
AND E-MAIL ADDRESSES AND ARRANGE A
WAY TO TALK WITH YOU. THE FAX IS ALWAYS
AVAILABLE.

SINCERELY,
John M. Holmes
JOHN M. HOLMES,
ATTORNEY AT LAW

ENCL:

- 1) 12-18-96 LETTER TO J. HOLMES FROM
~~TERESA~~ TERESA CARRIS, SENIOR STAFF
ASSOCIATE, ALASKA JUDICIAL
COUNCIL.
- 2) 11-24-96 LETTER FROM J. HOLMES TO ALASKA
JUDICIAL COUNCIL.
- 3) 12-08-95 LETTER FROM J. HOLMES TO ALASKA
JUDICIAL COMMITTEE ON FAIRNESS
AND ACCESS.
- 4) 11-02-95 MEMO ENTITLED "A COLONIAL
SYSTEM" FROM J. HOLMES TO
PUBLIC DEFENDER AGENCY.
(IN JAN. 1996 KOTZEBUE JUDGE RICHARD
ERLICH DISTRIBUTED A MONOGRAPH
ACKNOWLEDGING THAT THE CRIMINAL
JUSTICE SYSTEM IS COLONIAL BUT
ADVOCATING NOTHING TO CHANGE IT.)

END OF
LETTER

1-15-97
COPY TO AK LEGISLATURE
HOUSE JUDICIARY
COMMITTEE CHAIR
John M. Holmes

NOVEMBER 24, 1996

JOHN M. HOLMES, ATTORNEY
46 HONGQI STREET
ENGLISH TEACHERS' OFFICE
CHANGCHUN FOREIGN LANGUAGES SCHOOL
CHANGCHUN, JILIN PROVINCE
CHINA 130012
(ALASKA BAR ASSN. NO. 7811103)

DIRECTOR,
ALASKA JUDICIAL COUNCIL
C/O ALASKA STATE COURTHOUSE
3RD + K STREET
ANCHORAGE, ALASKA 99501

RE: PUBLIC DEFENDER APPOINTMENT

DEAR JUDICIAL COUNCIL:

THIS LETTER IS IN RESPONSE TO THE JUDICIAL COUNCIL'S OCTOBER SURVEY OF ATTORNEYS REGARDING APPLICANTS FOR THE STATE PUBLIC DEFENDER POSITION. THIS LETTER ADDRESSES THE APPLICATION OF BARBARA BRINK.

I WORKED IN THE PUBLIC DEFENDER AGENCY FROM DECEMBER 1988 TO SEPTEMBER 1991 AND FROM AUGUST 1994 TO JULY 19, 1996: ANCHORAGE 12/88 - 3/89 (PRIOR TO TRANSFER TO BARROW); BARROW 3/89 - 3/90; KETCHIKAN 3/90 - 9/91; KOTzebue 8/94 - 7/19/96.

AS DEPUTY PUBLIC DEFENDER, BARB BRINK RESPONDED PROMPTLY AND KNOWLEDGEABLY TO REQUESTS FOR INFORMATION AND APPROVALS, ON SHORT NOTICE. SHE IS AN EXPERIENCED ATTORNEY AND AN ORGANIZED ADMINISTRATOR. BARBARA BRINK IS A DEDICATED PROFESSIONAL.

HOWEVER, I DO NOT RECOMMEND BARBARA BRINK'S APPOINTMENT AS STATE PUBLIC DEFENDER FOR THE FOLLOWING REASON. IN CONTRAST TO THE USUAL

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ALASKA JUDICIAL COUNCIL

RE: PUBLIC DEFENDER APPOINTMENT
NOVEMBER 24, 1996

PUBLIC PERCEPTION OF THE CRIMINAL JUSTICE PROCESS, I SEE THAT PROCESS IS GROSSLY UNFAIR TO DEFENDANTS, BOTH IN TERMS OF STEADILY ERODING CONSTITUTIONAL RIGHTS AND ALSO IN PRACTICAL TERMS OF A STATE COURT SYSTEM THAT IS BIASED IN FAVOR OF THE PROSECUTION AND THAT TREATS DEFENDANTS FROM THE OUTSET AS THOUGH THEY WERE GUILTY. IT CAN BE SAID THAT THE PUBLIC DEFENDER AGENCY REPRESENTS THE OVERWHELMING MAJORITY OF DEFENDANTS WHO ARE REPRESENTED BY COUNSEL (AROUND 85-90%?). THE PUBLIC DEFENDER AGENCY'S POSITION AND STRATEGY CONCERNING THIS SYSTEMIC PROBLEM REALLY DETERMINES WHETHER THERE WILL BE MOVEMENT IN ALASKA TO REVERSE THE ABUSE OF DEFENDANTS IN ALASKA. I BELIEVE THAT THE PUBLIC DEFENDER AGENCY CANNOT BE RUN AS JUST ANOTHER STATE AGENCY. IT HAS AN OVERRIDING, A CONSTITUTIONAL, OBLIGATION ~~OBLIGATION~~ TO DEFENDANTS AND TO FAIR FAIR APPLICATION OF THE JUDICIAL PROCESS. I BELIEVE THAT THE PUBLIC DEFENDER AGENCY MUST TAKE A VERY STRONG POSITION TO REVERSE THIS SYSTEMIC SLIDE INTO AUTHORITARIANISM. I DO NOT BELIEVE THAT BARBARA BRINK IS THE PERSON TO DO IT.

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ALASKA JUDICIAL COUNCIL

RE: PUBLIC DEFENDER APPOINTMENT

NOVEMBER 24, 1996

HERE ARE EXAMPLES OF PROBLEMS THAT HAVE CONTRIBUTED TO THE EROSION OF A FAIR JUDICIAL PROCESS.

1) THE MIRANDA NOTICE REQUIREMENTS HAVE BEEN STEADILY RESTRICTED OVER THE YEARS, TO THE POINT THAT THE ALASKA COURT PERMITS THE POLICE TO ACTIVELY CONSPIRE TO HYDID THE REQUIREMENT OF GIVING NOTICE OF RIGHTS TO SILENCE AND COUNSEL. THIS IS IN A STATE IN WHICH A LARGE PERCENTAGE OF DEFENDANTS ARE RURAL PEOPLE FROM MINORITY CULTURES WHO ARE MORE VULNERABLE TO TECHNICAL VIOLATIONS OF THEIR RIGHTS. IN MY OPINION - THE PUBLIC DEFENDER AGENCY ACCEPTS CURRENT LEGAL DOGMA AS PERMANENT, WHERE PRECEDENT AGAINST IT CANNOT BE FOUND, RATHER THAN CAMPAIGNING FOR CHANGE. FOR INSTANCE, IN STATE V. J. HAWLEY, 2KB-94-198 CR, I BROUGHT TWO EXPERT WITNESSES TO A NOVEMBER 1994 EVIDENTIARY HEARING IN THAT CASE TO TESTIFY THAT INUPIAK ESKIMOS IN THE KOTZEBUE AREA DID NOT GIVE VOLUNTARY STATEMENTS TO THE POLICE AND TROOPERS, REGARDLESS ~~BE~~ OF LEGAL DOCTRINE OTHERWISE. EXCEPT FOR THE SITKA PUBLIC DEFENDER, I FOUND NO ONE ELSE INTERESTED IN THE ISSUE BECAUSE OF THE FACT THAT ALASKA LAW UNQUESTIONABLY HOLDS SUCH STATEMENTS TO BE CONSTITUTIONAL. DESPITE THE OBVIOUS INJUSTICE, THERE IS NO APPARENT INCENTIVE TO KEEP RATTLING THE BARS OF THE

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ALASKA JUDICIAL COUNCIL
RE: PUBLIC DEFENDER APPOINTMENT
NOVEMBER 24, 1996

JUDICIAL SYSTEM UNTIL THE COURTS RECOGNIZE WHAT BOTH JUDGES AND ATTORNEYS ALREADY KNOW, THAT DEFENDANTS ARE DEPRIVED OF THEIR CONSTITUTIONAL RIGHT TO MIRANDA WARNINGS. THE PUBLIC DEFENDER AGENCY SHOULD VIGOROUSLY FIGHT SUCH AN ISSUE, WHETHER PRECEDENT IS AVAILABLE OR NOT. IF THE PUBLIC DEFENDER AGENCY DOES NOT DO IT, WHO WILL?

2) THE COURTS EXCUSE VIRTUALLY ANY VIOLATION OF THE GRAND JURY PROCESS. A REVIEW OF THE SECTIONS ON INDICTMENT/INFORMATION AND GRAND JURY IN THE ALASKA DIGEST SHOW AN ALMOST UNINTERRUPTED LITANY OF DECISIONS EITHER NOT RECOGNIZING DEFECTS OR EXCUSING THEM. LIKEWISE, COURTS GRANT SEARCH WARRANTS AS THOUGH THEY WERE MEDIEVAL INDULGENCES (I'M NOT SAYING THAT THE COURTS SELL THEM.). THE PUBLIC DEFENDER AGENCY SHOULD CAMPAIGN AGAINST THESE VIOLATIONS OF DEFENDANTS' RIGHTS AND ABUSES OF THE JUDICIAL PROCESS. (A 1980s CASE FOOTNOTE PPOSES THE NECESSITY OF POST-GRAND JURY PRELIMINARY HEARINGS.

3) THE PROSECUTION ROUTINELY OVERCHARGES, GOING TO GRAND JURY WHEN MISDEMEANOR PROSECUTION IS SUFFICIENT. THE PROSECUTION AND DEFENSE THEN WORK TO EXPEDITIOUSLY SETTLE THE CASES, TO THE NET ADVANTAGE TO THE PROSECUTION. INSTEAD OF WORKING

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ALASKA JUDICIAL Council.

RE: PUBLIC DEFENDER APPOINTMENT

NOVEMBER 24, 1946

TO ACCOMMODATE THE EFFICIENT PROCESSING OF DEFENDANTS, THE PUBLIC DEFENDER AGENCY SHOULD HOLD OUT AND FORCE THE PROSECUTION TO PROSECUTE ON A REALISTIC BASIS. THE COURTS AND PROSECUTORS SHOULD UNDERSTAND THAT IT IS INAPPROPRIATE PROSECUTION THAT CREATES THE LOGJAMS IN THE SYSTEM. THE ETHICAL RULES DO NOT ADVOCATE PROSECUTION IN EVERY CASE IN WHICH THE ELEMENTS OF A CHARGE MAY BE MET; PROSECUTION, AND THE LEVEL OF PROSECUTION, ARE SUBJECT TO A NUMBER OF FACTORS UNDER PROSECUTORIAL ETHICAL RULES.

4) IN MY EXPERIENCE, THE COURTS DO NOT TREAT DEFENDANTS FAIRLY DURING THE JUDICIAL PROCESS. THE DEMEANOR OF THE JUDGE SAYS EVERYTHING ABOUT THE FAIRNESS OF THE PROCESS. DEFENDANTS ARE ROUTINELY TREATED - HANDLED - AS THOUGH THEY WERE GUILTY WHEN BROUGHT BEFORE THE COURT. THE JUDGES' DEMEANOR IN FRONT OF JURIES SHOW BIAS IN FAVOR OF THE PROSECUTION.

THE PUBLIC COMPLAINS THAT DEFENDANTS GET OFF ON "TECHNICALITIES", BUT ANYONE FAMILIAR WITH THE TRIAL PROCESS KNOWS THAT THE VAST MAJORITY OF DECISIONS ON ALL OF THE TECHNICAL QUESTIONS THAT ARISE DURING A CASE, AND DURING TRIAL, RUN IN FAVOR OF THE PROSECUTION. THE COURTS ARE SIMPLY UNACCUSTOMED TO ADDRESSING ISSUES WITH

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THE DEFENSE VIEW IN MIND.

THERE ARE INSTITUTIONAL MECHANISMS THAT COURTS USE TO FAVOR THE PROSECUTION. A DEFENDANT CAN BE TRIED BEFORE A JURY UNDER 2 OR 3 DIFFERENT THEORIES FOR THE SAME ALLEGED ACT, PREJUDICING JURIES TO SUPPOSE THAT THE DEFENDANT MUST REALLY BE GUILTY IF HE IS CHARGED WITH TWO DIFFERENT SEXUAL ASSAULT CRIMES (FOR THE SAME ACT) OR 2 OR 3 PHYSICAL ASSAULTS (FOR THE SAME ACT). IN A WHOLLY CYNICAL VIEW OF THE PROCESS, THE COURTS SAY THAT ^{ANY} INJUSTICE CAN BE RECTIFIED AFTER TRIAL WITH SENTENCING LIMITED TO ONLY ONE CONVICTION. LIKEWISE, UNDER ALASKA LAW, A JUDGE CAN SENTENCE A DEFENDANT WHO IS ACQUITTED OF A HIGHER CHARGE BUT CONVICTED OF A LESSER CHARGE AS THOUGH HE WERE GUILTY OF THE HIGHER - ACQUITTED - CHARGE IF THE JUDGE THINKS THAT THE DEFENDANT IS REALLY GUILTY OF THE HIGHER CHARGE. ^(IN DISAGREEMENT WITH THE JURY) A 1991 9TH CIRCUIT FEDERAL APPELLATE CASE CALLS THIS A PERVERSION OF THE JURY SYSTEM. AFTER TRIAL, PROBATIONERS ARE SUBJECT TO THE LOWEST STANDARD OF PROOF IN REVOCATION HEARINGS - PREPONDANCE OF THE EVIDENCE. JUDGES USUALLY ACT AS THOUGH ^{THERE} ~~WERE~~ WERE NO STANDARD AT ALL PREVENTING FINDINGS AGAINST DEFENDANTS.

PART OF THE SOLUTION TO ALL OF THIS IS TO CAMPAIGN HARD ON THE LEGAL ISSUES. PART OF THE SOLUTION IS TO

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BE WILLING TO PERSONALLY CONFRONT JUDGES.
I DON'T THINK THAT MOST LAWYERS ARE
WILLING TO DO THIS. THE PUBLIC DEFENDER MUST
TAKE A HARD POSITION ON BEHALF OF CLIENTS.
IF THE PUBLIC DEFENDER AGENCY IS NOT WILLING
TO DO IT, WHO WILL?

— — — — —
IN MY OPINION THE PUBLIC DEFENDER
AGENCY IS RUN LIKE OTHER STATE AGENCIES.
IN OTHER WORDS, THERE IS AN UNDERSTANDABLE,
A NECESSARY, EFFORT TO CREATE STABLE
WORKING CONDITIONS FOR EMPLOYEES AND
TO PROVIDE ^{LEGAL} SERVICES AS FULLY AS POSSIBLE.
BUT THE PUBLIC DEFENDER AGENCY IS NOT
JUST ANOTHER AGENCY. IT IS FIRST OF ALL
A MECHANISM THAT WAS SET UP TO PROVIDE
CONSTITUTIONALLY-MANDATED REPRESENTATION
TO DEFENDANTS. BECAUSE OF THE CASELOAD,
BECAUSE OF THE LACK OF SUFFICIENT PERSONNEL
AND RESOURCES, AND BECAUSE OF MISTREATMENT
OF DEFENDANTS UNDER THE JUDICIAL PROCESS,
THE PUBLIC DEFENDER AGENCY HAS A MISSION
THAT IS SIGNIFICANTLY DIFFERENT FROM THAT
OF OTHER STATE AGENCIES.

..... THE PUBLIC DEFENDER AGENCY OPERATES
UNDER GREAT PRESSURE. WHILE THE PROSECUTION
CAN GENERALLY DELAY COMMENCEMENT OF
FORMAL PROSECUTION UNTIL IT IS PREPARED
TO DO SO, THE DEFENSE HAS NO SUCH
DISCRETION. ONCE THE PROSECUTION HAS

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COMMENCED PROSECUTION, THE DEFENSE MUST ABSORB THE CASE AND DEFEND IT WITHIN DEADLINES. THIS IS IMPOSSIBLE TO DO EFFECTIVELY IF THERE IS A CASELOAD OF 75-100 ON-GOING CASES. PRESSURE IS THEREBY EXERTED TO PLEAD OUT CASES IN ORDER TO TRY DESPERATELY TO KEEP UP WITH THE CASELOAD. THE COURT AND THE PROSECUTION HAVE SIMILAR GOALS, TO MOVE CASES THROUGH THE SYSTEM. THEY ACT IN TANDEM TO FORCE THE DEFENSE TO MOVE CASES ALONG, BY PLEADING THEM OUT. THIS, DESPITE THE FACT THAT THE PROSECUTION GLUTS THE SYSTEM BY PROSECUTING CASES THAT COULD BE DIVERTED OR BY OVERCHARGING CASES. THIS, DESPITE THE FACT THAT THE COURTS HELP GLUT THE SYSTEM BY GRANTING SEARCH WARRANTS ON ANY GROUND AND BY OVERLOOKING ALMOST ANY DEFECT IN THE GRAND JURY PROCESS. THE ENTIRE WEIGHT OF THE OVERLOADED SYSTEM RESTS ULTIMATELY ON THE BACKS OF THE DEFENDANTS. MANY BARELY SEE THEIR ATTORNEYS. NO RESEARCH OR INVESTIGATION IS DONE ON THEIR CASES. NO TIME IS SPENT IN PREPARATION. DEFENDANTS ARE PLED OUT TO MEET COURT DEADLINES. IT IS A HARD, CYNICAL SYSTEM.

I BELIEVE THAT FOR THE MOST PART THE PUBLIC DEFENDER AGENCY HAS

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ACCOMMODATED ITSELF TO THIS SYSTEM.
THE PROSECUTION AND THE PUBLIC DEFENDER AGENCY IN ANCHORAGE HAVE A SYSTEM FOR PROCESSING PRE-INDICTMENT OFFERS. THIS MEANS THAT THE PROSECUTION STANDS A GOOD CHANCE OF GETTING AN ALMOST FREE PROSECUTION BY THREATENING INDICTMENT BY THE GRAND JURY. THE PROSECUTION HAS THE IMPLICIT SUPPORT OF THE COURTS SINCE THE DEFENSE KNOWS THAT NO JUDGE IN HIS RIGHT MIND WOULD THINK OF THROWING OUT A GRAND JURY INDICTMENT. THE A DEFENSE ATTORNEY MAY THEN ENCOURAGE A DEFENDANT TO PLEAD OUT EARLY, BEFORE LITTLE IS KNOWN ABOUT THE STRENGTHS OR WEAKNESSES OF THE CASE.

DUE TO LACK OF TIME AND RESOURCES, MISDEMEANORS ARE RARELY INVESTIGATED, AND MOTIONS ARE ONLY OCCASIONALLY FILED. CLIENTS MAY NEVER SEE THEIR LAWYERS FOR MORE THAN A FEW MINUTES, IN TOTAL.

MY PROBLEM WITH THIS IS THE FACT THAT THE PUBLIC DEFENDER AGENCY CAN BE REDUCED TO A FRAME OF MIND THAT THIS IS THE PERMANENT, UNALTERABLE REALITY, THAT THIS THE WAY THINGS WILL ALWAYS BE, THAT THIS IS FATE. IF THIS IS SO, THE DEFENSE BECOMES A PERMANENT UNDERDOG, RACING AGAINST IMPOSSIBLE DEADLINES, SCRAMBLING TO TAKE THE BIGGEST BONE THE

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PROSECUTION WILL OFFER, TRYING TO EFFICIENTLY
MANAGE AN OVERWHELMING CASELOAD.

I BELIEVE THAT THE PUBLIC DEFENDER
AGENCY DOES OPERATE UNDER THIS
MISCONCEPTION. THE ENTIRE PROCESS
BECOMES ONE OF SETTLING CASES, BASICALLY
WITHIN PROSECUTION-SGT BOUNDARIES.
TO THE EXTENT THAT CASELOADS ARE
PROCESSED EFFICIENTLY, NOT ONLY DO THEY
COME UNDER ^{AT LEAST} MINIMAL CONTROL, BUT
THE ATTORNEYS ALSO CAN LEAD MORE
NORMAL LIVES. I WAS RARELY IN THE
ANCHORAGE ^{PUBLIC DEFENDER} OFFICE, BUT, WHEN I WAS,
I NOTICED FEW ATTORNEYS WORKING
EVENINGS OR ON WEEKENDS. IT
APPEARED THAT THE PLACE PRETTY MUCH
EMPTIED OUT AFTER NORMAL WORKING
HOURS.

ON THE OTHER HAND, WORK IN THE
RURAL OFFICES NEVER ENDS. THE ATTORNEY
LIVES SO CLOSE TO THE COMMUNITY THAT
THERE IS NO INSULATION FROM THE JOB.
THE PUBLIC DEFENDER AGENCY DOES NOT
CONSIDER OFFICES SUCH AS BARROW, KOTzebue,
AND BETHEL TO BE LONGTERM PLACEMENTS
(THOUGH THE BARROW PUBLIC DEFENDER HAS
BEEN ON THE JOB THERE FOR 6 YEARS, TO
HER EVERLASTING CREDIT). INSTEAD THEY
SEEM TO BE STEPPING STONES TO POSSIBLE
EMPLOYMENT IN THE URBAN OFFICES,

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SOMETHING THAT DOES NOT PROMOTE THE HEALTH OF THE RURAL OFFICES. THE PUBLIC DEFENDER AGENCY HAS NO SYSTEM OF PERIODIC TRIPS BY CENTRAL-OFFICE OFFICIALS TO THE OUTER OFFICES. IN MY YEARS IN OUTER OFFICES, I REMEMBER ONLY ONE TRIP BY THE HEAD OF THE AGENCY, AND THE PRIMARY PURPOSE OF THAT TRIP (WHEN I WAS FIRST TRAVELING TO START WORK IN KOTZEBUE) WAS TO ~~BE~~ PARTICIPATE IN A SPECIALIZED COURT HEARING.

