CONFIRM.:

B. BRINK

PUBLIC

DEFENDER

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, JI LIN PROVINCE
CHINA 130012

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MS. SUN LI HONG, GEN. MGR.
MS. TRACY ZHANG
MR. WANG WEI
(ENGLISH SPEAKERS)

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.
H

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

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CHAIR, SENATE 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 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.

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CHAIR, SENATE 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 SAME PRINCIPLES THAT THE LEGISLATION MUST PROMOTE THE CONSTITUTIONAL RIGHTS OF THE DEFENSE. IT DOES SO IN THIS PRESENT CONTEXT BY BY A THOROUGH EXAMINATION OF THE APPOINTEE AND A THOROUGH 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

CHAIR, SENATE JUDICIARY COMMITTEE
ALASKA STATE LEGISLATURE

TO ABOUT FEBRUARY 15. HOWEVER I 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 AND CAN BE PERSONALLY CONTACTED THEN — AND WILL CHECK THE FAX AND E-MAIL ADDRESSES 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 CARNS, 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

EXECUTIVE DIRECTOR
William T. Cotton

1-15-97
COPY TO AK. LEGISLATURE
CHAIR, SENATE JUDICIARY
COMMITTEE.
Bob Holmes

December 18, 1996

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).

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,

Jere Carns

Teresa W. Carns
Senior Staff Associate

1-15-97
COPY TO AK. LEGISLATURE
CHAIR, SENATE
JUDICIARY COMMITTEE.
Jack Halloran

JANUARY 10, 1997

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

C/O:
CHANG CHUN WAI GUO YU XUE XIAO
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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:

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

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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 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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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

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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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LACK OF PROFESSIONAL ABILITY BUT RATHER BECAUSE SHE WILL NOT TAKE THE ACTIONS NECESSARY TO SHAKE THE CRIMINAL JUSTICE SYSTEM ON BEHALF OF [redacted] 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 [redacted] 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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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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SYSTEM AND AFFECT THE SECURITY AND WELL-BEING OF OUR SOCIETY. THEY DESERVE TO BE AIRED IN PUBLIC - BUT I DONT 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, IE 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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(WHICH WAS ORGANIZED IN NOVEMBER 1995 TO INVESTIGATE INEQUITABLE TREATMENT OF MINORITIES WITHIN THE ALASKA JUDICIAL SYSTEM), ENCLOSING 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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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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IT DOES NOT SERVE THE PUBLIC INTEREST IF I BELIEVE THAT THE PUBLIC DESERVES TO BE INFORMED BUT THEN 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, TO A CONFIDENTIAL PROCEEDING.

WITH REGARD TO ANY QUESTION 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. TERESA CARNS,

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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

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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 ~~OFTEN~~ TO THE DISADVANTAGE OF THE CLIENT. I SAY, ~~ED~~ 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,

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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 DECEMBER 1995 THE KOTZEBUE DA GOT THE GRAND JURY TO INDICT APPROXIMATELY 13 DEFENDANTS EN MASSE (IN JULY) AND APPROXIMATELY 21 DEFENDANTS EN MASSE IN (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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DUE PROCESS (REMINISCENT OF GROUP PROSECUTIONS IN TOTALITARIAN STATES) 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 B. 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 DA AND MOST OFTEN DENIED BY THE COURT. THE KOTZEBUE MAGISTRATE WILL ONLY VERY RARELY GO OUT ON A LIMB AND OVERRIDE THE DA'S OPPOSITION OF BAIL IN A CONTROVERSIAL BAIL HEARING. THE

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JUDGE
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 KOTZEBUE THAN NOME PRISONERS IN THE ANVIL MTN. 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 LAWMEN. 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~~ SPECTACULAR 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 PROSECUTION THAT IS FAVORED WITH ~~THEM~~ THEIR. 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 UPHELD 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 ANALYTICS. 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 VILLAGE 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 INBORN 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, JAIL 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 AGGRAVATORS/MITIGATORS BY ANALOGY IN FIRST-TIME FELONIES WHERE TECHNICALLY THEY DO NOT APPLY.