ONE REASON FOR MY POSITION REGARDING BARB BRINK'S APPLICATION HAS TO DO WITH A TELEPHONE CALL THAT I RECEIVED AROUND MID-DECEMBER, 1995. BOTH THE ALASKA PUBLIC DEFENDER AND BARB BRINK CALLED ME, TOGETHER, FROM ANCHORAGE. I WAS IN THE PUBLIC DEFENDER AGENCY OFFICE IN KOTZEBUE. THEY SAID THAT THE THEN CURRENT KOTZEBUE DISTRICT ATTORNEY HAD CALLED TO COMPLAIN THAT I WAS BEING UNREASONABLY INTRANSIGENT IN NEGOTIATING CASES. (THE DA NEVER TOLD ME THAT HE HAD MADE THE CALL).

THE PUBLIC DEFENDER AND BARB (WHO WAS VERY ACTIVE IN THE 15-20 MINUTE CONVERSATION) BEGAN ASKING ME, IN A CROSS-EXAMINING KIND OF WAY, ABOUT HOW I WORKED WITH THE DA. I WAS UNCOMFORTABLE WITH THE CONDUCT OF THE CONVERSATION, BUT IT WAS

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ONLY LATER, AFTER I HAD HAD TIME TO THINK ABOUT IT, THAT I FIGURED OUT WHY. FIRST, THEY HAD ACCEPTED WHAT THE DA HAD SAID WITHOUT FIRST LISTENING TO ME, THEIR OWN PUBLIC DEFENDER. THEIR STYLE WAS CONFRONTATIONAL. SECOND, THEY REPRESENTED THE DA'S INTEREST RATHER THAN THE INTEREST OF THE PUBLIC DEFENDER AGENCY IN KATIEBVE.

BOTH BARD AND THE P.D. EMPHASIZED THAT IT WAS NECESSARY TO HAVE A PERSONAL RELATIONSHIP WITH THE DISTRICT ATTORNEY IF WE WERE TO KEEP CONTROL OF OUR CASELOADS. THEY SAID THAT THE DA WAS COMPLAINING ABOUT OUR RELATIONSHIP.

I EXPLAINED THAT WE DID HAVE A RELATIONSHIP, THAT WE DID TAKE OUT CASES. I SAID, THOUGH, THAT A RELATIONSHIP MUST BE BASED ON SOMETHING AND THAT IT WAS NOT ENOUGH JUST TO CULTIVATE FRIENDLY RELATIONS. IF WE DO THAT, WE WILL END UP SETTLING CASES WITHIN THE PROSECUTOR'S PARAMETERS. IT IS FIRST A POWER RELATIONSHIP. THE DA MUST FIRST KNOW THAT WE WILL ALWAYS GO TO TRIAL. IF WE DON'T LIKE OFFERS, WE HOLD OUT TO THE BITTER END, EVEN GOING TO TRIAL IN LOSING CASES IF THE DEFENDANT WANTS TO GO. EVEN THOSE CASES HAVE THEIR VALUE, BECAUSE THE DA WILL NOT SEEK TO PUSH SO HARD IF HE KNOWS WE ARE CRAZY...

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ENOUGH TO GO TO TRIAL ON ANYTHING.
OUT OF ALL THIS A RELATIONSHIP DEVELOPS.
SURE THE DA WAS FRUSTRATED. THE
CALENDAR WAS CRAMMED WITH TRIAL
DATES - AND AS MANY MOTIONS AS I
COULD FILE (OFTEN LATE-FILED UNFORTUNATELY).
THE WHOLE KOTZEBUE CALENDAR WAS
BOGGED DOWN.

I BELIEVE I TOLD THEM THAT I
SAW THIS AS A FORM OF GUERRILLA WARFARE.
THERE WERE WAY TOO MANY CASES.
BUT I REFUSED TO JUST PLEAD THEM
OUT BECAUSE IN GENERAL THAT DID NOT
BENEFIT CLIENTS. SO I PUSHED EVERY CASE
I COULD TO THE WIRE. THAT ~~WAS~~
INCLUDED THE JUVENILE AND CHILDREN'S
CASES, IN WHICH I HAD MANY ADVERSARIAL
HEARINGS THAT - DOUBTLESS - HAD RARELY
BEEN SEEN IN COURT IN THE PAST.
(I DID THE SAME IN ADULT PAROLE HEARINGS;
ASK THE PAROLE BOARD - WHO WERE GENERALLY
VERY GOOD.)

THE KOTZEBUE CALENDAR WAS A
MESS. THE DA AND THE COURT SAW THAT AS
MY FAULT. I SAW THAT AS THEIR FAULT.
I SAW NO ALTERNATIVE ^{TO WHAT I WAS DOING} EXCEPT TO START
PLEADING OUT DEFENDANTS QUICKLY. I
SAW THAT AS ^{BEING} AN ACCOMMODATION TO A
SYSTEM THAT WAS ALREADY DENYING
CLIENTS DUE PROCESS IN KOTZEBUE.

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I TOLD THEM THAT THIS STRATEGY HAD WORKED, THAT BY HOLDING OUT I HAD GOTTEN MANY GOOD DEALS FOR CLIENTS. WE NEVER HAD A SINGLE MISDEMEANOR TRIAL IN KOTzebue (ONLY FELONY TRIALS). IN EVERY ^{MISDEMEANOR} CASE THAT WAS PUSHED TO TRIAL, AND I WAS THE ONLY PUBLIC DEFENDER IN THE OFFICE DOING TRIALS, THE PROSECUTION EITHER DISMISSED THE CASE ENTIRELY OR FINALLY THREW THE CASE AWAY WITH A VERY LOW OFFER.

I WOULD DEMAND VILLAGE TRIALS IN MISDEMEANORS, KNOWING THAT THE DA DID NOT WANT TO TRAVEL. (BOTH THE DA AND HIS PREDECESSOR WROTE THE JUDICIAL OFFICE DEALING WITH CR 18 VILLAGE TRIAL SITES AND ASKED THAT KOTZEBUE-AREA VILLAGE TRIAL SITES BE ELIMINATED BECAUSE THEY HAD NO RESTAURANTS, HOTELS, OR COURT FACILITIES.) IN JANUARY, 1996, A MONTH AFTER THIS CONVERSATION, WE ACTUALLY TRAVELED TO SELAWIK TO TRY ^{TWO MISDEMEANOR} CASES. WHILE THERE THE DA GAVE OFFERS IN BOTH CASES (ONE WHEN A JURY PANEL HAD BEEN ASSEMBLED) THAT WERE SO ATTRACTIVE THAT THE DEFENDANTS TOOK THEM - NO JAIL. I TOLD THEM I THOUGHT WE COULD WIN, BUT THEY WERE HOME AND WANTED OUT OF THE CASES.

BARB BRINK AND THE PUBLIC DEFENDER THEN CONFRONTED ME WITH 3 SPECIFIC

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* NOTE: PAGES 15 & 16 ARE BEING REWRITTEN
TO REMOVE PERSONAL REFERENCES TO
CLIENTS, TO PROTECT THEIR PERSONAL
PRIVACY.
John Holmes

CASES IN WHICH THE DA SAID I HAD BEEN UNREASONABLE. THE 1ST TWO I CANNOT REMEMBER FOR SURE, ALTHOUGH I BELIEVE I REMEMBER THE SECOND CASE SPECIFICALLY. I KNOW THAT I HAD GOTTEN GOOD RESOLUTIONS IN BOTH CASES BY REFUSING TO SIMPLY PLEAD OUT. IN THE SECOND CASE THE DEFENDANT HAD AN EXTENSIVE PRIOR RECORD AND WOULD HAVE BEEN SUBJECT TO A MINIMUM OF 15 YEARS IF CONVICTED OF THE CURRENT CHARGE; AS A PRACTICAL MATTER, HE COULD HAVE RECEIVED MANY MORE YEARS IF CONVICTED OF THE CHARGE. I PUSHED THE CASE TO TRIAL. THE DAY BEFORE TRIAL THE DA OFFERED US A MISDEMEANOR, WHICH CARRIED A 1-YEAR MAXIMUM. SINCE THE DEFENDANT HAD ALREADY BEEN IN JAIL FOR 4½ MONTHS, HE HAD ONLY 3½ MONTHS LEFT TO SERVE, COUNTING 4 MONTHS ADDITIONAL CREDIT FOR GOOD TIME. (HE ALSO FACED 3 YEARS IN PAROLE AND PROBATION VIOLATIONS, BUT UNDER ALASKA LAW WOULD HAVE FACED THESE VIOLATIONS EVEN IF HE

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*NOTE: PAGES 15 + 16 ARE BEING
REWRITTEN TO REMOVE PERSONAL
REFERENCES TO CLIENTS, TO PROTECT
THEIR PERSONAL PRIVACY.
John Halme

HAD BEEN ACQUITTED BY A JURY ON THE
CURRENT CHARGE, ANOTHER EXAMPLE OF
THE BUILT-IN BIAS OF THE JUDICIAL SYSTEM
TOWARD DEFENDANTS.

DID IT PAY TO FIGHT THIS CASE? OF COURSE
IT DID. THE DA EXPECTED AN EASY PLEA
BECAUSE OF THE MAN'S RECORD. THE MAN
WAS BEING PROSECUTED ON A CLASS A FELONY
BECAUSE OF HIS RECORD, NOT BASED ON
THE FACTS OF THE CURRENT CASE. WHEN
PUSH CAME TO SHOVE, THE DA SETTLED
FOR A CLASS A MISDEMEANOR BECAUSE
THAT WAS WHAT HE THOUGHT HE COULD
PROVE IN THE END — A SIMPLE MISDEMEANOR
RATHER THAN A MAJOR FELONY. SO ~~WHY~~ WHO
WASTED THE TIME AND RESOURCES OF THE
JUDICIAL SYSTEM FOR MONTHS, FROM GRAND
JURY TO MOTION PRACTICE, TO TRIAL
PREPARATION, TO GEARING-UP THE COURT
SYSTEM AND JURY PANELS — RIGHT UP TO
THE DAY BEFORE TRIAL? OBVIOUSLY, IT
WAS NOT THE DEFENSE. IT WAS THE
OVERREACHING PROSECUTION. AND YET

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* * * NOTE: PAGES 15, 16 (+16A) ARE REWRITTEN *
TO REMOVE PERSONAL REFERENCES TO
CLIENTS, TO PROTECT THEIR PERSONAL
PRIVACY. John Holmes

THIS WAS ONLY ONE CASE AMONG MAYBE
150-200 CASES BEING ACTIVELY HANDLED
BY THE 2 LAWYERS IN THE KOTZEBUG
PUBLIC DEFENDER OFFICE AT THAT TIME.

BARB BRINK AND THE STATE PUBLIC
DEFENDER THEN ASKED ME ABOUT THE
THIRD SPECIFIC CASE THAT THE DA HAD
CITED IN COMPLAINING ABOUT MY
INTRANSIGENCE IN NEGOTIATIONS.
"WHOEVER ASKED ME PUT IT LIKE THIS:
"WELL, WHAT ABOUT (CLIENT)?", AS IF
THIS CASE WOULD REALLY PROVE THE
DA'S POINT. I COULDN'T RECALL THE
FACTS OFF-HAND, ALTHOUGH IT WAS RECENT.
I SAID I'D WRITE THEM A MEMO ON IT.
THEY NOTED THAT SINCE I HAD REJECTED
THE DA'S OFFER TO PLEAD TO A CLASS C
FELONY, I HAD "FORCED" THE DA TO TAKE
THE CASE TO GRAND JURY, AND THAT
HE HAD ADDED ABOUT 8 MISDEMEANORS
TO THE FELONY CHARGE.

SOME DAYS LATER I RESPONDED WITH
A MEMO. IT TURNED OUT THAT I HAD

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* * NOTE: PAGES 15 + 16 (AND 16A, 16B) ARE
REWRITTEN TO REMOVE PERSONAL
REFERENCES TO CLIENTS, TO PROTECT
THEIR PERSONAL PRIVACY.
John Holmes

WRITTEN A COUNTEROFFER TO THE DA IN
THAT CASE. IN IT I HAD ANALYZED THE
FACTS TO SHOW THAT MY CLIENT COULD
BE PROSECUTED FOR ONLY ONE SINGLE
MISDEMEANOR. WE OFFER TO PLEAD
TO PLEAD TO ONLY A SINGLE MISDEMEANOR—
NO FELONY OR OTHER MISDEMEANORS.

THE DA ACCEPTED THE OFFER,
FAXING HIS REPLY ON MY COUNTEROFFER.
HE ~~HAD~~ WROTE ON THE BOTTOM OF MY
COUNTEROFFER: "GOOD ANALYSIS" AND
"CONSIDER THIS A DONE DEAL".

(EMPHASIS ADDED)

SO, WHY WOULD THE DA HAVE COMPLAINED
ABOUT DEFENSE NEGOTIATING STRATEGY IN THIS
CASE. SHOULD I HAVE PLEADED THE CLIENT OUT
EARLY TO A FELONY? MORE TO THE POINT, WHY
WOULD PUBLIC DEFENDER AGENCY DIRECTORS
COMPLAIN ABOUT THIS EFFECTIVE REPRESENTATION.
WOULD JUSTICE HAVE BEEN SERVED
BY PLEADING THE DEFENDANT TO A FELONY
WHEN EVEN THE DA CONCEDED THAT THE
SINGLE MISDEMEANOR WAS ENOUGH. THINK OF
THE HOURS AND RESOURCES WASTED ON THIS
OVER MONTHS (INCLUDING GRAND JURY), THE BURDEN
→ ON OUR SMALL OFFICE.

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** * NOTE: THE FOLLOWING IS THE ORIGINAL TEXT ON PAGE 17, BEGINNING WITH THE ORIGINAL SECOND PARAGRAPH.

John Holmer

SO WHAT IS WRONG WITH THIS REPRESENTATION? WHY NOT SUPPORT A PUBLIC DEFENDER WHO IS OFF IN A RURAL OFFICE? WHY REPRESENT THE DA'S INTEREST? WHY NOT TELL THE DA TO GO COMPLAIN TO SOMEONE ELSE? WHAT IS WRONG WITH STRONG REPRESENTATION?

THE PUBLIC DEFENDER AND BARB BRINK ASKED ME HOW LONG I THOUGHT I COULD GO ON LIKE THIS, AND I SAID TWO YEARS. THEY BOTH REACTED IN DISBELIEF. I SAID NO, THAT I HAD ALREADY BEEN GOING LIKE THIS SINCE AUGUST 1994 AND THAT I WOULD CONTINUE TO JULY, 1996, A PERIOD OF TWO YEARS. I HAD BEEN ASKED TO A PERIOD OF ONE YEAR WHEN I CAME TO THE KOTZEBUE OFFICE IN AUGUST 1994. THE PUBLIC DEFENDER TOLD ME ~~THE~~ HE HAD HIRED ME BECAUSE HE KNEW THAT I WOULD BE ABLE TO ADJUST IN KOTZEBUE. IN MY OWN MIND I PLANNED TO STAY IN KOTZEBUE FOR TWO YEARS, FOR THE SAKE OF CONTINUITY FOR BOTH THE OFFICE AND MYSELF.

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OUR SECRETARY SAID THAT THE KOTZEBUE OFFICE HAD HAD 8 ATTORNEYS IN THE 4 1/2 YEARS BEFORE I CAME. I PLANNED TO LEAVE AFTER 2 YEARS BECAUSE I KNEW FROM MY YEAR IN BARRROW (ALSO HAD 6 PREVIOUS YEARS IN BARRROW WITH ALASKA LEGAL SERVICES) THAT IT WOULD BE A VERY HARD TWO YEARS. (I THINK I HAD EIGHTEEN JURY TRIALS DURING THE YEAR IN BARRROW; NOTHING LIKE THAT IN KOTZEBUE.)

I WILL TELL YOU THAT IT IS HARD TO TAKE THE AIRIVE APPROACH IN REGARD TO CASES. IT UPSETS THE SYSTEM. THE DA RESENTS IT, THE COURT RESENTS IT, AND ASSOCIATED PEOPLE IN PROBATION AND DFYS (WHO CONSIDER IT IRRESPONSIBLE IN CHILDREN'S/JUVENILE CASES) RESENT IT. NOT EVEN THE SECRETARY IN THE KOTZEBUE OFFICE SUPPORTED IT, AND I DON'T THINK THAT THE NEWLY ADMITTED ATTORNEY IN THE OFFICE DID EITHER. IN ADDITION THE SHOTGUN APPROACH TO CASES UNQUESTIONABLY REDUCED EFFECTIVENESS WHEN ATTENTION NEEDED TO BE CONCENTRATED BUT WAS DILUTED. HOWEVER, ON BALANCE I THINK THAT MORE REPRESENTATION WAS GIVEN TO MORE PEOPLE THIS WAY, AND THE "INFLATION" OF PROSECUTION WAS BETTER REDUCED IN THIS WAY. MY THEORY WAS: IF THERE IS GOING TO BE CHAOS IN THE PUBLIC DEFENDER'S OFFICE DUE TO A HIGH CASELOAD AND

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INADEQUATE RESOURCES, THEN LET THERE
~~BE~~ BE CHAOS THROUGHOUT THE SYSTEM. I'M
NOT GOING TO PLEAD PEOPLE OUT ON AN
ASSEMBLY-LINE BASIS FOR THE SAKE OF
THE COURT'S CALENDAR AND THE D.A.'S
SCHEDULE.

PERSONALLY, I THINK THAT ATTORNEYS
TEND TO BE TOO TIMID, RELUCTANT TO
CONFRONT THE DAs AND JUDGES, PROBABLY
NOT SO MUCH ~~CONCERNED~~ ^{OUT OF FEAR} AS CONCERNED
ABOUT THE APPEARANCE OF THINGS, THAT
THEY MIGHT APPEAR UNPROFESSIONAL, FOOD
FOR GOSSIP. AND ATTORNEYS MAY BE
ESPECIALLY PRONE TO KEEP AN EYE OUT
FOR THE FUTURE, LOOKING BEYOND THE CASE,
AND EVEN THE PUBLIC DEFENDER JOB TO
AS YET VAGUE FUTURE POSSIBILITIES. THESE
THINGS MAY IN PART CONTRIBUTE TO A
RELUCTANCE TO CONFRONT, TO ANTAGONIZE,
TO CHALLENGE, ~~ESPECIALLY~~ ^{ESPECIALLY} WHEN PRECEDENT
IS LACKING AND ONLY JUSTICE ITSELF
LEADS THE WAY.

THE GREAT LAWYERS AND THE GREAT
JUDGES WERE NOT ~~HEESITANT PEOPLE~~ ^{HEESITANT PEOPLE} WHO
TIMIDLY LOOKED BEHIND THEM EACH STEP
OF THE WAY AND NEVER TOOK A STEP
UNLESS ALREADY APPROVED BY PEERS
THROUGH PRECEDENT. THE GREAT PEOPLE
KNEW WHERE THEY WANTED TO GO,
WHETHER ANYONE ELSE AGREED OR NOT,

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AND THEY HOLLED, SHOCK THE BARS OF THE CAGE, AND KEPT GOING 'TIL THEY GOT THERE. WHEN I THINK OF THE RIGHT ATTITUDE, I THINK OF HARD-BITTEN PRIVATE LAWYERS WHO WOULDN'T LET ANYTHING GET BETWEEN THEM AND THEIR CLIENTS, PEOPLE LIKE NEIL KENNELLY AND BILL HAZAR.

I THANK THE PRESENT PUBLIC DEFENDER FOR ALL HE HAS DONE FOR ME. HE HAS BEEN VERY GOOD TO ME THROUGHOUT MY EMPLOYMENT. WHILE IT IS OBVIOUS THAT I TOTALLY DISAGREED WITH THAT DECEMBER TELEPHONE CALL, HE HAS OTHERWISE BEEN HELPFUL AND A REAL FRIEND. HE HIRED ME TWICE, SIGHT UNSEEN; THE FIRST TIME IN 1988 WHEN I WAS WORKING FOR MICRONESIAN LEGAL SERVICES ON YAP ISLAND, MICRONESIA, AND THE SECOND TIME IN 1994 WHEN I WAS LIVING IN THE CITY OF CHITA, ZABAIKALIA (EAST OF LAKE BAIKAL), RUSSIA, TEACHING ENGLISH IN A TEACHER'S COLLEGE.

HOWEVER, WITH A NEW PUBLIC DEFENDER COMES A NEW ADMINISTRATION THAT WILL AFFECT THE CRIMINAL JUSTICE SYSTEM FOR YEARS TO COME.

IT IS TIME TO TAKE A FRESH LOOK AT THE AGENCY. IT IS TIME TO SHAKE UP THE SYSTEM ON BEHALF OF CLIENTS. THAT MAY REQUIRE SHAKING UP THE AGENCY FOR A START. IT MAY REQUIRE SUING THE STATE.

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IF THE LEGISLATURE DOES NOT FULLY FUND. I READ THAT THE MINNESOTA PUBLIC DEFENDER ORGANIZATION WAS AWARDED \$10 MILLION IN COURT. ULTIMATELY IT IS THE RESPONSIBILITY OF THE COURTS TO RECOGNIZE AND ENFORCE THE RIGHTS OF DEFENDANTS TO DUE PROCESS. IF THE COURTS CANNOT RESPECT THIS CONSTITUTIONAL RIGHT, WE CAN HARDLY EXPECT THE LEGISLATURE TO RECOGNIZE AND TO FUND ITS IMPLEMENTATION. AFTER ALL, THE LEGISLATIVE CONSTITUENCY IS LARGER THAN THE MEMBERS OF THE DEFENDANT CLASS.

THE PUBLIC DEFENDER AGENCY NEEDS TO DEFINE LEGAL GOALS, SUCH AS REDEFINING THE VOLUNTARINESS OF A CONFESSION, CRACKING DOWN ON UNJUSTIFIED SEARCH WARRANTS - PUBLICIZING GROSS EXAMPLES - AND AGGRESSIVELY FIGHTING GRAND JURY ABUSES; THE AGENCY SHOULD FIGHT FOR A RIGHT TO POST-GRAND JURY PRELIMINARY HEARINGS, AS I BELIEVE THAT CALIFORNIA PROVIDES. THE AGENCY SHOULD FIGHT TO DISMANTLE PRESUMPTIVE SENTENCING, THAT FARCE OF A SENTENCING SYSTEM, WITH ITS UNEQUAL LIST OF AGGRAVATORS AND MITIGATORS, AND ITS SOPHISTRY WHICH IN ALMOST EVERY CASE WORKS AGAINST THE DEFENDANT. THE PUBLIC DEFENDER AGENCY SHOULD ADOPT STATEWIDE GOALS AND COORDINATION ON

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SUCH ISSUES.

SEE THE POSTSCRIPT REGARDING GRAND JURY ISSUES. I WOULD SAY HERE THAT A COURT STATISTIC SHOWED THAT IN 1995 KOTZEBU^{KOTZEBU} HAD 110 FELONIES, MAKING ^{KOTZEBU} THE HIGHEST CR SECOND HIGHEST TOWN IN THE STATE, OUTSIDE ANCHORAGE, IN TERMS OF FELONIES PER CAPITA. A COUNT IN OUR OFFICE SHOWED THAT HALF OF THOSE FELONIES EVENTUALLY BECAME MISDEMEANORS OR WERE DISMISSED. THINK OF THE BURDEN ON ONE DEFENSE ATTORNEY, WHO WAS SUPPOSED TO LISTEN TO ALL THE HARD-TO-HEAR GRAND JURY TAPES, FAIR HARDER-TO-HEAR POLICE INTERROGATION TAPES, TO READ ALL THE SOMETIMES HARD-TO-READ DISCOVERY, TO INTERVIEW ALL THE CLIENTS, TO TALK TO WITNESSES, TO STRUGGLE FOR BAIL (THE COURT REFUSES TO WRITE STATUTORILY-AUTHORIZED BAIL BONDS, AS 30.100R20; I FILED AN APPEAL ON ONE DURING A MISDEMEANOR CASE), TO DEAL WITH THE INNUMERABLE PROBLEMS, PHONE CALLS, MOTIONS. ALL OF THIS TO FIND HALF OF THE FELONIES REDUCED OR DISMISSED IN THE END. WHO IS PUTTING A STAIN ON THE SYSTEM? THE PROSECUTION. WHO IS TYING UP THE COURT CALENDAR? THE PROSECUTION.

THE U.S. IS AFRAID OF LOOKING AT OTHER COUNTRIES AND POINTING TO HUMAN RIGHTS ABUSES. THE U.S. IS BLIND TO ITS OWN. EVERY TIME A JUDGE TREATS A DEFENDANT.

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AS THOUGH HE IS GUILTY PRIOR TO CONVICTION,
A HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE PREJUDICES A ~~DEFENDANT~~ ^{DEFENDANT} ~~BY~~ ^{BY}
THE JUDGE'S DEMEANOR BEFORE THE JURY,
A HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE TAKES ADVANTAGE OF A LOW
STANDARD OF PROOF, OR OF OTHER DISCRETIONARY
SITUATIONS IN WHICH TRIAL COURTS ARE RARELY
OVERTURNED, TO FAVOR THE PROSECUTION, A
HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE HIDES BEHIND PRECEDENT, OR
THE LACK OF IT, TO AVOID ACTING ON INJUSTICE
(WHICH MIGHT MAKE HIM UNPOPULAR WITH THE
PROSECUTION AND LAW ENFORCEMENT, FOR
INSTANCE), A HUMAN RIGHTS ABUSE HAS OCCURRED.
EVERY TIME A JUDGE DOES THE POPULAR THING
RATHER THAN THE JUST THING, A HUMAN
RIGHTS ABUSE HAS OCCURRED. IN MY OPINION
~~THE~~ JUDGES GENERALLY LEAD SUCH CIRCUMSPECT
LIVES, AND ARE SO CLOSELY BOUND TO THE
SYSTEM, AND DEVELOP SUCH CLOSE TIES WITH
SUPPORT PERSONNEL, SUCH AS DAs, POLICE,
PROBATION OFFICERS, AND THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES THAT THEY ARE
PERMANENTLY BIASED AGAINST THE DEFENDANT;
THE ONLY QUESTION IS TO WHAT DEGREE. IT SHOULD
NOT BE FORGOTTEN THAT THE FUNDAMENTAL
FEATURE OF OUR COMMON-LAW, ADVERSARIAL
SYSTEM IS THE JURY PROCESS. AND THE JURY
PROCESS, WHICH DATES BACK MANY HUNDREDS...

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OF YEARS, IS A DIRECT RESULT OF THE HISTORICAL PUBLIC DISTRUST OF JUDGES, WHO WERE SEEN AS TOOLS OF THE STATE. IN MY OPINION THEY STILL ARE. THIS IS WHY DEFENDANTS CHOOSE JURY TRIALS OVER JUDGE TRIALS IN NEARLY 100% OF TRIAL CASES. A DEFENDANT GETS ONLY CHANCE, USUALLY HIGHLY RESTRICTED IN SCOPE BY THE COURT, IN WHICH TO DEFEND HIMSELF. TOO OFTEN THE JUDGE GETS IN THE WAY OF A FAIR DEFENSE, INTERVENING AT CRITICAL TECHNICAL JUNCTURES IN THE TRIAL TO TIP THE BALANCE IN FAVOR OF THE STATE. AND THE COURT CAN ALSO DO THIS BY ITS Demeanor BEFORE THE JURY; IN A 1990 KETCHIKAN FELONY TRIAL, I MOVED FOR A MISTRIAL BECAUSE OF THE JUDGE'S SCOWLING Demeanor TOWARD THE DEFENSE IN FRONT OF THE JURY. IN THAT COURT, AS IN OTHERS, THE ATTORNEYS AND DEFENDANT WOULD HOLD HEARINGS IN THE JUDGE'S CHAMBERS WHEN HEARINGS WERE NEEDED OUTSIDE THE PRESENCE OF THE JURY DURING TRIAL. THE JUDGE HAD A LARGE COLLECTION OF PISTOLS MOUNTED ON THE WALL, ^{DIRECTLY} BEHIND HIS CHAIR, REPRESENTING AUTHENTIC REPRODUCTIONS OF PISTOLS USED BY WILD WEST LAWYERS DURING THE 19TH CENTURY.

IN SUMMARY, THE APPOINTMENT OF THE STATE PUBLIC DEFENDER IS A HIGHLY IMPORTANT DECISION THAT WILL AFFECT THE DIRECTION OF THE ADMINISTRATION OF JUSTICE FOR YEARS TO COME. I BELIEVE THAT STRONG, AGGRESSIVE, FARSIGHTED LEADERSHIP IS REQUIRED.

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I DO NOT SUPPORT THE APPOINTMENT OF BARBARA BRINK, DESPITE HER PROFESSIONAL AND UNQUESTIONED DEDICATION TO CLIENTS, BECAUSE I DO NOT BELIEVE THAT SHE IS CAPABLE OF DIRECTING THE TOUGH ACTION NECESSARY IN ORDER TO SHAKE THE JUDICIAL SYSTEM ON BEHALF OF CONSTITUTIONAL DUE PROCESS FOR DEFENDANTS. THE DECEMBER 1995 TELEPHONE CALL THAT SHE AND THE STATE PUBLIC DEFENDER MADE TO ME IN MOTZEBUE IS SIMPLY AN ILLUSTRATION OF AN ACCOMMODATION BY MOST LAWYERS TO THE MILL-LIKE OPERATION THROUGH WHICH DEFENDANTS ARE PROCESSED FROM ONE END OF THE JUDICIAL SYSTEM TO THE OTHER. IT ALSO ILLUSTRATES THE GENERAL ACCOMMODATION TO THE DISTRICT ATTORNEY'S OFFICE WHICH ENABLES RELATIVELY ^{SMOOTH} OPERATION OF THE MILL, TO THE ADVANTAGE OF THE STATE. ALTHOUGH BARBARA BRINK'S APPLICATION WOULD SEEM VERY INAPPROPRIATE TO MOST PEOPLE, ESPECIALLY CONSIDERING HER EXPERIENCE AS DEPUTY PUBLIC DEFENDER IN THE AGENCY, I BELIEVE THAT A DIFFERENT BREED OF CAT NEEDS TO BE BROUGHT INTO THE AGENCY. INSTEAD OF THE USUAL DE-CLAWED, IN-HOUSE CAT, THE AGENCY, THE DEFENDANTS, AND THE JUDICIAL SYSTEM NEED A FIGHTING ALLEYCAT, WHICH IS TO SAY A

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HARD-BITTEN, HIGHLY EXPERIENCED PRIVATE LAWYER WHO HAS NONE OF THE PSYCHOLOGICAL LIMITATIONS ON CONFIDENTIALITY THAT AN ATTORNEY DEVELOPS WHO IS ELEVATED THROUGH THE AGENCY. I DO NOT KNOW WHO THIS PERSON MAY BE, BUT I AM SURE THAT HE/SHE MAY BE FOUND BOTH AMONG ALASKA AND OUT-OF-STATE BAR MEMBERS. IT WOULD BE A CHALLENGE FOR A PRIVATE ATTORNEY WHO IS WILLING TO COME IN, TAKE CHARGE, AND TO FIGHT FOR DEFENDANTS AND ^{FOR} REALIGNMENT OF THE JUDICIAL SYSTEM.

THE STEADY EROSION OF DEFENDANTS' CONSTITUTIONAL RIGHTS AND THE MIS-TREATMENT OF DEFENDANTS AS THEY ARE PROCESSED THROUGH THE SYSTEM IS A CRISIS FOR DEFENDANTS AND FOR THE JUDICIAL SYSTEM, PARTICULARLY IN ALASKA, A STATE OF MINORITY CULTURES AND A HIGH PERCENTAGE OF MINORITY PROSECUTIONS. I WROTE ABOUT THIS IN A NOVEMBER 2, 1995 MEMO TO LAWYERS IN THE PUBLIC DEFENDER AGENCY, DURING OUR 1995 STAFF CONFERENCE. THERE WAS ONLY ONE SUBSEQUENT RESPONSE TO THE MEMO IN THE ENTIRE AGENCY; IT CAME FROM THE SITKA PUBLIC DEFENDER. IN DECEMBER 1995 ALASKA JUDGES BELATEDLY BECAME AWARE THAT ALASKA'S SUBSTANTIAL ETHNIC AND RACIAL MINORITIES MAY NOT

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TREATED FAIRLY WITHIN THE ALASKA JUDICIAL SYSTEM. A PANEL OF JUDGES AND A COURT ADMINISTRATOR ASSEMBLED TO FORM AN ADVISORY COMMITTEE ON FAIRNESS AND ACCESS TO EXAMINE THIS PHENOMENON. ON DECEMBER 8, 1995 I WROTE THE ADVISORY COMMITTEE ON FAIRNESS AND ACCESS CONCERNING THE PROBLEM, AND ENCLOSED A COPY OF MY NOVEMBER 2, 1995 PUBLIC DEFENDER AGENCY MEMO; COPIES WENT TO EACH ~~PA~~ COMMITTEE MEMBER. I HAVE RECEIVED NO RESPONSE FROM THE ADVISORY COMMITTEE ON FAIRNESS AND ACCESS. ENCLOSED ARE COPIES OF BOTH THE NOVEMBER MEMO AND THE DECEMBER LETTER.

THERE IS A ^{LARGER} HISTORICAL PERSPECTIVE TO THE CONTINUING PROCESS OF RESTRICTING DEFENDANTS' CONSTITUTIONAL RIGHTS AND MISTREATING THEM THROUGHOUT THE JUDICIAL PROCESS. EVERY NEGATIVE STEP ALONG THE WAY IS ULTIMATELY TAKEN IN THE NAME OF EFFICIENCY, QUICKLY AND EFFECTIVELY PROSECUTING DEFENDANTS AT THE LOWEST COST POSSIBLE. AS THE SYSTEM EVOLVES ALONG THIS LINE, IT BEGINS TO CHANGE IN CHARACTER FROM A JUDICIALLY-FOCUSED SYSTEM TO AN ADMINISTRATIVE SYSTEM IN WHICH DEFENDANTS ARE PROCESSED AUTOMATICALLY,

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WITH ONLY A CURSORY NOD AT DEFENDANT'S RIGHTS: THAT IS THE DIRECTION OF THE SLIDE. PUBLIC DEFENDERS ARE ALREADY ACCUSTOMED ^{TO THE} DISADVANTAGED AND UNDERDOG STATUS OF DEFENDANTS IN COURT. THE DEFENSE IS PSYCHOLOGICALLY PRIMED FOR FURTHER EROSION OF THE DEFENSE ROLE AND THE STATUS OF DEFENDANTS. SEVERAL DECISIONS FROM NEW THE CRIMINAL JUSTICE SYSTEM COULD BE SACRIFICED ON THE ALTAR OF EFFICIENCY. ONE EXAMPLE OF THE CURRENTLY INEXORABLE DRIFT IN THIS DIRECTION IS THE CALL FOR "REFORM" OF THE JURY SYSTEM. ALMOST ALL SUBSTANTIVE AND PROCEDURAL "REFORMS" TIGHTEN THE SCREWS ON THE DEFENSE.

OUR JUDICIAL SYSTEM IS NOT THE ONLY SYSTEM THAT LOOKS TO EFFICIENCY AS A PRIMARY GOAL. EFFICIENCY IS THE BASIC TENET OF TOTALITARIAN SYSTEMS. STALIN IS SAID TO HAVE DECLARED THAT IT IS BETTER TO CONVICT TEN INNOCENT PEOPLE THAN TO LET A SINGLE GUILTY PERSON ESCAPE. ADMINISTRATIVE, BACK-ROOM METHODS ARE THE ~~THE~~ RULE RATHER THAN THE EXCEPTION AMONG THE WORLD'S POPULATION. IS ALASKA MOVING IN THAT ULTIMATE DIRECTION? WE MIGHT RESENT EVEN BEING ASKED THE QUESTION, BUT HUMAN BEINGS IN EVERY SOCIETY ARE CAPABLE OF GREAT RATIONALIZATION AND ACCOMODATION, AND ACTIONS

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TAKEN, OR NOT TAKEN, TODAY INEVITABLY INFLUENCE THE COURSE OF THE JUDICIAL SYSTEM. CONSIDER THE COURSE INDICATED BY THE VAST NUMBERS OF ANNOTATIONS IN ALASKA DIGEST RATIONALIZING AWAY DEFENDANTS' CLAIMS. NOTHING IS WRITTEN IN STONE CONCERNING THE FUTURE OF OUR JUSTICE SYSTEM, CONSTITUTION OR NO CONSTITUTION. A DEMOCRATIC SYSTEM OF JUSTICE COULD BE FATAALLY COMPROMISED AND SACRIFICED ON THE ALTAR OF EFFICIENCY IN THE NOT-DISTANT FUTURE.

I ONCE TOLD A DISTRICT ATTORNEY THAT I WISHED I HAD TIME TO GO TO ALL OF THE VILLAGES IN THAT PARTICULAR AREA TO EDUCATE THE PEOPLE ^{ON} ~~ABOUT~~ THEIR CONSTITUTIONAL RIGHTS. THE DA REACTED ANGRILY, SAYING THERE WOULD BE 2 OR 3 MORE JUDGES AND 2 OR 3 MORE DAs IN TOWN IF I DID THAT. HIS ANSWER WAS INTERESTING BECAUSE HE WAS OBVIOUSLY COUNTING ON THE IGNORANCE OF (MINORITY-CULTURE) DEFENDANTS TO MAINTAIN HIGH LEVELS OF PROSECUTION OF AN ETHNIC MINORITY AT REDUCED COST. IT WAS ALSO INTERESTING BECAUSE OF THE PERCEPTION THAT THE DA AND THE JUDGE HAD A COMMON GOAL THAT WAS NOT INHIBITED BY IGNORANCE OF MINORITY DEFENDANTS OF THEIR RIGHTS.

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THERE IS NOTHING WRONG WITH THE CONCEPT OF EFFICIENCY. THE INJUSTICE COMES FROM PROMOTING EFFICIENCY AT THE EXPENSE OF DEFENDANTS' CONSTITUTIONAL RIGHTS AND HUMAN DIGNITY. THERE IS A LEGITIMATE WAY TO PROMOTE EFFICIENCY, AND THAT IS TO EXPAND THE SCOPE AND RESOURCES OF BOTH THE JUDICIAL SYSTEM AND OF LAW ENFORCEMENT TO HANDLE CASELOADS IN A MANNER ^{THAT PROTECTS} THE CONSTITUTIONAL RIGHTS AND HUMAN DIGNITY OF DEFENDANTS. IT IS NOT INCONSISTENT WITH DEFENDANTS' RIGHTS TO INCREASE THE NUMBERS OF JUDGES, COURT PERSONNEL, DEFENSE AND PROSECUTION ~~PERSONNEL~~ ATTORNEYS/STAFF, AND POLICE. RELIEVED OF AN OVERWHELMING CRUSH OF CASES, THE PEOPLE ASSOCIATED WITH THE JUDICIAL SYSTEM WILL HAVE TIME IN WHICH TO HONOR THE JUDICIAL PROCESS RATHER THAN BEING CONSTANTLY COMPELLED TO SHORTCUT THE PROCESS AT THE DEFENDANTS' EXPENSE.

OF COURSE THE PROBLEM WITH THIS VISION IS THE COLD REALITY THAT THE LEGISLATURE WOULD NEVER WILLINGLY FIND IT, HAVING OTHER PRIORITIES TO THINK ABOUT. IN FACT, THE LEGISLATURE WAS ACTIVELY CONSIDERING TERMINATING THE SECOND-ATTORNEY POSITION IN THE KOTZEBUE PUBLIC DEFENDER OFFICE THIS YEAR (HELD BY A NEW ATTORNEY

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IN A LOWER-SALARY POSITION). THERE IS ANOTHER ALTERNATIVE, HOWEVER - THE ONLY PRACTICAL ALTERNATIVE. THE ALASKA PUBLIC DEFENDER AGENCY MUST BRING ITS OWN CONSTITUTIONALLY-MANDATED FUNDING REQUIREMENTS TO THE COURTS AND, AS SOON AS POSSIBLE, TO THE APPELLATE COURTS. THE COURTS HAVE ORDERED THE STATE TO PROVIDE CONSTITUTIONALLY-MANDATED RESOURCES TO THE ALASKA PRISON^{SYSTEM}, AND THERE IS NO REASON WHY DEFENDANTS ARE NOT ELIGIBLE FOR SIMILAR NECESSARY RESOURCES PRIOR TO CONVICTION. THIS PROJECT CAN BE MOUNTED IN THE FORM OF A CIVIL LAWSUIT, IN THE CONTEXT OF ~~LEGAL~~ INDIVIDUAL CRIMINAL CASES, AND BY EXTRAORDINARY WRIT. ULTIMATELY IT IS THE COURT THAT MUST ENFORCE DEFENDANTS' CONSTITUTIONAL RIGHTS AND THE HUMAN TREATMENT OF DEFENDANTS. IF THE COURTS WILL NOT DO IT, THE RESULT IS A SORRY COMMENTARY ON THE STATE OF AND THE FUTURE OF THE JUDICIAL SYSTEM, FOR IT IS THE JUDICIAL BRANCH THAT CARRIES THE EXPERIENCE OF THE LAW AND HOLDS THE VISION OF THE LAW FOR THE FUTURE. I BELIEVE THAT THE COURTS CAN BE PERSUADED TO REALIGN IN THE INTERESTS OF JUSTICE AND TO PROVIDE TO ALL DEFENDANTS THE DUE PROCESS

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AND HUMAN DIGNITY THAT JUDGES
AND DISTRICT ATTORNEYS WOULD HOPE
TO SEE FOR THEMSELVES IF THEY OR
SOMEONE CLOSE TO THEM HAD TO
FACE THE CRIMINAL JUDICIAL PROCESS.

AS STATED ABOVE, I KNOW THAT THERE
IS A HARD-BITTEN, DRYED, TOUGH, AND EXPERIENCED
PRIVATE LAWYER OUT THERE, EITHER IN ALASKA
OR IN ANOTHER U.S. STATE, WHO WOULD
RELISH THE CHALLENGE OF FIGHTING FOR
THE RIGHTS OF ALASKA DEFENDANTS AND
TO REALIGN THE ALASKA JUDICIAL SYSTEM.
FREE OF PREVIOUS TIES TO THE ALASKA
PUBLIC DEFENDER AGENCY, THIS PERSON
WOULD ALSO BE FREE TO MOUNT A
STRONG CAMPAIGN ON BEHALF OF
DEFENDANTS AND THEIR RIGHTS.

SINCERELY,
JOHN M. HOLMES
JOHN M. HOLMES,
ATTORNEY AT LAW

POSTSCRIPT 1)

IF YOU HAVE QUESTIONS ABOUT THIS
LETTER, YOU CAN WRITE ME AT THE ENCLOSED
ADDRESS IN THE CITY OF CHANGCHUN, CHINA.
I CAN BE CONTACTED BY PHONE C/O A
NEIGHBOR IN THE NEXT ROOM AT:
TEL. No. (DIRECT): 011-86-431-595-3201, EXT. 3064.
IF A CHINESE SPEAKER ANSWERS, SLOWLY

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SAY "SAHN, LING, LIU, SEE" ("3064" IN CHINESE).
(HANGKUN IS SEVENTEEN HOURS AHEAD
OF ANCHORAGE).

POSTSCRIPT 2)

HERE ARE TWO EXAMPLES THAT ILLUSTRATE
PROBLEMS WITH THE GRAND JURY SYSTEM.

1) I ^{A.P.G.} ONCE HAD A SITUATION ^{IN} WHICH I
ASKED ^A WHETHER WE WOULD BE HAVING A
PRELIMINARY HEARING THAT WAS SCHEDULED
IN THE CASE FOR LATER THAT AFTERNOON.
HE SAID NO, THAT THE DEFENDANT HAD BEEN
INDICTED EARLIER THAT DAY. I THEN STEPPED
INTO THE CLERK'S OFFICE TO MAKE A PHONE
CALL. A MINUTE OR TWO LATER THE DA
STUCK HIS HEAD INTO THE CLERK'S OFFICE AND
SAID THAT WE REALLY NEEDED TO TALK BECAUSE
THE CASE SHOULD HAVE A MISDEMEANOR DISPOSITION;
HE HAD JUST INDICTED HER ON A (CLASS-C
FELONY) EARLIER THAT DAY.