IN STATE V. ROBLES, 2KB-S.C.-172(A

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THE DEFENDANT WAS WAYLAID 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, AN 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. ~~THE~~ THE DEFENDANT, BADLY INJURED, IMMEDIATELY FOLLOWED THEM IN HIS TRUCK 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 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 ~~CASE~~ EACH. THEY PLED AND RECEIVED SIX-MONTH SUSPENDED IMPOSITION 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 ~~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 MITIGATER, 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 [redacted] 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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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 SCHAEFF'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

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

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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 CRITICALLY

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KNEW ABOUT THE LIMITED FACILITIES WHEN ADOPTING THE RULE YEARS AGO, WHEN ~~FACITIES~~ FACILITIES WERE EVEN MORE LIMITED, THE PROSECUTION WOULD ~~ASK~~ 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 MATER OF FACT, THERE ARE PLENTY OF FACILITIES IN THE VILLAGES TO ACCOMODATE VILLAGE TRIA

10. 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 (TO JAIL) 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 EVIDENCIARY 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 SENTENCING 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 MILLENEUM!

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 RELATIVES 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 ~~FRED~~ TERESA CARNS, 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
Chair, Senate
Judiciary
Committee
Joe Hollis

NOVEMBER 24, 1996

JOHN M. HOLMES, ATTORNEY
46 HONGQI STREET
ENGLISH TEACHERS' OFFICE
CHANGCHUN FOREIGN LANGUAGES SCHO
CHANGCHUN, JILIN PROVINC
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 ATTORNEY 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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PUBLIC PERCEPTION OF THE CRIMINAL JUSTICE PROCESS, I SEE THAT PROCESS AS GRASSLY 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.

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 CONNIVE TO AVOID 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 INUPIAT ESKIMOS IN THE KOTZEBUE AREA DID NOT GIVE VOLUNTARY STATEMENTS TO THE POLICE AND TROOPERS, REGARDLESS ~~OF~~ 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

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 POSES 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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TO ACCOMODATE 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 (IN DISAGREEMENT WITH THE JURY) OF THE HIGHER CHARGE. 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 — PREPONDERANCE OF THE EVIDENCE. JUDGES USUALLY ACT AS THOUGH THERE 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?

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IN MY OPINION THE PUBLIC DEFENDER AGENCY IS RUN LIKE OTHER STATE AGENCIES. IN OTHER WORDS, THERE IS AN UNDERSTANDABLE & NECESSARY, EFFORT TO CREATE STABLE WORKING CONDITIONS FOR EMPLOYEES AND TO PROVIDE EQUAL 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 CASE. 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

ACCOMODATED 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 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 OCCASSIONALLY 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 BANG 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-SET 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 FELW 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 ~~SEE~~ 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

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 KOTZEBUE.

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 TALK 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 PROSECUTION'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 GUERILLA 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 [redacted] 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 ACCOMODATION 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 ~~THE~~ 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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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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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 ~~HE~~ 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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THIS WAS ONLY ONE CASE AMONG MAYBE 150-200 CASES BEING ACTIVELY HANDLED BY THE 2 LAWYERS IN THE KOTZEBUE 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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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 ~~DID~~ 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 PLEAD THE CLIENT OUT EARLY TO A FELONY? MORE TO THE POINT, WHY WOULD PUBLIC DEFENDER AGENCY DIRECTORS COMPLAIN ABOUT. THIS EFFECTIVE REPRESENTATIONS. 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 BURDE ↪ 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 Holmes *

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 ~~THAT~~ 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 4½ YEARS BEFORE I CAME. I PLANNED TO LEAVE AFTER 2 YEARS BECAUSE I KNEW FROM MY YEAR IN BARROW — (ALSO HAD 6 PREVIOUS YEARS IN BARROW WITH ALASKA LEGAL SERVICES) THAT IT WOULD BE A VERY HARD TWO YEARS. (I THINK I HAD EIGHTEEN JURY TRIALS DURING THE YEAR IN BARROW; NOTHING LIKE THAT IN KOTZEBUE.)