THE UNUSUAL THING WAS THAT THE DA
WAS STARTING NEGOTIATION WHILE THE CASE
WAS STILL TECHNICALLY BEFORE THE GRAND JURY,
BECAUSE NO RETURN HAD BEEN MADE TO
THE COURT ON THE INDICTMENT, THE JUDGE
BEING OUT OF TOWN UNTIL THE FOLLOWING
WEEK. WHILE HE HAD PRESENTED THE CASE
TO THE GRAND JURY AS A FELONY, AND WAS
GOING TO PRESENT ~~A~~ A FELONY INDICTMENT

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TO THE JUDGE, HE WAS PRESENTING THE CASE TO ME AS A MISDEMEANOR AT THE SAME TIME. HOWEVER, BY PROSECUTING THE CASE AS A FELONY, THAT MEANT THAT THE PUBLIC DEFENDER OFFICE HAD TO TREAT THE CASE AS A FELONY, LISTENING TO THE GRAND JURY TAPE AND TRANSCRIBING NOTES, DEALING WITH THE DISCOVERY ON A FELONY, POSSIBLY DRAFTING MOTIONS, AND DEALING WITH PRETRIAL RELEASE ON A FELONY BASIS.

THE FOLLOWING TUESDAY, WHEN THE JUDGE HAD RETURNED TO TOWN, I ATTENDED THE OPEN COURT SESSION WHEN THE DA AND GRAND JURY FOREPERSON MADE THEIR RETURNS. AFTER THE GRAND JURY FOREPERSON HAD MADE HER RETURN IN THIS CASE, I STEPPED UP TO THE BAR FROM THE AUDIENCE SECTION. I SAID THAT I ALREADY REPRESENTED THE DEFENDANT IN THIS CASE. I SAID THAT THE DA HAD PRESENTED THE CASE ^{AS A FELONY} TO THE GRAND JURY, THAT THE DA HAD THEN TOLD ME THAT IT SHOULD BE A MISDEMEANOR (THE DA OBJECTED THAT HE HAD ONLY SAID THAT IT SHOULD HAVE A MISDEMEANOR DISPOSITION - SAME THING), AND THAT THE CASE WAS NOW BEING PRESENTED TO THE COURT AS A FELONY. I REQUESTED THAT THE COURT ASK THE GRAND JURY FOREPERSON IF SHE WANTED TO TAKE THE CASE BACK TO THE GRAND JURY FOR RECONSIDERATION. THE JUDGE PAUSED, GAVE ME A HARD GLARE, AND SAID THAT THIS WAS AN

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ABUSE OF THE GRAND JURY SYSTEM.

I SEE THIS AS AN ILLUSTRATION OF HOW THE PROSECUTION CAN USE THE GRAND JURY SYSTEM AS A STRATEGIC TOOL TO RATCHET-UP THE PRESSURE UPON THE PUBLIC DEFENDER AGENCY TO DEFEND FELONIES WHEN THE STATE IS ONLY CONTEMPLATING A MISDEMEANOR CONVICTION. THAT DA ^{SAYS} THAT HE WOULD TAKE ABOUT ONE OF THE CASES TO THE GRAND JURY EVERY OTHER GRAND JURY SESSION (ABOUT 1 CASE PER MONTH) JUST TO SEE IF THE GRAND JURY WOULD INDICT ON IT. THIS IS HARDLY SPORTING SINCE, AS THEY SAY IN NEW YORK, A PROSECUTOR CAN GET A GRAND JURY "TO INDICT A HAM SANDWICH". THE GRAND JURY IS TOTALLY RELIANT UPON THE DA IN THE SECRECY OF GRAND JURY ROOM. THERE IS NO DEFENSE ATTORNEY, NO JUDGE. THE GRAND JURY MUST LOOK TO THE DA FOR ALL LEGAL ADVICE AND FOR THE PRESENTATION OF EVIDENCE. THE GRAND JURY FOLLOWS THE DA'S ADVICE, AND INDICTS, NEARLY 100% OF THE TIME.

MEANWHILE THE PUBLIC DEFENDER HAS A WHOLE BOX OF FELONY GRAND JURY-~~PROSECUTOR~~ PROCEEDING TAPES AND POLICE INTERROGATION TAPES TO LISTEN TO ON PCAR EQUIPMENT AND TO ANALYZE, AS WELL AS MOUNTAINS OF WRITTEN DISCOVERY, AND

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ALL OF THE OTHER WORK ASSOCIATED WITH FELONIES. ALL OF THIS IS SUPPOSED TO BE ACCOMPLISHED WITHIN DEADLINES. THE DEFENSE IS BLAMED FOR DELAY, BUT IT IS THE STATE WHICH HAS CREATED THE LOGJAM, FOR ABOUT HALF OF THESE CASES WILL BE DISPOSED OF AS Misdemeanors, AND SOME WILL BE DISMISSED. THIS IS A DESTRUCTIVE PROCESS THAT UNBALANCES THE JUDICIAL SYSTEM. IT ALSO UNNECESSARILY BURDENS THE JURY SYSTEM, PARTICULARLY IN SMALLER REGIONAL CENTERS THAT HAVE A LIMITED JURY POOL.

2) IN KATZEBU'G THE DA BROUGHT ABOUT 13 ALCOHOL/DRUG CASES BEFORE THE GRAND JURY IN JULY 1995 AND ABOUT 21 CASES BEFORE THE GRAND JURY IN SEPTEMBER 1995. THESE CASES WERE THE RESULT OF TWO ALCOHOL/DRUG BUSTS. THESE WERE ALL SEPARATE, INDIVIDUAL CASES. NOUN WAS SUBJECT TO JOINDER.

THE PROBLEM WAS THAT THE DA INDICTED ALL 13 IN A SINGLE GRAND JURY HEARING; THE GRAND JURY WAS TOLD TO DELIBERATE ON ALL 13 AT ONCE. THE SAME THING HAPPENED WHEN THE 21 WERE INDICTED. THERE WAS A SINGLE HEARING, AND THE GRAND JURY WAS TOLD TO DELIBERATE ON ALL 21 AT ONCE.

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THE UNDERCOVER AND OTHER POLICE OFFICERS SIMPLY TESTIFIED ABOUT ONE DEFENDANT AFTER ANOTHER IN EACH OF THE TWO (JULY AND SEPTEMBER) HEARINGS. THERE IS A UNITED STATES AND ALASKA CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL GRAND JURY. SOMEHOW THE STATE EXPECTED THE GRAND JURY TO KEEP 13 INDIVIDUALS, AND 13 SETS OF TESTIMONY (TOTALLY CONFUSING BECAUSE DIFFERENT, ~~THE~~ WITNESSES TESTIFIED ABOUT DIFFERENT PEOPLE), SEPARATE; THEY WERE SUPPOSED TO SOMEHOW DISREGARD THE OTHER 12 ~~THE~~ DEFENDANTS IN THE FIRST HEARING, AND THE OTHER 20 DEFENDANTS IN THE SECOND HEARING, IN DELIBERATING ON THE FATE OF EACH INDIVIDUAL. IN EACH OF THE TWO HEARINGS ALL DEFENDANTS WERE INDICTED, EN-MASSE, AS THOUGH TAKING PLACE IN A COUNTRY THAT PERMITTED GROUP PROSECUTIONS.

I WROTE AN ^{INITIAL} 11-PAGE DRAFT OF A MOTION TO DISMISS THE INDICTMENT ON CONSTITUTIONAL GROUNDS. THE INDIVIDUAL CASES WERE DISTRIBUTED BETWEEN OUR ANCHORAGE AND FAIRBANKS OFFICES, AND ATTORNEYS IN THESE OFFICES RESEARCHED AND DRAFTED MOTIONS TO DISMISS, WHICH WERE FILED AND GRANTED IN THOSE CASES WHICH HAD NOT ACCEPTED REDUCTIONS OF CHARGES FROM FELONIES TO MISDEMEANORS. ~~THESE~~

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(SOME OF THESE CASES WENT TO CONFLICT COUNSEL.) THE DA REINDICTED SEVERAL WHO DID NOT ACCEPT OFFERS.

THE INVESTMENT IN TIME, ANALYSIS, RESEARCH, AND CLIENT CONTACTS CAN SCARCELY BE OVERSTATED. THE ANCHORAGE AND FAIRBANKS PUBLIC DEFENDER OFFICES CARRIED THE ENTIRE LOAD FOR MONTHS. IF THE GOAL WAS MISDEMEANOR PROSECUTION IN MOST CASES, THIS COULD HAVE BEEN DONE FAR MORE EASILY BY PROSECUTING THOSE CASES AS MISDEMEANORS IN THE BEGINNING.

INDICTING THE DEFENDANTS EN-MASSE ADDED A WHOLE NEW LEVEL OF COMPLEXITY TO THE (TOTAL OF) 34 CASES. NOT ONLY WAS SUCH AN INDICTMENT PROCESS UNCONSTITUTIONAL, BUT THE PRECEDENT SET BY IT THREATENED TO UNDERMINE THE GRAND JURY SYSTEM ITSELF IF THE PROCEDURE WERE NOT LEGALLY CONDEMNED. THIS WAS ONE EXCEPTION TO THE RULE THAT COURTS EXCUSE GRAND JURY DEFECTS. THIS VIOLATION OF THE UNITED STATES AND ALASKA CONSTITUTIONS WAS TOO GROSS EVEN FOR THE COURT.

—H—

John M. Holmes

1-15-97
COPY TO CHAIR, AK.
LEGISLATIVE HOUSE
JUDICIARY COMMITTEE.
Sub-Holmes

December 8, 1995

John M. Holmes,
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Tel: C/O 442-3736 (Work)

Hon. Jay Rabinowitz, Justice,
Alaska Supreme Court, and Chair,
Advisory Committee On Fairness And Justice

Hon. Larry Card, Superior Court Judge
Hon. Dale Curda, Superior Court Judge
Hon. Mary Greene, Superior Court Judge
Hon. Larry Zervos, Superior Court Judge
Hon. Roy Madsen, Superior Court Judge (Ret.)
Ms. Stephanie Cole, Deputy Director, Alaska Court System

Dear Members of the Advisory Committee On Fairness And Access:

Recently I noticed an article in the Anchorage Daily News on the Advisory Committee On Fairness And Access, which has been formed to "examine the experiences of ethnic and racial minorities within the state court system".

The Public Defender Agency had its annual staff conference at the beginning of November and spent much of its time on the same subject. Since there was not much formal discussion built into the schedule, I typed up my own informal comments one night during the conference. Enclosed is a copy of the memo. You will see at once that it is just a collection of ideas strung together in what might pass for a first draft, but I pass them on since they relate to the subject addressed by the Advisory Committee. They represent one person's opinion; no one has given the nod to mount the soapbox on a broader scale.

I titled the comments "A Colonial System" because I truly believe that the Alaska criminal court system is colonial in nature in the rural areas I have seen. Prosecution and sentencing are regionalized in the regional centers. I don't believe that local communities generally handle their own minor local prosecutions or have significant input into prosecution and sentencing policy that affects them. Since the people who do make these kinds of policy decisions are not from the local communities, and are not Alaska Natives, there is a colonial aspect to the system.

Alaska is a village state. Alaska has some 500 villages and many differing languages and traditional cultures that have been rooted here for thousands of years. There are some 226 different federally-recognized tribal governments in the state. The city of Anchorage would hardly qualify as a suburb in many of the cities around the world, and Juneau would not even be worth mentioning in terms of population. Yet the people who formulate regional prosecution and sentencing policy are rarely people who come from the region. Rather they are people who at one point or another immigrated from the Lower 48 and who bring along attitudes and priorities (including legal fads) originating from elsewhere. These may be imposed without input from local communities.

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Often the penalties are draconian. (Ever notice that there are more aggravators than mitigators in AS 12.55.155? Ever try to mitigate a sentence?)

There is a mystique about being an "Alaskan" for most people who have drifted north - uninvited - from Outside. At some mystical point people come to consider themselves "real Alaskans". It is the immigrants who move into the vast majority of decision-making positions in the state and who define and implement the public goals. Yet these people may not always be speaking for the village populations, populations that have been here forever, who have no need to establish their identity as Alaskans, and who may have somewhat different outlooks and goals than most Outsiders who have immigrated.

The point of this letter is not to imply that local communities are not in favor of effective law enforcement. I cannot speak for the communities, but I assume that each community wants good law enforcement. And it may be that, given their say, the villages would want even stricter enforcement than is now provided at the regional level. The point of this letter is to suggest that there should be real local input into prosecution and sentencing policy. After all, Anchorage juveniles are now beginning to participate in the juvenile justice system through youth trials and sentencing; if the kids can participate in the system, there is no reason why rural communities cannot participate also. Yet what I have seen is a movement away from the rural village communities. Not only are villages excluded from jury service in the regional centers, but in this part of the state the prosecution has actively tried to disqualify Criminal Rule 18 Additional (village) Trial Sites on the ground that they do not have court facilities, restaurants, and hotels (and flush toilets). If the facilities are good enough for the people who live there, they should be good enough for ^{the} court system also, unless of course we are talking about a colonial system; if it's a colonial system that we are talking about, then we can hardly expect a plane-full of court officials to land in a village and to conduct a trial under 'such conditions'.

American democracy has immortalized local government, going back to village town hall meetings in the early years of the colonies. We can imagine what Britain must have thought of the sophistication of those local efforts back in the 1600s and 1700s. The British must have thought of those colonists as real backward bumpkins. But we recognize something different and applaud it. In fact we teach each generation of children to celebrate a criminal act, the Boston Tea Party, as a righteous protest against taxation without representation, a restriction on local commerce. If Taxation Without Representation justifies such a reaction, how should people feel about Incarceration Without Representation, in which a much larger -statewide- entity prosecutes and sentences without significant input on the policies by the regional village communities.

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All of this is speaking only very generally of course, to touch on the issue. This is only one opinion, and I am one of those who came north from somewhere else. People from the villages may or may not agree with the premise. Better to ask them. There are certainly many people from the Alaska Native communities who would be available to serve with the Advisory Committee On Fairness And Access.

Sincerely,

John M. Holmes

John M. Holmes

ANCH. DAILY NEWS, TUES 21 NOV. 95

Court creates fairness panel

The Alaska Supreme Court has created an advisory committee on fairness and access. Court officials said the panel was set up to examine the experiences of ethnic and racial minorities within the state court system. Alaska Supreme Court Justice Jay Rabinowitz will chair the new committee. Also named to the panel are Anchorage Superior Court Judge Larry Card, Fairbanks Superior Court Judge Mary Greene, Sitka Superior Court Judge Larry Zervos, Bethel Superior Court Judge Dale Curda, retired Kodiak Superior Court Judge Roy Madsen and Stephanie Cole, the court system's deputy director. The court said it wants the committee to turn up whatever inequities it can find along with minority perceptions about the court system. It also wants the panel to recommend changes in court procedures and policies. A recent survey by the Alaska Public Interest Research Group said Natives lack representation on juries across the state, particularly in rural Alaska.

1-15-97
COPY TO AK. LEGISLATURE,
CHAIR. HOUSE JUDICIARY
COMMITTEE John Holmes

November 2, 1995

John M. Holmes,
Kotzebue P.D. Office

A COLONIAL SYSTEM

Comments On The Alaska Criminal Court System

Our annual staff conference has had several very interesting presentations ^{on} minorities and the criminal court system in Alaska. There has not been time for general discussion of the topics. The themes have been running through my head for some time now, for years in fact, and I would like to set out some ideas on the subject. This memo has not been researched or organized in any formal way; it is simply written like a letter.

The subject of the memo is critical in nature. That is not meant as a criticism of individuals in general. The great majority of people working in the criminal court system are hard-working, dedicated, sensitive people who put in very long hours trying to keep from being buried in work and trying to do the best that they can for their communities. However the system still comes up way short; that is no secret to anyone, least of all the people who labor within it.

Most of us in the criminal court system are non-Natives (meaning here non-minority people in general). Most of us grew up somewhere else, in the Lower-48. Imagine how our relatives, friends, neighbors, and other persons in our original home communities would feel if a "foreign" group of people were installed to run our courts, police, schools, hospitals, other agencies, and most of our businesses.. What if the "foreigners" were better organized than most of us, more punctual, more goal-oriented than most of us. What if they enthusiastically introduced advanced

technology and what they thought of as good ideas. And, what if these "foreigners" were of a different race and easily recognizable on the streets, in the stores, and in their offices? What would be the reaction of our townspeople?

The reaction would be one of being extremely pissed-off. A bitter resentment, a brooding anger would develop at all levels of the community. People would resent the friendly smiles, the helpful suggestions, the material assistance of these outsiders who had taken control in areas of life that we had handled in the past and could continue to handle in the future. We would think, "What right do they have to come in here?", "Who do they think they are?". Ultimately some in the community would consider some good-old American vigilante/militia action.

Incidentally, there are plenty of groups that could fill that hypothetical role, one of which is the Japanese.

The reaction would inevitably be negative and destructive in our communities. It would corrode the psyche of the community. We would know that we were denied power over our own lives, and we could not stand to live under that cloud, even if the entire administration were exercised in a paternal, missionary-like way, for our own good. We couldn't stand it because we, after all, are the people who value above all else the right to live freely.

I guess we have to ask Native people how they feel under similar circumstances. Certainly they have had a history of living freely too. They have been tied to their land for thousands of years rather than for only a few generations. The land is not wasted, or wasteland to them. It is interesting that we non-Natives generally think that communal land, held for

subsistence purposes is unused and wasted if it is not farmed, or mined, or otherwise developed. We have a blind spot because, on the other hand, we do not think that privately-owned land that has been set-aside indefinitely is wasted; we respect the 'Keep-Out' sign. But our tradition prevents us from giving the same respect to communally-held land. As to the reaction of Native people to similar circumstances described above, maybe we got an idea of that in the presentations we have heard at the conference.

In my opinion the Alaska criminal court system is a colonial system as it operates in the rural areas in which I have worked, including the North Slope Borough, the Northwest Arctic Borough, the Fort Yukon-area villages north of Fairbanks, and the Ketchikan-area villages. The system is an imposed system. To my knowledge, no Native village formally requested that it impose its centralized system of operation over the community. It is a third wave of control that has swept over the villages in the past century. The first, the missions, altered the worldview of people. The second, the schools, broke the local languages. And the third, the criminal courts, is determined to jail people until they conform. All three waves were well-meaning, but what is the result for the local communities. The purpose of this memo is not to suggest that the villages do not want law enforcement, but instead to suggest ^{that} local input from city and IRA councils, and whatever other organizations and groups available, would not hurt. People in rural Alaska communities probably have the same interest in self-determination that people in other communities have. We can find out by listening to them.

Insofar as the courts themselves are concerned, the Native community is hardly represented at all in the regional centers, except as clerks. I do not know of any Native serving as an Alaska Supreme Court justice, as a Court of Appeals judge, or as a Superior Court judge. I do not know of a Native who serves as a Magistrate in any of the regional centers, where almost all trials are conducted. There are Native Magistrates in villages. However, in the Northwest Arctic Borough region the village magistrates do not do trials ^(WITH ONE EXCEPTION) and all - or nearly all - misdemeanors are heard in Kotzebue rather than in the villages. In the Northwest Arctic Borough there is resistance from the district attorney's office to having trials at the designated trial sites in the villages, though a non-jury trial was held some months ago. The state has filed motions to change venue to Kotzebue on at least two occasions, on the ground that the village did not have adequate facilities for a misdemeanor trial, unlike metropolitan Kotzebue.

It seems that there is a historical process at work which is vacating Natives from the regional magistrate positions rather trying to fill those slots with local personnel. Sadie Neakok, an Inupiaq, was the law in Barrow for many years until her retirement from the Barrow Magistrate position in 1978 or 1979. Charlotte Brower, also an Inupiaq, then held the position for about two years. However, since then, for about the last fifteen years, no Alaska Native has held the position so far as I know, despite the fact that there has been a non-Native Superior Court judge in Barrow since 1982.

A non-Native left the Kotzebue Magistrate position about three

years ago. An Inupiaq former-Kotzebue Magistrate then applied for the position. He had held the same Kotzebue Magistrate position for some eight years during the early 1980s period. He was not hired three years ago, however; a non-Native was hired into the job. In about January of this year, 1995, the Kotzebue Magistrate position opened up again. The Inupiaq former-magistrate again applied for the position. Once again he was not hired; a non-Native was hired into the job. Apparently the Superior Court wanted to hire a law-trained person who could assist with research. However, with eight years of experience, the local applicant was not like a new-hire.

It is understandable that the Superior Court could use the skills of a law-trained magistrate. However, it was arguably far more important that the community have the benefit of a local magistrate who had grown up in the community, raised a family there, knew the region intimately, and was part of the community and the local Native culture. The magistrate has more contact with the community than the superior court judge, since there are far more misdemeanor cases than felonies. The magistrate also handles initial matters in felonies, acts as a master in Child In Need Of Aid and juvenile proceedings, and has a variety of other duties that bring him into contact with the community. Having a local magistrate can help local people feel that the legal system is their system. It can serve as a role model to attract other Native people into the legal system. All of that is lost when the local applicant is not hired, and the colonial nature of the criminal court system is reinforced. Having a local magistrate does not mean that law enforcement would relax, and become lax. It could become more

strict. The point is that a local person, who knew the people and local mores very well, would be making those decisions.

The state charges out an incredible number of misdemeanors and felonies, many of which could be handled by diversion. If the state looked toward village councils for direction on cases, many cases might be handled differently; in some instances cases might be handled more severely. The point is that there would be local input.

Probably every extended family in the villages has someone going to jail, in jail, or getting out of jail, or on probation or parole. Every family is probably familiar with conditions of release and third-party custody. It is as though the whole region is tied up in the court system one way or another. The villages themselves have no role in the process except to the extent that individuals take on the role of defendants, third-party custodians, and witnesses. It is as though the villages are under some form emergency rule. This is not to deny that there are problems, or to suggest that there should not be prosecutions, but rather *to* have local input into charging policy and sentencing policy. To do so would diminish the colonial aspect of the criminal court system.

Jail is the sentence of choice. What is the effect on the village of having its young men sit in Nome at the Anvil Mountain Correctional Center, doing nothing constructive there. To be sure, jail is a necessary punishment in many cases, but in so many, and for so long? How do we, the non-Native workers in the court system, know that jail is the appropriate disposition in the vast majority of the cases. Shouldn't there be formal

local input into sentencing policy? If there were, the colonial aspect of the criminal court system would be diminished.

I think that there are things that everyone in the system knows but do not acknowledge. I think that everyone knows that people in the villages feel threatened by law enforcement to a degree far beyond the normal apprehension that is discounted in the cases. People feel threatened, feel they have no choice but to cooperate, and then end up getting entangled in questions that under the law can be framed in lies. Either the system is fair or it is not. A trooper mentioned just the other day that he doesn't have to pull any tricks because the clients are so "cooperative". Officially the law does not recognize that there is a problem. There is no direct authority to support the argument that people's rights are being violated. But if we do not consistently holler about it, nobody will. And if we do holler consistently, the court system may eventually feel compelled to acknowledge the obvious. Miranda established a right to notice prior to interrogation. It was a limited right under Miranda, and Miranda has been progressively eroded ever since, but there comes a point where reality has to be acknowledged. If we do not raise it, it never will be raised.

The defense is the shock absorber of the criminal court system. The state can usually wait to file a case until it is prepared to do it. The defense is bracketed in by time deadlines. Where there are about 150 cases at any one time, it is impossible to give real attention to most of the cases. Most misdemeanors get minimal attention. This is news to no one. But the question is what we do about it. Is this the natural state of things or is

this the condition we accept as the natural state of things? I think that it is the natural state of things, insofar as we have experienced. But it does not have to. It shouldn't be. Our clients know that they do not always receive due process, in the sense of having sufficient access to their attorney or preparation for their cases. If they can sense it, why can't the rest of the system. This too is something that everybody in the system knows but does not acknowledge.

The question is to whom we owe our ultimate loyalty. Is it to the client or to the system? If it is to the client, we hold out for him. If it is to the system, we have unwritten understandings with district attorneys as to how far we will take a case, so that both we and the DA can get home at a decent time. If it is to the system, the DA knows that we will plead the man out and we plead him out.

I think that our loyalty has to remain with the client. This introduces a level of uncertainty in the relationship between the district attorney and the defense lawyer, but it is worth it to the client. However it also increases the work for the defense since many more cases head toward trial. This also tends to clog up the calendar.

How much attention should a client get? In the rural areas he needs more than may always be necessary in the urban areas. He needs time to talk things over. He needs more time than we have. There comes a point where we do not give enough time to the client, or enough time to preparation, and where we are ready to plead out of vulnerability; then we have arrived at the point where the client is not getting effective assistance of counsel.

At that point something has to be done to save the case for the client.

The 22 alcohol and drug cases overloaded the Kotzebue office. I filed the notice of ineffective assistance of counsel on the cases to place the problem before the court. However, as I mentioned in the hearing on the matter, it would not have been necessary to do so if I had requested assistance from our central office earlier; that is my personal responsibility.

I think that the court system has to be confronted with the fact that clients are often not receiving due process or their right to counsel because they are rushed through the system under current (and former) caseloads and deadlines. If the defense does not put a brake on the process, no one will. The state and the court have identical interests insofar as each is vitally concerned with processing cases. A smooth system is what they need, and every effort is made to keep the defense in the program. But the defense does not necessarily have the same interest, and where the caseload and time pressures put the defense at a strategic disadvantage, something has to be done. What is done in each case depends upon circumstances.

But we have to do something. Otherwise our rural clients ~~face~~ face disadvantages all the way down the line, from their initial contact with the police - where the police are free to dominate them, to bail - where the clients have the disadvantage of little access to money, to contact with their attorney, which is often minimal, to negotiations - if the lawyer allows himself to be placed at a disadvantage (which I normally avoid), to trial - where the defense is challenged to complete investigation, motions,

and trial preparation. The criminal court system has to know that the problem is everybody's problem. The situation will be relieved only if it is seen as a threat to the system.

In addition there is another factor that deserves some consideration. I do not know public defender working conditions around the program in any detail, but I think I have some feeling for them after working in several of the offices. In my opinion the lawyers in the rural offices carry an extra load because they cannot shift work among several lawyers, must absorb everything that comes down the pike (except motions on the 22 alcohol and drug felonies), and need to give extra attention to the residents of the smaller communities. In addition they tend to get more personally involved in clients' problems. Many hours are spent over time in conversations with clients who are worried, depressed, and occasionally thinking about suicide. There is no one else to do it, and it cannot be brushed off, especially the depression and talk of suicide. (Referrals and warnings to jail personnel are also made.) In a small community the ~~xxxxxxx~~ lawyer is liable to bump into a current client any time he takes a walk down the street. There is very little insulation from work, especially when the court makes pretrial release such a challenge in so many of the cases. There is no mechanism in ~~xxx~~ the program to deal with this. Maybe that is why Linda Green, the Kotzebue secretary, counted eight lawyers passing through the Kotzebue in the 4-1/2 years before I arrived. *Heidi Erickson has 20 charges of plea scheduled early this week.* When you think of it, there is a problem when the clients do not get the attention to the cases that they deserve and the lawyers around the program have overwhelming caseloads. None of

this is new. And it exists across the country.

The criminal law is central to the organization of a society. How it is enforced determines the character of the society. One benefit of the criminal law is the resulting decrease in revenge and retaliation on the streets when the state becomes the prosecuting party rather than the victim himself, or his friends, relatives, or neighbors. To the extent that there are adequate police, prosecutors, defense lawyers, and judges, the well-being of the community can be enhanced. To the extent that these resources are missing, the community suffers and Constitutional rights are violated.

What more can be done for our clients? What more should be done for them? What do they have a right to receive under the U.S. and Alaska Constitutions in terms of adequate representation? There is no hard and fast answer. But the more we push it, the better the chances that our clients' representation will improve.

John Holmes

JUST CHUCK ME IN THE OLD CHUKCHI

I was down and out in Fairbanks, in the unemployment line,
When a Doctor of Consultancy stepped up and spoke his mind; (he said)
So you're of late from the '48, a stateside refugee,
Well there's still hope on the great North Slope
And the shores of the Chukchi Sea.

As he advised I dredged my mind and found some talent there,
Lying neglected and unexpected, a certain talkative flair;
So I printed cards and letterhead, in grand hyperbole,
And I placed my hope in the great North Slope
And the shores of the Chukchi Sea.

Subsistence is the field in which I find I do excel;
I hunt and trap consultant fees, and do it pretty well.
No more bumming cigarettes, I'm fixed financially,
For I placed my hope in the great North Slope
And the shores of the Chukchi Sea.

So dry those tears you refugee, and join the planning game;
Consult your way to solvency, move on to wealth and fame.
Look beyond that handicap of mediocrity,
And place your hope in the great North Slope
And the shores of the Chukchi Sea.

Oh...when my contract's done, and my luck has run,
And the Slope's downhill for me,
Then my only hope is to head on North,
So chuck me in the Old Chukchi;
Yes, chuck me in the Old Chukchi,
Just chuck me in the Old Chukchi,
For my only hope is to head on North,
So...chuck me in the Old Chukchi.

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John M. Holmes

FROM: RESULTS OF THE EVALUATION
OF APPLICANTS FOR AK. PUB. DEFENDER

Complete Booklet available in the
Committee Room.

**SURVEY OF THE ALASKA BAR ASSOCIATION:
EVALUATION OF APPLICANTS FOR THE
ALASKA PUBLIC DEFENDER**

EXECUTIVE SUMMARY

This report contains the results of a recent survey of the Alaska Bar Association. Bar members evaluated three applicants for Alaska Public Defender on six traits: professional competence, integrity, administrative skills, temperament, suitability of candidate's experience for the vacancy and overall professional performance. Attorneys used a five-point scale to rate each trait. Applicant mean ratings have been presented numerically, and in five descriptive categories: "Excellent" (4.0-5.0); "Good" (3.5-3.9); "Acceptable" (3.0-3.4); "Below Acceptable" (2.5-2.9); and "Poor" (0-2.4).

Table 1 summarizes the overall ratings by respondents who based their ratings on direct professional experience with the applicants.

Applicant Barbara K. Brink received ratings in the "excellent" range on all six items. Ms. Brink was evaluated by 245 respondents on the basis of direct professional experience, with the following results: professional competence (4.4), integrity (4.2), administrative skills (4.2), temperament (4.2), suitability of experience (4.4), and overall professional performance (4.3). These were the highest ratings given to any of the applicants on all six items.

Applicants Sidney Kay Billingslea and Cynthia L. Strout each received ratings in the "excellent" range on two of the six items, and ratings in the "good" range on the remaining items. Applicant Billingslea received "excellent" ratings on the professional competence (4.1) and integrity (4.0) items, and ratings in the "good" range on the administrative skills (3.5), temperament (3.6), suitability of experience (3.8), and overall professional performance (3.9) items. Ms. Billingslea was evaluated by 220 respondents on the basis of direct professional experience.

Applicant Strout also received "excellent" ratings on the professional competence (4.1) and integrity (4.1) items, and ratings in the "good" range on the administrative skills (3.6), temperament (3.9), suitability of experience (3.7), and overall

professional performance (3.9) items. Ms. Strout was evaluated by 194 respondents on the basis of direct professional experience.

DESCRIPTIVE RATINGS AND SYMBOLS

This report contains detailed breakdowns of each candidate's scores on the six individual scales: Professional Competence, Integrity, Administrative Skills, Temperament, Suitability of Experience, and Overall Professional Performance. The survey instrument defines each trait, and specifies the meaning of each number on the five-point scale (see Appendix I for a copy of the actual survey form). Unless otherwise noted, mean ratings are tabulated only from replies by respondents based on direct professional experience with the applicant. The responses each applicant received on the five scales (each with a range from 1 (poor) to 5 (excellent)) were summarized into arithmetic means. The means fit into the following descriptive ratings which appear in Tables 4 through 10:

Mean Score	Symbol	Range Description
4.0-5.0	+++	Excellent
3.5-3.9	++	Good
3.0-3.4	+	Acceptable
2.5-2.9	-	Below Acceptable
1.0-2.4	--	Poor

Statistically significant group differences often arise between mean ratings whose difference is less than one-half a point. Caution must be used in interpreting relatively small differences in mean ratings between the applicants. Another caution is that some of the respondent groups used in the detailed analysis for each applicant are quite small. Those with fewer than ten members cannot be considered reliable for analysis, but their results appear for completeness.

TABLE 4:

MEAN ITEM SCORES FOR ALASKA PUBLIC DEFENDER CANDIDATES

(Ratings From Respondents With Direct Professional Experience)

<u>Candidate</u>	<u>Professional Competence</u>		<u>Integrity</u>	
	Average Score	Range	Average Score	Range
Billingslea	4.1	+++	4.0	+++
Brink	4.4	+++	4.2	+++
Strout	4.1	+++	4.1	+++

<u>Candidate</u>	<u>Administrative Skills</u>		<u>Temperament</u>	
	Average Score	Range	Average Score	Range
Billingslea	3.5	++	3.6	++
Brink	4.2	+++	4.2	+++
Strout	3.6	++	3.9	++

<u>Candidate</u>	<u>Suitability of Experience</u>		<u>Overall Professional Performance</u>	
	Average Score	Range	Average Score	Range
Billingslea	3.8	++	3.9	++
Brink	4.4	+++	4.3	+++
Strout	3.7	++	3.9	++

TABLE 5

PERCENTILE DISTRIBUTION OF CANDIDATE SCORES ON THE
OVERALL PROFESSIONAL PERFORMANCE SCALE, ALASKA PUBLIC DEFENDER

(Ratings From Respondents With Direct Professional Experience)

<u>Candidate</u>	<u>1.0</u>	<u>2.0</u>	<u>3.0</u>	<u>4.0</u>	<u>5.0</u>
Billingslea	2.3	4.7	26.6	37.4	29.0
Brink	2.1	5.3	11.9	25.1	55.6
Strout	2.6	6.2	24.9	32.1	34.2

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<u>Candidate</u>	<u>Mean</u>	<u>Median</u>	<u>Mode</u>	<u>SD</u>	<u>N</u>	<u>Range</u>
Billingslea	3.9	4.0	4.0	.97	214	++
Brink	4.3	5.0	5.0	1.00	243	+++
Strout	3.9	4.0	5.0	1.03	193	++

Sidney Kay Billingslea

Between 189 and 219 respondents rated Ms. Billingslea on the basis of direct professional experience. These respondents gave a mean rating in the "excellent" range on the professional competence (4.1) and integrity (4.0) items, and ratings in the "good" range on administrative skills (3.5), temperament (3.6), suitability of experience (3.8), and overall professional performance (3.9). Respondents who based their ratings on direct professional experience with the applicant tended to give higher ratings on the professional competence, integrity, and overall professional performance items than did those who based their ratings on the applicant's reputation or those who had other personal contacts.

BASIS FOR EVALUATION	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
	[p<.05]		[p<.05]								[p<.05]	
NO ANSWER	4.7	3	3.0	3	3.0	3	2.3	3	3.3	3	3.5	4
DIRECT PROFESSIONAL	4.1	219	4.0	214	3.5	189	3.6	218	3.8	215	3.9	214
OTHER PERSONAL REPUTATION	3.9	38	3.9	36	3.6	25	3.4	38	3.6	35	3.6	36
	3.8	74	3.7	72	3.3	65	3.5	72	3.6	72	3.6	74
<u>DIRECT EXPERIENCE SUB SAMPLE:</u>												
	4.1	219	4.0	214	3.5	189	3.6	218	3.8	215	3.9	214
<u>TYPE OF PRACTICE</u>												
NO ANSWER	3.5	13	3.4	12	2.9	9	3.5	13	3.3	12	3.3	12
PRIVATE												
SOLO	4.1	44	4.2	43	3.6	40	3.8	44	3.8	43	3.9	43
OFFICE 2-5	4.1	42	4.1	43	3.6	39	3.8	43	3.9	43	3.9	42
OFFICE 6+	4.3	19	4.4	18	3.7	15	3.8	19	3.9	19	4.1	18
PRIVATE CORPORATE	4.5	2	5.0	1	5.0	1	4.5	2	5.0	1	5.0	1
JUDGE OR JUD. OFCR	4.4	28	4.1	28	3.6	22	3.7	27	3.9	28	4.0	28
GOVERNMENT	3.9	63	3.9	61	3.3	56	3.4	62	3.6	61	3.7	62
PUBLIC SERVICE	4.3	3	4.3	3	4.3	3	3.7	3	4.0	3	4.3	3
OTHER	4.6	5	4.0	5	3.8	4	3.6	5	4.0	5	4.4	5
<u>YEARS OF PRACTICE IN ALASKA</u>												
NO ANSWER	3.8	20	3.6	18	3.4	14	3.8	20	3.5	18	3.6	17
0 TO 5	4.4	19	4.1	19	3.8	17	3.8	19	4.1	19	4.1	19
6 TO 10	4.2	51	4.0	49	3.6	46	3.6	51	3.7	50	3.9	50
11 TO 15	4.1	39	4.0	38	3.3	35	3.4	39	3.6	39	3.9	39
16 +	4.0	90	4.1	90	3.5	77	3.7	89	3.8	89	3.8	89
<u>GENDER</u>												
NO ANSWER	3.8	16	3.7	15	3.3	12	3.5	16	3.3	15	3.5	15
MALE	4.2	125	4.2	124	3.6	110	3.7	124	3.9	123	3.9	123
FEMALE	4.1	78	3.9	75	3.4	67	3.6	78	3.7	77	3.8	76
<u>CASES HANDLED</u>												
NO ANSWER	3.6	12	3.5	11	3.1	8	3.6	12	3.4	11	3.5	11
PROSECUTION	3.8	17	3.8	16	3.5	15	3.6	16	3.7	16	3.7	17
MAINLY CRIMINAL	4.1	45	4.0	44	3.3	42	3.4	45	3.5	45	3.7	45
MIXED	4.1	79	4.1	79	3.6	68	3.7	78	3.9	78	4.0	79
MAINLY CIVIL	4.2	62	4.1	61	3.6	54	3.7	63	3.9	62	3.9	59
OTHER	4.5	4	4.7	3	4.0	2	4.0	4	4.3	3	4.3	3
<u>LOCATION OF PRACTICE</u>												
NO ANSWER	3.6	12	3.5	11	3.1	8	3.6	12	3.4	11	3.5	11
FIRST DISTRICT	4.0	14	4.2	14	3.4	10	3.7	14	4.1	14	4.1	14
SECOND DISTRICT	4.0	2	3.5	2	3.5	2	4.0	2	4.0	2	4.0	2
THIRD DISTRICT	4.1	181	4.1	177	3.5	160	3.6	180	3.7	179	3.9	177
FOURTH DISTRICT	4.0	8	4.0	8	3.3	7	3.4	8	3.7	7	3.8	8
OUT-OF-ALASKA	5.0	2	5.0	2	5.0	2	4.5	2	4.5	2	4.5	2
<u>AMOUNT OF EXPERIENCE</u>												
NO ANSWER	3.8	32	3.8	31	3.6	27	3.7	31	3.7	31	3.7	32
SUBSTANTIAL	4.2	111	4.1	111	3.4	102	3.6	111	3.7	110	3.9	110
MODERATE	4.2	47	4.1	46	3.5	40	3.7	46	3.9	47	4.0	47
LIMITED	4.0	29	4.1	26	3.5	20	3.7	30	3.9	27	3.8	25

Ms. Brink was evaluated by 226-243 respondents who had direct professional experience with the applicant. These respondents gave mean ratings in the "excellent" range on all six items: professional competence (4.4), integrity (4.2), administrative skills (4.2), temperament (4.2), suitability of experience (4.4), and overall professional performance (4.3). Of these respondents, those who have a private practice in an office with six or more attorneys tended to rate the applicant lower on the temperament item than did those with other types of practice. Respondents with less than six years of practice in Alaska tended to give lower ratings on the integrity item than did those with six or more years of practice. Female respondents tended to give higher ratings on the professional competence and suitability of experience items than did the male respondents. Respondents who handle prosecution cases tended to rate the applicant lower on all six items than did those who handle other types of cases. Respondents who indicated that they had a limited amount of direct professional experience with the applicant tended to give lower ratings on the professional competence, administrative skills, temperament, suitability of experience, and overall professional performance items than did those with higher levels of experience. Respondents who based their evaluations on the applicant's reputation tended to give lower ratings on the professional competence, administrative skills, suitability of experience, and overall professional performance items than did those who based their ratings on direct professional experience or other personal contacts.

BASIS FOR EVALUATION	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
<u>BASIS FOR EVALUATION</u>	[p<.0001]											
NO ANSWER	4.3	15	4.0	15	3.6	14	3.8	15	4.1	15	4.1	15
DIRECT PROFESSIONAL	4.4	243	4.2	242	4.2	226	4.2	243	4.4	243	4.3	243
OTHER PERSONAL	4.5	22	4.4	22	4.6	16	4.3	22	4.6	22	4.5	22
REPUTATION	4.0	70	3.9	70	3.8	67	3.9	70	3.9	71	3.9	70
<u>DIRECT EXPERIENCE</u>	[p<.01]											
SUB SAMPLE:	4.4	243	4.2	242	4.2	226	4.2	243	4.4	243	4.3	243
<u>TYPE OF PRACTICE</u>	[p<.05]											
NO ANSWER	4.2	12	4.1	12	4.1	12	3.9	12	4.2	12	4.1	12
PRIVATE												
SOLO	4.4	42	4.2	42	4.1	38	4.1	42	4.2	42	4.1	42
OFFICE 2-5	4.7	38	4.6	38	4.4	36	4.6	38	4.5	38	4.5	38
OFFICE 6+	4.2	18	4.2	18	3.8	17	3.7	18	4.2	18	4.0	18
PRIVATE CORPORATE	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
JUDGE OR JUD. OFCR	4.6	32	4.4	32	4.4	29	4.3	32	4.5	32	4.3	32
GOVERNMENT	4.3	84	4.1	83	4.1	78	4.0	84	4.3	84	4.2	84
PUBLIC SERVICE	4.5	11	4.4	11	4.7	10	4.5	11	4.8	11	4.5	11
OTHER	5.0	5	4.6	5	4.8	5	5.0	5	5.0	5	5.0	5
<u>YEARS OF PRACTICE</u>	[p<.05]											
IN ALASKA												
NO ANSWER	4.2	16	4.2	16	4.2	16	4.1	16	4.3	16	4.2	16
0 TO 5	4.1	34	3.7	34	4.0	32	3.9	34	4.1	34	3.9	34
6 TO 10	4.6	49	4.3	49	4.3	49	4.2	49	4.5	49	4.4	49
11 TO 15	4.6	52	4.5	52	4.3	48	4.3	52	4.5	52	4.5	52
16 +	4.4	92	4.3	91	4.2	81	4.2	92	4.3	92	4.2	92
<u>GENDER</u>	[p<.05]											
NO ANSWER	4.3	14	4.2	14	4.1	14	4.0	14	4.2	14	4.1	14
MALE	4.3	134	4.2	133	4.1	122	4.1	134	4.3	134	4.2	134
FEMALE	4.6	95	4.4	95	4.4	90	4.3	95	4.5	95	4.4	95
<u>CASES HANDLED</u>	[p<.0001]											
NO ANSWER	4.2	12	4.1	12	4.1	12	3.9	12	4.2	12	4.1	12
PROSECUTION	3.8	25	3.0	24	3.3	22	3.0	25	3.5	25	3.4	25
MAINLY CRIMINAL	4.7	60	4.5	60	4.5	58	4.5	60	4.6	60	4.6	60
MIXED	4.5	69	4.4	69	4.3	67	4.2	69	4.4	69	4.3	69
MAINLY CIVIL	4.4	75	4.3	75	4.2	65	4.3	75	4.5	75	4.3	75
OTHER	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2
<u>LOCATION OF PRACTICE</u>	[p<.0001]											
NO ANSWER	3.9	12	3.8	12	3.9	12	3.8	12	3.9	12	3.8	12
FIRST DISTRICT	4.4	20	4.3	20	4.2	17	4.4	20	4.5	20	4.4	20
SECOND DISTRICT	4.7	3	5.0	3	5.0	3	4.7	3	5.0	3	5.0	3
THIRD DISTRICT	4.4	188	4.3	187	4.2	175	4.2	188	4.4	188	4.3	188
FOURTH DISTRICT	4.6	18	4.3	18	4.3	18	4.3	18	4.6	18	4.4	18
OUT-OF-ALASKA	4.5	2	3.0	2	5.0	1	4.5	2	4.5	2	4.5	2
<u>AMOUNT OF EXPERIENCE</u>	[p<.001]											
NO ANSWER	4.3	31	4.2	30	4.0	31	4.1	31	4.1	31	4.1	31
SUBSTANTIAL	4.5	145	4.3	145	4.4	141	4.3	145	4.5	145	4.4	145
MODERATE	4.4	47	4.3	47	3.9	39	4.0	47	4.3	47	4.2	47
LIMITED	3.7	20	3.7	20	3.6	15	3.7	20	3.9	20	3.8	20

Cynthia L. Strout

Between 175 and 194 respondents rated Ms. Strout on the basis of direct professional experience. These respondents gave a mean rating in the "excellent" range on the professional competence (4.1) and integrity (4.1) items, and ratings in the "good" range on administrative skills (3.6), temperament (3.9), suitability of experience (3.7), and overall professional performance (3.9). Of these respondents, those who have a government practice tended to rate the applicant lower on all six items than did those with other types of practice. Female respondents tended to rate the applicant higher on the professional competence item than did the male respondents. Respondents who handle prosecution cases tended to rate the applicant lower on the professional competence, integrity, suitability of experience, and overall professional performance items than did those who handle other types of cases.