I WILL TELL YOU THAT IT IS HARD TO TAKE THE ACTIVE 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 WHERE 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 ~~SCARED~~ ~~AFRAID~~ 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 UNKNOWN FUTURE POSSIBILITIES. THESE THINGS MAY IN PART CONTRIBUTE TO A RELUCTANCE TO CONFRONT, TO ANTAGONIZE, TO CHALLENGE, ~~SPECIALLY~~ ESPECIALLY WHEN PRECEDENT IS LACKING AND ONLY JUSTICE ITSELF LEADS THE WAY.

THE GREAT LAWYERS AND THE GREAT JUDGES WERE NOT ~~HESITANT PEOPLE~~ HESITANT 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,

AND THEY HOLLERED, SHOOK 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 HAHR.

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

SUCH ISSUES.

SEE THE POSTSCRIPT REGARDING GRAND JURY ISSUES. I WOULD SAY HERE THAT A COURT STATISTIC SHOCKED THAT IN 1995 KOTZEBUE HAD 110 FELONIES, MAKING (KOTZEBUE) THE HIGHEST OR 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, FAR 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 30.10 OR 20; 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 STRAIN ON THE SYSTEM? THE PROSECUTION. WHO IS TYING UP THE COURT CALENDAR? THE PROSECUTION.

THE U.S. IS FOND 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 [redacted] DEFENDANT 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 [redacted] 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...

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 CHOSE 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 LAWMEN 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 KOTZEBUE IS SIMPLY AN ILLUSTRATION OF AN ACCOMODATION 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 ACCOMODATION 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 APPROPRIATE 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 CONFRONTATION 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 MISTREATMENT 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 ~~[illegible]~~ 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 UNCERTAIN STATUS OF DEFENDANTS IN COURT. THE DEFENSE IS PSYCHOLOGICALLY PRIMED FOR FURTHER EROSION OF THE DEFENSE ROLE AND THE STATUS OF DEFENDANTS. SEVERAL DECADES FROM NOW 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 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 FATALLY 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, [redacted] ON 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 ATTORNEYS/STAFF, AND POLICE. RELIEVED OF AN OVERWHELMING CRUSH OF CASES, THE PEOPLE ASSOCIATED WITH THE JUDICIAL SYSTEM WILL HAVE TIME IN WHICH TO HEAR 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 FUND 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

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 [redacted] 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, DIGGED, 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).
CHANGCHUN IS SEVENTEEN HOURS AHEAD OF ANCHORAGE.

POSTSCRIPT 2)

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

1) I ONCE HAD A SITUATION IN WHICH I ASKED A A.D.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 FELONY INDICTMENT

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 MISDEANOR 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 MISDEANOR CONVICTION. THAT DA SAID 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-~~PRIVER~~ PROCEEDING TAPES AND POLICE INTERROGATION TAPES TO LISTEN TO ON POOR EQUIPMENT AND TO ANALYZE, AS WELL AS MOUNTAINS OF WRITTEN DISCOVERY, AND

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 KOTZEBUE 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. NONE 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, WITNESSES TESTIFIED ABOUT DIFFERENT PEOPLE), SEPARATE; THEY WERE SUPPOSED TO SOMEHOW DISREGARD THE OTHER 12 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 INDIVIDUALS' 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.

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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 AK. LEGISLATURE
CHAIR, SENATE
JUDICIARY COMMITTEE.
Bob Holmes

December 8, 1995

John M. Holmes,
Attorney at Large
C/O P.O. Box 276
Kotzebue, Alaska 99752
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 ideas 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.

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.

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, SENATE
JUDICIARY COMMITTEE
Sen. 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.