	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
<u>BASIS FOR EVALUATION</u>												
NO ANSWER	4.5	6	4.5	6	3.6	5	3.8	6	4.2	6	4.3	6
DIRECT PROFESSIONAL	4.1	194	4.1	192	3.6	175	3.9	194	3.7	192	3.9	193
OTHER PERSONAL	4.1	16	4.5	16	3.8	12	4.1	17	3.7	16	4.1	16
REPUTATION	3.9	47	3.9	47	3.6	41	3.9	46	3.7	48	3.8	47
<u>DIRECT EXPERIENCE</u>												
SUB SAMPLE:	4.1	194	4.1	192	3.6	175	3.9	194	3.7	192	3.9	193
<u>TYPE OF PRACTICE</u>												
	[p<.01]		[p<.01]		[p<.01]		[p<.05]		[p<.01]		[p<.01]	
NO ANSWER	3.7	7	3.7	6	2.8	4	3.0	7	3.5	6	3.5	6
PRIVATE												
SOLO	4.4	41	4.4	41	4.0	38	4.2	41	4.1	41	4.3	41
OFFICE 2-5	4.0	27	4.1	27	3.6	25	4.0	27	3.7	27	3.7	27
OFFICE 6+	4.4	14	4.4	14	3.9	14	4.1	14	4.1	14	4.4	14
PRIVATE CORPORATE	--	0	--	0	--	0	--	0	--	0	--	0
JUDGE OR JUD. OFCR	4.4	29	4.4	29	3.9	25	4.2	29	4.1	29	4.2	29
GOVERNMENT	3.8	67	3.7	66	3.2	64	3.7	67	3.3	66	3.5	67
PUBLIC SERVICE	4.0	4	4.3	4	3.0	3	4.0	4	3.3	4	3.8	4
OTHER	4.2	5	4.2	5	3.0	2	3.8	5	4.0	5	4.0	5
<u>YEARS OF PRACTICE</u>												
<u>IN ALASKA</u>												
NO ANSWER	4.0	11	4.1	10	3.8	8	3.7	11	4.1	10	3.9	10
0 TO 5	4.2	13	4.2	13	4.0	12	4.1	13	3.8	13	4.2	13
6 TO 10	4.2	33	4.0	33	3.4	33	3.3	33	3.5	33	3.8	33
11 TO 15	4.0	47	3.8	47	3.4	43	3.8	47	3.6	47	3.7	47
16 +	4.2	90	4.2	89	3.6	79	4.1	90	3.8	89	4.0	90
<u>GENDER</u>												
	[p<.05]											
NO ANSWER	4.0	8	4.1	7	3.8	5	3.8	8	4.1	7	4.0	7
MALE	4.0	113	4.1	112	3.5	104	3.9	113	3.7	112	3.8	113
FEMALE	4.3	73	4.1	73	3.6	66	4.0	73	3.7	73	4.0	73
<u>CASES HANDLED</u>												
	[p<.05]		[p<.01]						[p<.05]		[p<.05]	
NO ANSWER	4.0	7	4.2	6	3.8	4	3.6	7	4.2	6	4.0	6
PROSECUTION	3.7	23	3.4	22	3.1	21	3.4	23	3.1	22	3.3	23
MAINLY CRIMINAL	4.3	45	4.2	45	3.5	42	4.0	45	3.6	45	4.0	45
MIXED	4.2	58	4.3	58	3.7	53	4.1	58	3.9	58	4.1	58
MAINLY CIVIL	4.1	59	4.1	59	3.7	53	3.9	59	3.8	59	3.9	59
OTHER	4.5	2	4.0	2	3.0	2	4.5	2	4.5	2	4.5	2
<u>LOCATION OF PRACTICE</u>												
NO ANSWER	3.7	7	3.8	6	3.3	4	3.3	7	3.8	6	3.7	6
FIRST DISTRICT	4.4	8	4.6	8	4.1	7	4.6	8	4.4	8	4.4	8
SECOND DISTRICT	4.0	3	3.7	3	3.7	3	4.0	3	3.3	3	3.7	3
THIRD DISTRICT	4.1	169	4.1	168	3.6	154	3.9	169	3.7	168	3.9	169
FOURTH DISTRICT	3.7	6	3.8	6	3.0	6	3.7	6	3.2	6	3.3	6
OUT-OF-ALASKA	4.0	1	4.0	1	3.0	1	4.0	1	4.0	1	4.0	1
<u>AMOUNT OF EXPERIENCE</u>												
NO ANSWER	4.0	26	3.8	26	3.3	23	3.5	26	3.5	26	3.5	26
SUBSTANTIAL	4.2	103	4.2	103	3.6	99	4.0	103	3.9	103	4.0	103
MODERATE	4.0	43	4.0	42	3.4	37	3.9	43	3.5	42	3.7	42
LIMITED	4.1	22	4.2	21	3.8	16	4.0	22	3.8	21	4.0	22

November 29, 1996

UNSOLICITED REFERENCE

RECEIVED

DEC 4 1996

Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1981

AK Judicial Council

Re: Candidacy of Barbara Brink for
Director, Alaska Public Defender Agency

Dear Council Members:

I am writing this unsolicited letter of reference in support of the candidacy of Barbara Brink for the position of the Director of the Alaska Public Defender Agency. As an Assistant Public Defender for almost twelve years, I am fortunate to be acquainted with almost all of the applicants for the position. In my opinion, Barb is the most qualified applicant for the job.

I have known Barb in a professional and personal capacity for almost a decade. During that time, both of us have been practicing criminal law at the Public Defender Agency. While both of us started as trial lawyers, Barb has been the Deputy Public Defender in charge of the Anchorage office for a number of years, and I have been the supervisor of the appellate section for the past four years. Based on my direct working experience with Barb and my observation of her trial skills, I can fairly state that she is one of the most outstanding criminal defense lawyers I have ever known. Her courtroom presence is always appropriate. She is a tenacious litigator who understands the importance of delivering quality legal services to her client. As deputy director, she has consistently monitored the staff lawyers to ensure that every attorney in the office provides that same quality of service.

In addition to being a highly regarded trial lawyer, Barb has a keen analytic mind and an excellent command of the law. As an appellate lawyer, I frequently feel the need to discuss complex legal issues with other attorneys in the office. My first choice for a sounding board is always Barb. She quickly grasps the legal issues I'm pondering and focuses in on the issue. She has excellent and temperate judgement. I always leave her office knowing more about the law than when I came in the door. I know that every attorney in the office shares my view that she is a great resource for any legal problem that arises.

Barb is also a very good administrator. Given the nature and temperament of criminal defense attorneys in general, and public defenders in particular, being the deputy director can be a thankless task. Barb has a very innovative approach to systemic problems and fair treatment of all lawyers affected by administrative decisions. She includes people in the decision-making process in an effort to achieve consensus--a trait shared

by all those who understand the importance of management issues. In addition, Barb is known throughout the agency for her ability to work with the most difficult clients and lawyers--a skill that will serve her well as director of this office.

Finally, I can't write a letter of support for Barb without mentioning her commitment to work on behalf of Alaska's indigent citizens. She is truly the hardest working lawyer in the office. She can be found in the office any time of the day or night, weekends as well as during the work week. More than once she has worked all night in order to complete pleadings in a case. Many times these cases were not originally assigned to her--she simply pitched in to help when she saw the need was there. As the appellate supervisor, I have on many occasions come across Barb's legal pleadings in an appellate record. I can categorically state that her work is exceptional.

I realize that in making its recommendations to Governor Knowles, the Judicial Council members will be guided by many factors. If those factors include a proven ability to administer a large group of fairly egocentric lawyers, the proven ability to expertly assume a job in the office, and a demonstrated commitment to the able representation of Alaska's impoverished citizens in an efficient and professional manner, you cannot do better in that regard than appointing Barb Brink.

Sincerely yours,



Margi A. Mock

MM:sh

BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

LAW OFFICES

Kevin T. Fitzgerald

1031 West 4th Avenue, Suite 600
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NOV 26 1996

AK Judicial Council

November 25, 1996

Alaska Judicial Council
1029 W. Third Avenue
Suite 201
Anchorage, Alaska 99501

UNSOLICITED REFERENCE

Dear Members of the Alaska Judicial Council:

This is a letter of support for Barbara Brink. During my nearly eight years as a prosecutor I occasionally found myself opposite a case with Ms. Brink. On those occasions I was frequently impressed with her professional competence and performance. I always thought that Ms. Brink did a tremendous job zealously representing her clients. Over the years I have also found Ms. Brink to be a "straight shooter."

I understand that Ms. Brink received quite low scores from the prosecutors who responded to the bar poll. This surprises me since I felt that my view of Ms. Brink's abilities and integrity were shared by my colleagues. I am concerned that some of my former colleagues have confused Ms. Brink's advocacy with her integrity. I feel that frequently prosecutors and defense attorneys develop an "us against them" mentality. Unfortunately, this siege mentality prevents attorneys in the respective agencies from having anything good to say about each other.

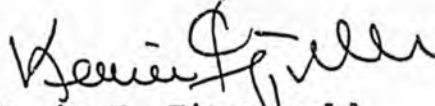
For my own part, I believe Ms. Brink possesses both the character and competence required in a position as important as public defender. As a result, I support her candidacy for that position.

Alaska Judicial Council
November 25, 1996
Page 2

If you have any questions of me please do not hesitate
to contact me.

Very truly yours,

BOGLE & GATES P.L.L.C.


Kevin T. Fitzgerald

BOGLE & GATES P.L.L.C.

Donna J. McCready
733 West Fourth Avenue
No. 668
Anchorage, Alaska 99501

November 18, 1996

Judicial Council
Suite 201
1029 W. 3rd Avenue
Anchorage, Alaska 99501-1981

UNSOLICITED REFERENCE

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NOV 26 1996
AK Judicial Council

Dear Members of the Judicial Council,

I am pleased to write a letter on behalf of Barb Brink in support of her being named to succeed John Salemi as the Public Defender.

I have known Ms. Brink for approximately six years professionally. I worked for the Public Defender Agency as an intern in Anchorage in 1990 and then as a staff attorney in Juneau from January, 1992, through August, 1994. As a staff attorney at the Office of Public Advocacy in Anchorage for the past two years, I have continued to have professional and personal dealings with Ms. Brink.

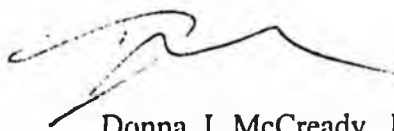
Ms. Brink exemplifies the best qualities of the legal profession. She is an excellent and committed advocate while maintaining the highest level of integrity.

Nonetheless, I could not support Ms. Brink simply because I believed her to be an excellent attorney. I believe Ms. Brink to be uniquely qualified for the position of the Public Defender because, in addition to being an impressive advocate, she has excellent administrative, organizational and interpersonal skills. I know this because I worked with Ms. Brink personally at the Public Defender Agency and I know of her reputation.

Finally, because I consider Ms. Brink to have the highest ethics I believe that she will instill respect and confidence in the position of the Public Defender and in the Agency as a whole.

Thank you for this opportunity to express my support for Barb Brink. Please call me if you have any questions.

Sincerely,



Donna J. McCready, Esq.

November 19, 1996

William Cotton, Executive Director
Alaska Judicial Council
1029 West 3rd Avenue, Suite 201
Anchorage, Alaska 99501

UNSOLICITED REFERENCE

RECEIVED

NOV 22 1996

AK Judicial Council

Re: Barbara Brink

Dear Mr. Cotton:

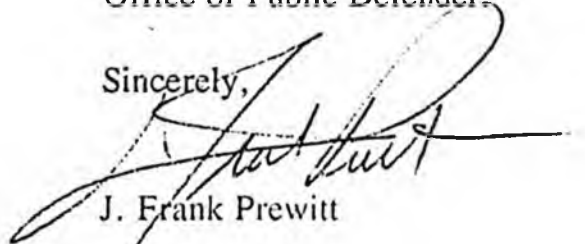
I understand that Barbara Brink is seeking appointment as Public Defender for the State of Alaska.

During the Sheffield, Cowper and Hickel administrations, I had occasion to work with Ms. Brink on Sentencing Commission issues, as opposing counsel, and as a public administrator. Being on the opposite sides of emotionally charged or highly controversial issues places one in a unique position to offer opinions concerning the intelligence, character, and competence of opposing counsel. I can say without hesitation that Barbara Brink excels in each respect.

As a trial lawyer she is organized, articulate, and formidable; as a negotiator she is balanced, persuasive, and prepared; and as an advocate she tenaciously promotes public policies that are tempered by compassion, reason, and fairness.

The people of Alaska would be well served by Ms. Brink's appointment to the Office of Public Defender.

Sincerely,


J. Frank Prewitt

Joseph B. Austin
5201 Secluded Circle
Anchorage, Alaska 99516
Phone (907) 345-3806

December 9, 1996

UNSOLICITED REFERENCE

Alaska Judicial Council
1029 W. Third Ave, Suite 201
Anchorage, AK 99501

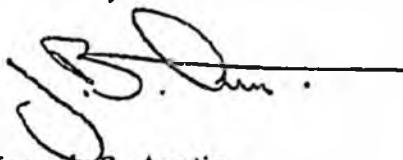
I'm writing you this letter in support of Ms. Barbara Brink, for the Alaska Public Defender position in Anchorage.

I'm a retired Anchorage police officer who was on the opposing side in a number of cases where Ms. Brink represented the defendant. I found her to be honest, ethical, hard working, and fair, while remaining a strong advocate for her clients. She was also prepared and well organized on the cases I was involved in.

I can recall blistering cross examinations by Ms. Brink but don't recall ever hearing anyone question her integrity.

In my opinion she would be an excellent choice to head the Alaska Public Defender agency.

Sincerely,



Joseph B. Austin
Sergeant, APD (Retired)

RECEIVED

NOV 6 1996

AK Judicial Council

Thomas J. Meyer
Attorney at Law
NBA Building
217 Second Street, Suite 204
Juneau, AK 99801

(907) 586-8666

(907) 586-8059 FAX

November 4, 1996

Alaska Judicial Council
1029 W. 3rd Ave.
Suite 201
Anchorage, AK 99501

UNSOLICITED REFERENCE

Dear Members of the Council:

I am writing in reference to your evaluation of the candidates for the Public Defender Agency director vacancy and in particular, Ms. Barbara Brink.

By way of introduction, I am in private practice. I primarily defend people charged with all levels of State offenses. I am also presently a contract defense attorney for the Office of Public Advocacy which is headed by Mr. Brant McGee. Previously, I was an assistant Public Defender for seven years and supervised the Juneau office of the agency. This past session, I was counsel for the Alaska House of Representatives Judiciary Committee. Earlier in my career, I was a Superior Court law clerk for Judge Duane K. Craske in Sitka.

During my seven years with the Public Defender Agency, Ms. Brink was the Deputy Public Defender. I had a substantial amount of contact with her, ranging from advice on issues in cases to getting her approval of expenditures for hiring expert witnesses. I also had personal contact on social occasions. My most recent contacts occurred when she testified before the Judiciary Committee on bills of concern to the agency.

Given the role and status of the Public Defender Agency in our state's government, it is clear that it needs a strong advocate for its interests. Because Ms. Brink is familiar with the agency administratively and in some measure, politically, she has built-in experience and an advantage over the other candidates.

Is Ms. Brink qualified for the position? Her substantial experience as an assistant Public Defender prepares her well for decisions on major issues in cases on which her advice will be sought by assistant Public Defenders. Ms. Brink, in my experience, also has very good personnel relations--an important qualification for the chief officer of an agency. Furthermore, her administrative experience gives her important perspective on the agency's history and where it must go in the future. She already knows about budget

Letter to Alaska Judicial Council

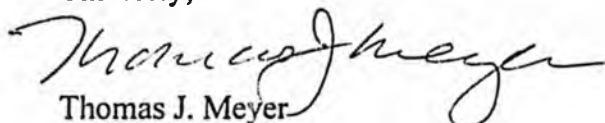
Page two

November 4, 1996

issues and how to balance the budget with the agency's overall goal of representing indigent people zealously. In conclusion, Ms. Brink should best be able to continue the agency's tradition of providing excellent legal services notwithstanding a shrinking budget. But most important, she is a true believer in the defense function and adherence to Alaska's constitution.

Ms. Brink has a very good head on her shoulders. Please refer her to the Governor for appointment. If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Thomas J. Meyer". The signature is written in dark ink and is positioned above the printed name.

Thomas J. Meyer

Public Defender Applicant
Counsel Questionnaire

Barbara K. Brink

RECEIVED
OCT 21 1996
AK Judicial Council

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

Ms. Brink is a highly competent attorney. She demonstrated a thorough grasp of legal issues & facts. She ~~fight~~ fights hard for her clients, but does not stoop to unfair or questionable tactics. She has the ~~is~~ intellectual ability to head the agency. She has shown over the past several years that she would ~~like~~ continue to make ~~an~~ a good supervising attorney.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

She has good temperament. She can be forceful when necessary, but she ~~will~~ would also be humble enough to not misuse the power of the office.

(Over) →

3. Did the attorney work conscientiously on the case? Were pleadings filed timely and were deadlines met?

yes to all

4. Please give us your general comments on the attorney, and assess what type of public defender he or she would make.

I think Ms. Brink is the best candidate for the job. She has experience both as a trial attorney & as a supervising attorney, & I think she has proven that she would do an excellent job as head of the agency

MARU ANNE HENRY
Print Name (Optional)

Your comments, whether or not you give your name, will not be shown to the applicant. However, a general summary of all comments received will be shared.

Please check this box only if you want your comments (and name if provided) sent to the Governor. We cannot guarantee your confidentiality if you check this box.

Public Defender Applicant
Counsel Questionnaire

RECEIVED

OCT 14 1996

AK Judicial Council

Barbara K. Brink

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

I have utmost respect for Barb's intellectual abilities and believe that she is well-suited for this position. My experience with Barb, on this and other cases, is that she quickly grasps the important issues, weeds through the intricacies, and then proceeds to do very thorough legal research and drafting before coming up with a final product. I trust Barb's judgment and skills more than any lawyer I know, Barb is sought out for advice -- on legal questions, strategy and ethics -- significantly more often than any other lawyer in the agency statewide.

I believe that Barb is one of the best lawyers in the state - in all aspects of criminal defense work. Her legal analysis and motion work in Whitaker resulted in a just and legally sound sentence, without spending years in appellate practice.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

I believe that Barb's interest in this position has nothing to do with power, prestige or money. Instead, it reflects her career-long dedication to this agency and its work. As deputy, Barb has demonstrated the highest standards and skills in managing the Anchorage office and in ensuring proper representation of our clients. As public defender, she would bring a personal familiarity with every function of this agency since she consistently steps up to the plate whenever a need arises -- from clerical duties to every lawyers' duties. She is a wise, strong and supportive leader, by example and by her direction

(Over) →

3. Did the attorney work conscientiously on the case? Were pleadings filed timely and were deadlines met?

Barb's conscientiousness and perseverance made all of the difference in Whitaker and convinced the trial court, after multiple pleadings, to reconsider its earlier ruling. Her work is always thorough and well-reasoned. As a result, I believe she has earned the highest respect from judges, prosecutors and defense lawyers alike.

Unlike other lawyers, Barb never misses deadlines and rarely, if ever, files pleadings late. Her style is a reflection of her conscientiousness and her truly remarkable organizational skills (see below).

4. Please give us your general comments on the attorney, and assess what type of public defender he or she would make.

Barb's legal, supervisory and administrative skills are outstanding! In the face of an overwhelming amount of work, she is the most organized person I know. When necessary, Barb takes a strong and principled stand and requires those who work for her to rise to her standards. Yet she is never unnecessarily confrontational or adversarial. Barb is the quintessential diplomat and brings superior negotiation skill to any and every dispute, with d.a.'s, clients or staff members. She is invariably patient, calm and reasonable. I completely trust her judgment.

Barb has demonstrated what kind of public defender she would be, in her role as deputy. She is the most valuable resource this Agency has and I wholeheartedly support her application for public defender.

Suzanne Cole
Print Name (Optional)

Your comments, whether or not you give your name, will not be shown to the applicant. However, a general summary of all comments received will be shared.

- Please check this box only if you want your comments (and name if provided) sent to the Governor. We cannot guarantee your confidentiality if you check this box.

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OCT 14 1966

AK Judicial Council

Public Defender Applicant (Barbara Brink)
Counsel Questionnaire

(1) I have done two trials and negotiated many other cases with Ms. Brink. The depth of her experience in criminal law is obvious in her trial practice. Her cases are well prepared and well argued. Not only does she have an impressive grasp of legal issues, she handles sensitive subjects such as racial discrimination skillfully and thoughtfully.

(2) Ms. Brink has a strong personality which would enable her to manage the different individuals of the Public Defender's Office fairly. She is not intimidated by other strong personalities, but I would think that her staff would find her approachable and sensitive to their problems. Although we have been adversaries in court, she has always been courteous and enjoyable to work with. Many defense attorneys can be obstreperous and unprofessional in their dealings with prosecutors. This has never been the case with Ms. Brink. Although we do not always agree, our dealings have always been civil and productive.

(3) Ms. Brink is a very conscientious person who cares deeply for her work and for her clients.

(4) When I heard that Mr. Salemi was leaving the Public Defender's Office, I assumed that Ms. Brink would apply for the opening. She has been in training for the position as the deputy for many years and I think that it would be a natural transition for her and for the office. She has dedicated her professional life to public service as a public defender when many others have moved on to private practice. She has an open mind and is willing to listen to opposing viewpoints. She also has a sense of humor which would be invaluable in managing the office. Her abilities as an attorney are well respected among attorneys that I know and I believe she is respected by her colleagues as well. She has practiced in the criminal law community long enough to develop a productive working relationship with the staff of other agencies, such as the District Attorney's Office, the Attorney General's Office, DFYS, etc. which would facilitate the work of the Public Defender Agency.

I strongly support her application for Public Defender.

Helen Valkavich

Please send my comments to the governor for consideration.

Public Defender Applicant
Counsel Questionnaire

RECEIVED

OCT 7 1996

AK Judicial Council

Barbara K. Brink

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

1. Ms. Brink is an excellent attorney; one of the best trial attorneys in the state. The Fox case involved some complicated legal issues - a posse comitatus motion was filed by both defendants and both defendants filed various motions to dismiss the case, suppress evidence, and discover evidence. I was awed and impressed by Ms. Brink's ability to recognize legal issues and thoroughly argue them to the judge. Frankly, I followed Ms. Brink's lead in this case; she qud me in to issues I may have missed. In her arguments to both the judge and jury, she was able to quickly and clearly articulate her legal and factual arguments. I felt like I learned a lot from watching Ms. Brink in trial.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

2. Ms. Brink has a very level temperament. It is patently obvious that she is an extremely bright woman, and one who does not let her emotions rule her actions. For this reason, I think she would be an excellent choice for Public Defender. She is a smart, logical and rational person. Despite her reputation as a talented and experienced attorney, she is not arrogant or obnoxious and treats all those with whom she deals -- secretaries, court clerks, less experienced and more experienced attorneys -- as equals.

(Over) →

3. Did the attorney work conscientiously on the case? Were pleadings filed timely and were deadlines met?

3. Ms. Brink was extremely well prepared for the trial. Many motions were filed, all in a timely matter. She was prepared for the evidentiary hearing, and her arguments and examination of witnesses at trial demonstrated a thorough knowledge of the case, which could only have been gained through intensive preparation.

4. Please give us your general comments on the attorney, and assess what type of public defender he or she would make.

4. I cannot imagine a better candidate for the position of Public Defender. Ms. Brink has a thorough knowledge of the criminal justice system, and is devoted to the representation of indigent persons. She is a thoughtful and extremely organized person, and a hard worker. Moreover, she is fair in her dealings with people, and is well liked and respected by both prosecutors, members of the defense bar, court personnel and support staff.

Sharon Barr
Print Name (Optional)

Your comments, whether or not you give your name, will not be shown to the applicant. However, a general summary of all comments received will be shared.

Please check this box only if you want your comments (and name if provided) sent to the Governor. We cannot guarantee your confidentiality if you check this box.

02/10/97

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

13:05:14

PARTICIPANT LIST (ALL PARTICIPANTS)

BY:ANC

TCN:70233

SCHEDULED FOR:02/10/97 13:00 TO 15:00

FOR:ANC

PUBLIC HEARING

HOUSE JUDICIARY

LOCATION: ANCHORAGE

ATTY GEN ABILI

JOANNE

GRACE (ANSWER ?'S IF NEEDED)

TESTIFY

APPOINTMENT OF

JOHNNY

~~GRAVES~~

DADS

TESTIFY

GRAVES

Alaska Judicial Council
Application for Public Defender Appointment

Date: September 16, 1996

Office Telephone: (907) 264-4400

Home Telephone: (907) 250-4666

FAX: (907) 269-5476

RECEIVED

SEP 16 1996

AK Judicial Council

I. PUBLIC INFORMATION (Qs. 1-27 & 33)

PERSONAL

1. (a) State full name* Barbara Karen Brink
Name as it should appear on bar survey: Barbara K. Brink
* Unless otherwise specified, this is how your name will appear on the bar survey.
- (b) Have you ever used or been known by any other name? If so, please identify
No.
2. (a) Mailing address 810 West 16th Avenue
Anchorage, AK 99501
- (b) Current business address 900 West 5th Avenue, #200
Anchorage, AK 99501
3. Date and place of birth Menominee, Michigan ^{2/26/56} Age 40
4. (a) Spouse's full name and occupation None
- (b) Children's names None
- (c) Occupations of children over 18 None

5. State every residence you have had in the last five years in the United States or elsewhere, with exact address of each, and the month and year of the beginning and ending of each such residence.

Oct. 1993 to present: 810 W. 16th Ave., Anchorage, AK 99501

Oct. 1992 to Oct. 1993: Spruce Haven, Kodiak, AK 99615 (P.O.Box 2395)

Feb. 1990 to Oct. 1992: 816 W. 16th Ave., Anchorage, AK 99501

6. How long have you been a resident of the State of Alaska immediately preceding the date of this application? ** 15 years 1 months

Total years 15 months 1

7. How long have you been engaged in the active practice of law immediately preceding the date of this application? ** 14 years 1 months

Total years 14 months 1

NONLEGAL EDUCATION

8. State names and dates of attendance of all colleges and professional schools (other than law schools) ever attended and degrees and dates conferred. List any honors.

The University of Chicago - Sept. 1974 - June 1978

Bachelor of Arts with Honors

Dean's List - 4 years

Maroon Key Honor Society

Gertrude Dudley Scholarship

"Order of the C" - varsity letter volleyball, basketball, softball

LEGAL EDUCATION

9. List all law schools, dates attended and degrees conferred. If you did not receive a degree from any law school, please indicate.

University of California - Hastings College of the Law, San Francisco

August 1978 to May 1981 - Juris Doctorate

10. (a) Did you receive any honors in law school or belong to any honorary societies or groups?
yes If so, please give details.

Jessup International Moot Court Team
Public Interest Law Foundation

(b) Have you taken any CLE (continuing legal education) courses during the past five years?

Yes X No _____ Please describe: NITA trial advocacy seminar
Annual State of Alaska Public Defender - ATLA Conference
National Legal Aid and Defender Association Management
Training and Fund Raising Project
(plus various trainings: e.g., immigration law) conducted by the Alaska
Federal Defender.

MILITARY

11. Have you served in the armed forces (reserves or otherwise)? No

If so, please provide the following information:

- (a) Dates of service: _____
- (b) Branch of service: _____
- (c) Rank at time of discharge: _____
- (d) Type of military discharge: _____
- (e) Awards or citations: _____

(f) Have you ever been refused admission to or released from any of the armed services for reasons other than honorable discharge? If so, state the details.

NONLEGAL EMPLOYMENT

12. Describe major nonlegal working experience, if any.

only part-time and summers until education complete: lifeguard, delivery
driver, intramural sports coordinator.

13. Describe major nonlegal business or professional experience, if any. If your association has been discontinued, please note whether there are unpaid debts or claims pending litigation.

None.

Per Barb Brink:
no known address
for Roger Connor--
she thinks he's in
Japan...

LEGAL EXPERIENCE

14. Describe chronologically your legal employment since admission to law school. Please provide dates, name of employer, name of supervisor, addresses, the reason you left the position, and a brief description of type of practice (i.e., insurance defense, criminal, appellate, general, litigation, etc.). Please describe in more detail both your criminal law and supervisory/administrative experience. Also, provide the name and current address of a person, preferably your supervisor, who can verify your employment for each position listed below.

CONTRA COSTA COUNTY PUBLIC DEFENDER AGENCY, 1957 B Parkside Drive, Concord, CA 94519

Law Clerk - June 1980 - July 1981. Supervisor: Ken Dothee. Initial client interviews regarding financial eligibility and case information. Researched and drafted pleadings, argued motions in court, assisted felony and misdemeanor trial attorneys and conducted misdemeanor non-jury trial. Left to move to Alaska.

THE SUPREME COURT OF THE STATE OF ALASKA, 303 K Street, 5th Floor, Anchorage, AK 99501

Law Clerk to Justice Roger Connor - August 1981 - July 1982. Researched and drafted bench memos prior to oral argument, summarizing and evaluating litigant arguments. Drafted and edited opinions. Supervised work of legal intern/law student. One year internship.

THE ALASKA PUBLIC DEFENDER AGENCY, 900 W. 5th Avenue, Suite 200, Anchorage, AK 99501

Assistant Public Defender - August 1982 - October 1988. Supervisor: Dana Fabe. Started service as an appellate lawyer, progressed as misdemeanor trial lawyer, felony trial lawyer, appellate supervisor, felony intake lawyer. Have handled every type of case at every level including delinquency, CINA and involuntary civil commitments.

LEGAL EXPERIENCE (Cont.)

14. THE ALASKA PUBLIC DEFENDER AGENCY (Continued)

Deputy Public Defender - October 1988 - September 1996. Supervisor: John Salemi. Assisted director in all phases of administration as well as provide direct attorney services in all types of cases as needed in urban and rural courts.

Acting Director - September 1996 - present. Administer state agency of 13 offices with 108 employees who provide legal services in over 17,000 cases per year. Duties include personnel oversight, preparation of annual budget in coordination with Department of Administration, testimony before the legislature on substantive and procedural criminal bills, service on various boards, task forces and committees that deal with criminal justice issues.

15. For the past five years, please indicate (approximately) the following:

(a) Percent of your practice that was

Civil	<u>5</u>
Criminal	<u>95</u>
Other	<u> </u>

= 100%

Comment: _____

(b) Percent

State	<u>100</u>
Federal	<u> </u>
Other	<u> </u>

= 100%

Comment: _____

(c) Of practice in state courts, percent:

Supreme Court	<u>5</u>
Court of Appeals	<u>5</u>
Superior Court	<u>80</u>
District Court	<u>10</u>

= 100%

Comment: _____

(d) Frequency of appearance in court: Regularly X; Occasionally _____;
Infrequently _____; Not at All _____

Comment: _____

(e) Number of trials (by court or jury) you conducted in the past 5 years:
 None X 1 to 5 6 to 16 16 to 30 31 or more

Comment: _____

(f) Percent of these trials which were: Jury 100 Non-Jury _____

Comment: _____

(g) Approximate number of appellate matters handled: 10;

Comment: _____

(h) Approximate number of arbitrations or administrative hearings: X None
 1 to 5 6 to 16 16 to 30 31 or more

Briefly describe type of matters heard: _____

(i) Have you undertaken any pro bono work during this period?

Yes _____ No X

Describe: Not permitted under Alaska Statute 18.85.070 which prohibits public defenders from other practice of law.

16. List all the courts and administrative tribunals in the United States or elsewhere to which you are or have been admitted to practice, and the dates of admission.

State Courts of California 12/81

State Courts of Alaska 6/82

PUBLIC SERVICE

17. List bar associations, sections and committees of which you are or have been a member or officer.

-Alaska Bar Association - Annual Conference Planning Committee 1994

-California Bar Association - Inactive status

-National Association of Criminal Defense Lawyers

-National Legal Aid and Defender Association

-California Public Defenders Association

-Southern Poverty Law Center -Northwest Womens Law Center

18. List legal publications, if any (give title, subject and date of publications):

19. Have you ever applied for a judgeship or for public defender? Please list dates and judgeships applied for, as well as whether you were nominated by the Judicial Council and appointed:

Judgeship/Public Defender	Date	Nominated By Council (Y/N)	Appointed By Governor (Y/N)
NO n/a			

20. Have you ever held public or political office, elective or appointive? No

If so, state office, manner selected, and when and where held.

21. List all nonlegal organizations and clubs of which you are a member, including civic, charitable, religious, educational, social and fraternal. (Please indicate whether you participate in the organization's activities, or simply hold a membership.)

- Alaska Aids Assistance Association - Board member
- Alaskans Against the Death Penalty - Board member
- National Coalition to Abolish the Death Penalty - Member
- Alaska Center for the Environment - Member
- Sierra Club - Member
- Anchorage Women's Hockey League - Member
- Alaska Sports Association - basketball and softball team - Member
- Habitat for Humanity - Member
- National Museum for Women in the Arts - Charter member
- Amnesty International - Member
- ACLU - Member
-
-
-

22. Indicate (Yes or No) whether you have ever:

- (a) been arrested, charged with, pled guilty or "nolo contendere" to, or been convicted of the violation of any law or ordinance, or been requested to appear before any prosecuting or investigative agency in connection with any matter other than minor traffic offenses (those for which a fine of \$50.00 or less, and no other sanctions were imposed)?
No
- (b) failed to answer any summons or other legal process served upon you personally at any time? No
- (c) as a member of any armed forces, been the subject of any charges which may have resulted in disciplinary action or court martial? No

(d) had any proceedings brought to have you declared a ward of any court or adjudged an incompetent? No

If your answer is "yes" to any part of this question, state the facts in detail. Give the name and place of the court or agency, dates of the beginning and end of any action or proceeding, case numbers, and the judgment or other disposition.

23. (a) Has a tax lien or other collection procedure ever been instituted against you by federal, state or local authorities? In particular, have you been the subject of any proceeding, criminal or civil, initiated against you by the Internal Revenue Service or a State Tax Office? If so, give particulars, including case numbers.

No

(b) Have you ever been sued by a client? If so, give particulars, including case numbers.

No

- (c) Have you ever been a party in any other legal proceeding? If so, give the particulars. Include all legal proceedings in which you were a party in interest, including divorce/dissolution proceedings; a material witness; a named co-conspirator or correspondent; and any grand jury investigation in which you figured as a subject, or in which you appeared as a witness. Do not list proceedings in which you were sued only in a representative capacity (e.g. Guardian ad litem, or as Commissioner of Natural Resources).

Yes. In Darryl Waters v. State of Alaska (3ANS-84-1279 CR)

I was a witness in a criminal defendant's action for
post-conviction relief.

24. State the nature and disposition of any of the following actions which apply to you:

- (a) Are there any unsatisfied judgments against you? Have you ever defaulted in the performance of any court-imposed obligation, including payment of alimony or child support or compliance with another court order or decree? In each case, list the name and address of the creditor, the court which rendered the judgment, the case number, the date, the amount of the judgment, and the circumstances on which such claim was based. Has property owned by you been either judicially or non-judicially foreclosed? Please state the circumstances and outcome of any such unsatisfied or default judgment, or of any foreclosure.

No

- (b) Have you ever made an assignment for the benefit of creditors? Has any petition in bankruptcy ever been filed by you? If so, state the circumstances, case number, and the outcome.

No

REFERENCES*

25. (a) List the names, addresses, and phone numbers of two persons whom the Judicial Council may contact who can discuss your general character and background.

(1) NAME: Cammy Oechsli, Assistant Attorney General
ADDRESS: 1031 W. 4th Avenue, Suite 200
CITY/STATE/ZIP: Anchorage, Alaska 99501 PHONE: 269-5293

(2) NAME: The Honorable Michael L. Wolverton
ADDRESS: Alaska District Court, 825 W. 4th Avenue, Room 342
CITY/STATE/ZIP: Anchorage, Alaska 99501 PHONE: 264-0665

- (b) List the names, addresses, and phone numbers of three other persons whom the Judicial Council may contact who can discuss your professional competence and qualifications for a public defender position. (You should not list the Chief Justice of the Alaska Supreme Court.)

(1) NAME: Justice Dana A. Fabe
ADDRESS: Alaska Supreme Court, 303 K Street, 5th Floor
CITY/STATE/ZIP: Anchorage, Alaska 99501 PHONE: 264-0622

(2) NAME: John Salemi, Assistant Federal Defender
ADDRESS: 550 W. 7th Avenue #1600
CITY/STATE/ZIP: Anchorage, Alaska 99501 PHONE: 271-2277

(3) NAME: Brant McGee, Public Advocate
ADDRESS: 900 W. 5th Avenue, Suite 525
CITY/STATE/ZIP: Anchorage, Alaska 99501 PHONE: 274-1684

* Please Note: Letters of reference from these persons are confidential and will not be given to either the Governor or the applicant. The applicant should not request a copy of the letter from the reference.

REFERENCES (continued)

- (c) List the names, addresses and phone numbers of attorneys involved in your three most recent cases that have gone to trial. (Applicants who are currently judges should list the three most recent trials they presided over.) List only those cases which have gone to trial within the past three years. Please include case names and numbers. (*Attach additional pages if necessary.*)

1

Name of Case
State of Alaska v. Larry Fox and Odell Fox

Case Number
3ANS-93-7688 Cr.

Attorneys Involved

Name: Helen Valkavich, Assistant District Attorney
 Address: P.O. Box 102417 Anchorage, AK 99510-2417
269-6250

Name: Sharon Barr, Assistant Public Advocate
 Address: 900 W. 5th Avenue, Suite 200 Anchorage, AK 99501
264-4436

Name: _____
 Address: _____

Name: _____
 Address: _____

2

Name of Case
State of Alaska v. Joseph Tyler

Case Number
3ANS-92-1811 Cr.

Attorneys Involved

Name: Helen Valkavich, Assistant District Attorney
 Address: P.O. Box 102417 Anchorage, AK 99510-2417
269-6250

Name: _____
 Address: _____

Name: _____
 Address: _____

Name: _____
 Address: _____

3

Name of Case
State of Alaska v. Eirik Petersen

Case Number
3ANS-86-7914 Cr.

Attorneys Involved

Name: Adrienne Bachman, Assistant District Attorney
 Address: 310 K Street, Ste. 520 Anchorage, Alaska 99501
269-6324

Name: _____
 Address: _____

Name: _____
 Address: _____

Name: _____
 Address: _____

REFERENCES (continued)

- (d) List the names, addresses and phone numbers of attorneys involved in your three most recent cases that did not go to trial but in which you did significant work. (Applicants who are currently judges should list the three most recent cases they presided over that did not go to trial but in which they did significant work.) Please include case names and numbers. (*Attach additional pages if necessary.*)

1 Name of Case State of Alaska v. Doretha Cowan Case Number 3ANS-96-3763 Cr.
and Kyeme Melton

Attorneys Involved

Name Mary Anne Henry, Assistant District Attorney
Address 310 K Street, Suite 520
Anchorage, AK 99501
269-6355

Name Leslie Hiebert, Assistant Public Advocate
Address 900 W. 5th Ave. #525
Anchorage, AK 99501
274-1684

Name _____
Address _____

Name _____
Address _____

2 Name of Case State of Alaska v. Julie Burns Case Number 3ANS-95-5829 Cr.

Attorneys Involved

Name Sam Adams, Assistant District Attorney
Address 310 K Street, Suite 520
Anchorage, AK 99501
269-6368

Name _____
Address _____

Name _____
Address _____

Name _____
Address _____

3 Name of Case State of Alaska v. Darryl Shane Whitaker Case Number 3ANS-93-8448 Cr.

Attorneys Involved

Name Mary Anne Henry, Assistant District Attorney
Address 310 K Street, Ste. 520
Anchorage, AK 99501
269-6355

Name Suzanne Cole, Assistant Public Defender
Address 900 W. 5th Avenue, Suite 200
Anchorage, AK 99501
264-4422

Name _____
Address _____

Name _____
Address _____

ADDITIONAL COMMENTS (Non-Confidential)

33. Please make any additional comments that you wish to bring to the Council's attention regarding your experience and suitability for this position.

I went to law school to become a public defender. At the time there seemed to be no legal work more important or more exciting. After working as a public defender attorney in Alaska for more than 14 years I still believe this.

Although I have been offered other employment opportunities, I have continued to represent indigent people accused of crimes. I am highly committed to the defense function and the administration of criminal justice. I feel very fortunate that I find my work here challenging and rewarding. I love my job.

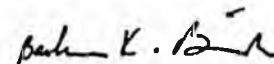
I believe I have unique qualifications and experience for this directorship. Since beginning with the Alaska Public Defender Agency in Anchorage in 1982, I have performed every staff function from investigator to acting director. I have worked in appeals, family law, juvenile law, misdemeanors, involuntary commitments (API hearings), felony intake and felony trials.

I have also been fortunate in my position to occasionally live in and often to travel to the rural areas of Alaska handling criminal cases in many bush locations. I spent a three month period of time in the Ketchikan office. I was the supervisor of the Kodiak office. I have handled cases in Kotzebue, Dillingham, Bethel, Valdez, Glennallen, Naknek, Cordova, Unalaska, Craig, Homer, Seward, Palmer, St. Marys, Sand Point and St. Paul Island. This experience has given me insight concerning the needs of the public defender clients and staff. I am familiar with the particularized issues which arise in rural court locations and the sensitivity that must be shown to Alaska Native peoples in the context of criminal and family court litigation.

I am very familiar with the responsibilities of the director of the Public Defender Agency. For eight years now I have been second in command of this statewide agency. As the Deputy Public Defender, I have been called on to assist in budget preparation, provide written comment and critique on proposed legislation, testify before legislative bodies on budget and legislative matters, attend court system meetings, engage in public relations and community service, handle personnel matters and training, as well as to provide direct client services. I am currently serving as Acting Director and I am charged with the responsibilities of the position for which I now apply.

My main focus during this interim period is to review the workings of our agency. I think we have been blessed with a history of sound management. However, my experience has also taught me that there are areas in which we can improve. In particular, I specifically wish to improve our client relations, and our delivery of services to rural Alaska. In a time when many entities within the criminal justice system are moving to more localized services, the Alaska Public Defender Agency wishes to support and actively participate in this practice. Additionally, for those functions which can be coordinated at a statewide level and relieve some of the burden from our outer offices, I hope to make changes to coordinate our legal efforts. I am surveying our clients, staff, and other participants in the criminal justice system for other creative suggestions to improve our efficiency and performance. We are also currently participating in a legislative audit which I believe will provide useful insight.

In summary, I understand the responsibilities of this position and I have the experience, the organizational skills and the desire to undertake these duties. I have a high degree of enthusiasm and energy that I hope to use to continue to serve our clients and the citizens of the State of Alaska.



Barbara K. Brink

CERTIFICATION AND WAIVER

I hereby certify that, to the best of my knowledge, the information provided on this application is true and complete.

I hereby waive any privilege of confidentiality I may have with respect to information concerning my qualifications for public defender which the Judicial Council may desire to obtain. I specifically authorize the Council to obtain information regarding me from any credit reporting agency, any law enforcement agency, and the Judicial Conduct Commission. I further authorize all of the aforesaid institutions, organizations, and individuals to make available to the Council all documents, records, and information concerning me which the Council may request.

Barbara K. Brink
Signature of Applicant

Barbara K. Brink
Typed Name

9/13/96
Date

Subscribed and sworn to before me this 13 day of SEPTEMBER, 1996.

Susan A. Hedger
Notary Public, State of Alaska
My Commission expires: 1/27/99

IN THE COURT OF APPEALS FOR THE STATE OF ALASKA

1 : STATE OF ALASKA,)
2 :)
3 : Appellant,)
4 : vs.)
5 : JUSTIN MONK,)
6 : Appellee.)

Writing Sample

7 : Court of Appeals No. A-5125
8 : Trial Court No. 3AN-S93-560 Cr.

9 : APPELLEE'S SENTENCE MEMORANDUM

10 : CERTIFICATION

11 : This document and its attachments do not contain information that is confidential under
12 : AS 12.61.110 or the name of an alleged victim of a crime listed in AS 12.61.140.
13 : This document or an attachment contains confidential information that may be placed in
14 : a court file under an exception listed in AS 12.61.130(b). This information appears
15 : at _____ . This document and its attachments do not contain the
16 : name of an alleged victim of a crime listed in AS 12.61.140.

17 : Justin Monk plead no contest to a charge of Assault in
18 : the Third Degree and a charge of Driving While Intoxicated. By
19 : exaggerating the consequences of his actions, by ignoring parts
20 : of his sentence, and by refusing to acknowledge the record of his
21 : unique rehabilitative prospects, the state manages to argue in a
22 : four and a half page memorandum that the sentence should be
23 : disapproved. A careful review of the entire record, including
24 : the detailed and thoughtful Chaney criteria analysis by Judge
25 : Hunt, compels the conclusion that the sentence was well within
26 : the discretion permitted the trial court and is not clearly
mistaken.

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Anchorage, Alaska 99501
Phone (907) 279 7541

This is to certify that a copy of the foregoing
is being mailed to _____
D.A. Hanley
on 2/4/94
By: C. D. [Signature]

I. THE LAW

1 When the state appeals a lawfully imposed sentence as
2 too lenient, this court may approve or disapprove the sentence,
3 but is not authorized to change it. AS 12.55.120(b). This court
4 must independently review the entire sentencing record and
5 conclude whether or not the trial court's sentencing decision was
6 clearly mistaken. State v. Huletz, 838 P.2d 1257, 1258 (Alaska
7 App. 1992). Assault in the Third Degree is a class C felony
8 offense, and as such it is punishable by a minimum term of no
9 time in jail, a maximum term of five years in jail, and a fine of
10 \$0 - \$50,000. AS 12.55.125(e); AS 12.55.035(b)(2). Further, a
11 trial court may order restitution (AS 12.55.045), community work
12 (AS 12.55.055), and may suspend imposition of sentence (AS
13 12.55.085). Additionally, a court may order as a condition of
14 probation participation in or compliance with a treatment plan
15 (AS 12.55.100).

16 Driving While Intoxicated is a class A misdemeanor,
17 and, as such, it is punishable by a maximum term of one year in
18 jail, a fine of \$5,000, or both. The court must impose a minimum
19 sentence of imprisonment of not less than 72 consecutive hours
20 and a fine of not less than \$250 if the person has not been
21 previously convicted. AS 28.35.030(b)(1)(A). Additionally, the
22 court must revoke a person's driver's license and order a person
23 convicted to satisfy the screening, evaluation, referral and
24 program requirements for rehabilitative treatment. AS

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28.35.030(h).

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II. THE OFFENSE

On January 22, 1993, 23-year old Justin Monk, along with six other members of the United States Coast Guard flew from Kodiak to Anchorage for a weekend skiing trip. Mr. Monk was engaged in drinking alcohol, as he was not planning on driving. Upon leaving the lodge and attempting to walk back to their condo, Mr. Monk and a friend were unable to locate it. Because of near zero outside temperatures and the fact that Mr. Monk's companion had a key, Mr. Monk exercised bad judgment and offered to drive a short distance to the condo. After again being unsuccessful in locating the condo, Mr. Monk was driving on the left side of the road to give the two pedestrians in the roadway the maximum amount of room. Upon the suggestion of his companion that he ask them for directions, he began heading in their direction. The car slid on the roadway, Mr. Monk locked his brakes, and the impact resulted. (R. 42-43)

The original Information filed by the State of Alaska on February 5, 1993 summarized the injuries as follows: "It was later determined that Mr. Blackstone suffered a broken wrist as a result of the collision and Ms. Blackstone suffered various contusions." (R. 4) The presentence report later confirmed that that was the extent of the injuries. (R. 31) The Blackstones were taken to Providence Hospital where they were treated and released. While alluded to in the state's sentencing memorandum,

1 there is absolutely no evidence that they were somehow released
2 because they had no insurance coverage. (St. Sent. Memo. at 2)
3 In fact, there was follow-up medical attention despite lack of
4 insurance coverage. (R. 69-73) Mr. Monk stipulated to pay
5 restitution for the entire amount submitted by their attorney,
6 \$3305.40. (Tr. 10)

7 Judge Hunt made a specific factual finding regarding
8 that Chaney criteria:

9 "when we look to the degree of harm and the
10 kind of harm inflicted by the defendant's
11 conduct, the court finds that the victims in
12 this case suffered injury. According to the
13 records that I have before me it does not
14 appear to be permanent injury. There was
15 also economic loss of clothing and the one
16 victim has submitted a statement to the
17 court in which she expresses her fear now of
18 having a similar experience in the future."

19 (Tr. 54-55)

20 III. THE OFFENDER

21 The state's summary of Mr. Monk's characteristics in
22 six lines is accurate, yet hardly informative. (St. Sent. Mem.
23 p.3) The presentence report and the Department of Corrections
24 Probation Officer confirmed that Justin D. Monk had never been
25 charged or arrested for any type of bad behavior in the past, not
26 felony, not misdemeanor, not juvenile, nor traffic. (R. 32) The
27 presentence report detailed a hard working high school graduate
28 with a history of good employment. (R. 33-34)

29 The greatest amount of information was provided by the
30 United States Coast Guard, Mr. Monk's employer since April 9,

1 1990. (R. 34) Mr. Monk's performance as a member of the United
2 States Coast Guard has been impressive. Over 20 letters by Coast
3 Guard personnel, including supervisors, peers, and supervisees,
4 attested to the character of Yeoman Third Class Justin Monk.

5 These letters universally praised his professionalism,
6 hard work, enthusiasm, and his "strong desire to do the best job
7 possible." His "devotion" and "selfless efforts" were noted. He
8 was described as "truly a credit to the service and his country."

9 (R. 90) People repeatedly mentioned his dedicated work, accuracy
10 of work, timeliness of completion, and his conscientious and
11 meticulous proficiency. (R. 91) He was described as an "asset
12 to the unit," with an outstanding awareness and sensitivity to
13 the needs of his fellow workers and customers. One lieutenant
14 described him to be a "stellar performer." (R. 92) He was
15 described as being honest, friendly, professional, and a person
16 of excellent character. (R. 101) He is a tireless worker. (R.
17 98) He is conscientious, hardworking and professional. He
18 demonstrates "a strong moral fiber and principled actions." (R.
19 100) He is dedicated and enthusiastic and professionally and
20 socially beyond reproach. (R. 106) He "has proven to be a very
21 valuable asset to his command." He was described repeatedly as
22 having the "utmost dedication to his duties." (R. 94) "He is a
23 talented individual and given the opportunity he will have a very
24 bright future in the Coast Guard." (R. 94)

1 Many of the Coast Guard personnel made it very clear
2 that they did not condone the situation that Justin Monk had
3 gotten himself into. (R. 93) While noting all of his positive
4 assets, several Coast Guard personnel also reflected on the
5 danger that Justin Monk's conviction on these charges might
6 prevent him from continuing in his Coast Guard career. "I
7 realize that Justin made a mistake while in Anchorage, however,
8 this event does not reflect the person he is. If Justin is
9 prosecuted with a felony there is a good chance he may be
10 discharged from the Coast Guard . . . a career he has a bright
11 future in. Though I don't want to downgrade the seriousness of
12 his offense, I think it would be a tragedy for Justin to pay such
13 a high price for this error in his judgment." (R. 95)
14 Lieutenant Commander Clifford Comer noted, "I sincerely believe
15 that allowing Petty Officer Monk to continue with his Coast Guard
16 career would serve not only the best interest of the Coast Guard
17 but the community as well." (R. 96)

18 In fact, just how highly the Coast Guard thought of
19 this young man was demonstrated by the fact that the commanding
20 officer of the Coast Guard Air Station in Kodiak, Alaska, Robert
21 C. Gravino, testified on his behalf at his sentencing. (Tr. 15-
22 38) Captain Gravino had been in the Coast Guard for twenty-eight
23 and one half years. (Tr. 16) He had known Justin Monk for a
24 little over two years. He had the opportunity to get to know
25 Justin Monk better than he normally would know an E-6 because for
26

1 the last six months Justin functioned as the captain's yeoman
2 right outside his office. (Tr. 16-17) Captain Gravino described
3 Justin Monk as being a "very productive individual . . . he's
4 been very reliable." (Tr. 16) He was described as a very
5 competent individual and a good performer. (Tr. 17) Captain
6 Gravino pointed out that Coast Guard supervisor personnel
7 normally do not stand up for, or act as supportive of an
8 individual as they had been for Justin Monk. Captain Gravino
9 testified that the reason the Coast Guard did stand up for Justin
10 Monk was that, "He's shown himself to be a good performer and I
11 think this was just a very bad error in judgment. And people
12 should be held accountable for that but I'm very concerned that
13 this bad error in judgment does not ruin his potential for a
14 career in the Coast Guard because I think that -- I think he can
15 be -- can continue to be a productive member of the Coast Guard."
16 (Tr. 21) The Captain repeated that they would not take such a
17 strong position for any member of the Coast Guard.

18 In fact, Captain Gravino detailed a voluntary
19 restriction program that had been proposed specifically to try to
20 keep Petty Officer Monk in the Coast Guard. The Coast Guard was
21 willing to go out of its way to structure a program to allow to
22 keep him as a productive member of the command. (Tr. 23)

23 Captain Gravino also detailed for the court the fact
24 that the U.S. Coast Guard took drinking and job performance very
25 seriously. He pointed out that Justin Monk was sent by the
26

1 command to a residential treatment program. (Tr. 18)

2 The Captain pointed out that one more alcohol related
3 incident and Justin would be out of the Coast Guard. (Tr. 18)

4 The Captain also pointed out that the entire incident had had a
5 profound impact on Justin Monk. He specifically addressed the
6 question of using jail as a deterrent.

7 "I'm not sure that jail time or a large
8 amount is going to do any good in regards to
9 Petty Officer Monk. If jail time is awarded
10 as a deterrent to make sure that he never
11 does this again, I've observed him for the
12 last couple months, and he's -- I guess I
13 could use the word -- maybe been a little
14 bit shaky. And I think the reason he's been
15 that way is I think he is scared. I think
16 he is very scared because I think he
17 realizes he's facing possibly a long jail
18 term. You know, if the court is trying to
19 ensure that this individual has had a
20 significant life event, I think he's had it.
21 I think he realizes that he had a very bad
22 judgmental error and he messed up bad. And
23 this could end up -- this could end up
24 hurting him for a long time to come. So if
25 jail time is meant to be a deterrent I think
26 just the fact that he's gone through this
whole process already and if the Coast Guard
is kind of, to some extent, come down on him
already, I think maybe he's learned a
lesson. If he hasn't learned a lesson, then
I would be very surprised. So I think that
if you're trying to find a deterrent, I
think -- I think the system has probably
already gotten his attention. I'm -- you
know, I just kinda throw it out that I think
that -- that I think that maybe he is
learned a lesson from this. I think a
lesson that hopefully is going to carry him
forward for a long time to come."

23 (Tr. 23-24)

1 : Once again, Captain Gravino testified that the United
2 : States Coast Guard was willing to go to rather extreme steps in
3 : order to permit Petty Officer Monk to continue with his Coast
4 : Guard career. "I -- and I'll be honest with you, I wouldn't
5 : normally do this. This puts a lot of burden on myself and the
6 : command. I wouldn't normally stick myself out this far for a
7 : person but I -- I do feel strongly that Petty Officer Monk is
8 : worthwhile saving. And that's kind of what I'm looking for."
9 : (Tr. 27)

10 : IV. THE SENTENCE

11 : Judge Hunt gave a substantial amount of thought and a
12 : detailed analysis of the Chaney criteria before imposing
13 : sentence. She specifically recognized the struggle between the
14 : dueling and competing interests of rehabilitation of the offender
15 : and reaffirmation of societal norms and deterrence. (Tr. 54-63)

16 : The court specifically found that for a D.W.I. based
17 : criminal offense, this was a typical offense by a typical
18 : offender. (Tr. 55) She noted that Justin Monk was a relatively
19 : youthful offender, being 23; that this act was somewhat
20 : impulsive; and that alcohol was a major ingredient of the
21 : criminality which brought the defendant before the court. (Tr.

22 : 55-56) Judge Hunt specifically found that Justin Monk's
23 : prospects for rehabilitation were very good. She noted that this
24 : was his first offense of any type. (Tr. 56) She noted that
25 : Justin Monk was employed and had good evaluations from his
26 :

1 : employers and co-workers. (Tr. 56) There was no previous
2 : indication of any alcohol abuse and as a consequence of this case
3 : he had completed an inpatient alcohol abuse program under the
4 : direction of the U.S. Coast Guard at Woodby Island in Washington.
5 : (Tr. 56) She noted that Justin Monk appeared to be sincere
6 : remorseful for his conduct. She further noted he was continuing
7 : to follow the aftercare recommendations from his inpatient
8 : treatment. She specifically noted it was very unlikely that he
9 : would reoffend. However, she concluded "With drunk driving
10 : offenses the deterrence of others must also be a goal that is
11 : given serious consideration. Therefore, it is this court's
12 : conclusion that at least in part, both incarceration and
13 : probation must be a part of this sentence." Judge Hunt then
14 : discussed isolation and the mandatory sentences. She also
15 : discussed reaffirmation of community norms, and acknowledged that
16 : "society recognizes that a drunk driver behind the wheel of a
17 : motor vehicle is very, very dangerous." (Tr. 58) She
18 : specifically took all of these goals and findings into
19 : consideration in imposing sentence. On the D.W.I. she imposed an
20 : entire year, but suspended everything except 72 hours. This time
21 : was in addition to the 21 days he had spent in residential
22 : treatment. (Tr. 62) She placed Justin Monk on one year of
23 : probation, she fined him \$250, and suspended his license for 90
24 : days.
25 :
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Specifically, turning to the Assault in the Third Degree count, Judge Hunt recognized "the tension that exists in sentencing the defendant for Count II is the tension between prospects for rehabilitation, likelihood of reoffense and the condemnation and reaffirmation of community norms. I believe, however, on balance that the ultimate interest of society is that this defendant not reoffend and that he become and be a productive member of society. Given that overriding goal and purpose behind making anything criminal -- any kind of conduct criminal, I am going to agree with the defense and give him a suspended imposition of sentence on the felony count II. (Tr. 58-59)

However, the suspended imposition of sentence had other rather serious conditions and requirements. Justin Monk was ordered to pay \$3,305.40 in restitution. He was ordered to totally abstain from the use of alcohol. He was ordered to continue to complete all of the aftercare requirements and recommendations from the inpatient treatment program that he already completed. He was prohibited from frequenting places where alcohol was the main item for sale. He was not permitted to drive unless insured and provided proof of insurance. He was ordered to apply for the permanent fund dividend and assign the proceeds towards restitution. He was ordered to obtain and maintain reliable full time employment. (Judge Hunt specifically found that his enlisting and being in the Coast Guard would meet

1 that condition.) (Tr. 59) And finally, she ordered Justin Monk
2 to perform 300 hours of community service. She specifically
3 noted "if possible, it would be the recommendation of the court
4 that this be spent with young people and that he be participating
5 in programs to discourage young people from driving and drinking
6 or otherwise driving under anything other than conditions of
7 alertness and competency." (Tr. 60)

8 V. ARGUMENT

9 The sentences imposed were well within the discretion
10 of the trial court. Assault in the Third Degree carries a
11 possible penalty of anywhere from zero days in jail up to five
12 years in jail. The Austin limit for a person who had never been
13 previously convicted of a felony would have been two years.
14 Therefore, Judge Hunt had discretion of anywhere from zero days
15 in jail up until two years that she could have imposed upon Mr.
16 Monk. She chose to grant him the legislatively provided for
17 suspended imposition of sentence. All of her decisions were well
18 thought out and supported by the evidence. She analyzed the
19 competing interests and the tension between the Chaney criteria.
20 She gave thoughtful consideration to a variety of proposals and
21 chose an intermediate sanction that not only provided a service
22 to the community, but did not impede Mr. Monk's Coast Guard
23 career or Air Station Kodiak's functioning. She specifically
24 selected an option that addressed community condemnation and
25 reaffirmation goals by requiring community work service in the

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area of deterring young people from drinking and driving.

1
2 It is exactly this kind of thoughtfulness and analysis
3 that this court has previously encouraged judges to participate
4 in. In State v. Huletz, 838 P.2d 1257 (Alaska App. 1992), it was
5 not simply the amount of jail time this court criticized, but the
6 sentencing court's failure to provide for any meaningful form of
7 treatment aimed at Huletz' rehabilitation. Huletz only had a
8 small fine and a "modest community service requirement." Justin
9 Monk's community service requirement amounts to seven and one
10 half weeks of full time work. It is clear that the record before
11 Judge Hunt supported her conclusion that there was no need for
12 any additional incarcerative measures to deter Justin Monk from
13 future misconduct. It is also clear that terms of the sentence
14 expressly addressed community condemnation: restitution was
15 ordered in an effort to make the victims whole and community work
16 service was designed to benefit the actual members of the
17 community, to publicize society's condemnation of drinking and
18 driving and to reaffirm community standards.

19 Most of the cases cited by the State of Alaska only
20 serve to help this court recognize the distinctions in Justin
21 Monk's case. In Lee v. State, 760 P.2d 1039 (Alaska App. 1988)
22 Lee was 48 years of age and his victim suffered injuries that
23 were crippling and potentially permanent. Lee also had a
24 significant alcohol problem which he only partially acknowledged.
25 Lee was so intoxicated at the time of the accident he was not

1 even aware he had run over a person. This court recognized that
2 "the sentencing court has a primary responsibility for
3 determining the priority and relationship of applicable
4 sentencing goals." Lee v. State, 760 P.2d 1039, 1046 (Alaska
5 App. 1988). Given those circumstances, the sentencing court's
6 decision in Lee not to give rehabilitation overriding and
7 exclusive emphasis, was held to be not clearly mistaken.

8 Similarly, in this particular case, given the
9 exceptional prospects for rehabilitation of Mr. Monk, the lesser
10 degree of injuries, the broad discretion given to Judge Hunt by
11 the sentencing statutes, and the ability to address questions of
12 deterrence and community condemnation in ways other than
13 incarceration, Judge Hunt's thoughtful and careful analysis and
14 her ultimate conclusions should be upheld.

15 RESPECTFULLY SUBMITTED at Anchorage, Alaska this 4th
16 day of February, 1994.

17 PUBLIC DEFENDER AGENCY

18 By: Barbara K. Brink
19 BARBARA K. BRINK
20 DEPUTY PUBLIC DEFENDER
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ALASKA PUBLIC DEFENDER AGENCY

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April 8, 1997

Johnny Grames
DADS Against Discrimination
P.O. Box 100827
Anchorage, Alaska 99510

Dear Mr. Grames:

Thank you for your letter. I have left a phone message on your home telephone, asking you to call me back so that we can discuss this issue. I appreciate your concerns about the responsible management of the Alaska Public Defender Agency and of course wish to investigate any allegations as fully as possible. Your participation is obviously necessary for me to get to the root of your dissatisfaction. I have previously left messages for you without any success. Perhaps you are not getting those telephone messages.

I look forward to hearing from you.

Sincerely,

Barbara K. Brink

Barbara Brink
Public Defender

BKB:sh

cc: State Senator Randy Phillins

Dear Acting Public Defender Brink:
Thanks for returning my call. You keep hiding former Judge V.D. Carlson in this letter, in your Budget and in your "no comment"; made after Chair Joe Green- during your House Judiciary Confirmation hearings- offered you a response to my testimony concerning Assistant Public Defender Carlson's job performance and conduct. You have been a Public Defender a long time. When your Agency hired Carlson, then Director John Salemi said in the Anch. News, "consider the source" of the accusations against Carlson: knowing full well of the hundreds of citizen horror stories on public record at the Judicial Council, Supreme Court and Senate Archives. Notorious anti-father Judge Carlson was forced to resign before the Legislature opened an investigation for his Impeachment. His vindictive decisions continue to be overturned years later. Prior he was preempted over 2 thousand times without ever recusing himself. Who protects troubled boys coming into his office now?

Fax 1st session, 1997 Legislature + Gov. *John Grames*

Cornes @ Jul. Council - re: Barb Brink

2/4/97

Bar survey
whole survey - other nominees

unsolicited letters

those requested are confidential

if Cindy wants to share

L Smith head of bdo commissioners

she (Cornes) will send info.