Incidently, 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 <u>from</u> the regional magistrate positions rather trying to fill those slots with local personnel. Sadie Neakok, an Inupiaq, was <u>the</u> 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 reenforced. 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 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 ~~xx~~ 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 ~~xxxxxxxxx~~ 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 Ericksson has 20 charges I can reduced 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 found 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 Chikchi;
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.

THOMAS J. MEYER
ATTORNEY AT LAW
NBA BUILDING
217 SECOND STREET SUITE 204
JUNEAU, ALASKA 99801

AREA CODE (907)
TELEPHONE: 586-8666
FAX 586-8059

February 4, 1997

TO: Members of the Alaska State Senate Judiciary Committee

RE: Consideration of appointment of Ms. Barbara Brink as Alaska Public Defender

I am a local attorney and practice primarily criminal defense in state prosecutions. My prior experience as an attorney includes being an aide last year to Rep. Brian Porter and the House Judiciary Committee. From 1988 to 1995, I was an assistant Public Defender for the State of Alaska and ended that part of my career as a supervising attorney in the Juneau office of the Public Defender Agency.

During my employment as a public defender, I had extensive contact with both Mr. John Salemi, who is the former chief of the Public Defender and Ms. Barbara Brink, who is now before your committee for confirmation of her appointment by Governor Knowles. Ms. Brink was the Deputy Public Defender during my service to the agency.

I am writing to express my support for Ms. Brink's confirmation as the Public Defender.

The Alaska Public Defender Agency, pursuant to AS 18.85.100, represents indigent persons who are under formal charges for serious crimes, probation or parole violations, or who are entitled to representation under the Supreme Court Delinquency or Child in Need of Aid Rules, or who are detained for specific physical or mental health commitment proceedings. In other words, the Public Defender represents persons in a wide range of proceedings. The Public Defender must, accordingly, have a wide range of experience.

Ms. Brink, having been a public defender for over 10 years, has the experience required for the head position. Many times a day, Ms. Brink will have to field calls from assistant public defenders who require sound advice and approval of expense on cases. In my contacts with Ms. Brink over several years, it was apparent to me that she had a substantial amount of knowledge, experience and training in the area of criminal defense. She has conducted jury trials at all levels of offenses. A consider her highly qualified to be the Public Defender in terms of her level of experience. When the occasion came that I needed direction, she was a helpful colleague. I would expect her to continue that tradition as the Public Defender.

The Public Defender Agency needs an advocate as its head officer. Based again on my observations of Ms. Brink, I predict that she will reasonably and appropriately assert the needs of the agency to her superior administrative officers and indeed the legislature. As

you are likely aware, Ms. Brink has handled many administrative tasks for the agency in her position as a deputy. This prior experience will serve the agency well in terms of consistency of operation and administration.

In both the Alaska and U.S. constitutions is a provision establishing the right to counsel. It is this provision that motivated the Alaska legislature to create the Public Defender Agency almost 20 years ago. With respect to the right to counsel, the Senate Judiciary committee's concerns in the confirmation process are to enforce this right and assure that enforcement of it is carried out in the judiciary. Ms. Brink, I believe, because of her continued faithful service to the agency and high level of experience, will continue the agency's outstanding tradition of ensuring that the right to counsel remains strong and enduring. I ask that the committee give Ms. Brink its support and full consideration.

Sincerely,

Thomas J. Meyer

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
Senator Miller
Senator Parnell
Senator Ellis

FROM: Laura Chase, Committee Aide lc

DATE: February 3, 1997

RE: Phone Call in Support of Barbara Brink Confirmation

Ms. Mauri Long, president of the Trial Lawyers Association, telephoned to voice her support of Ms. Brink's confirmation.

Ms. Long worked with Barbara Brink when they were both employed by the Public Defender's office. Ms. Long stated that she thinks highly of Ms. Brink's professional capabilities and knows her on a personal level as well. She asked that you "not hesitate" to telephone her if you would like a personal recommendation. Her telephone number is (907) 277-5400.

Alaska State Legislature
Senate
Office of the Secretary

OFFICIAL BUSINESS

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

January 30, 1997

M E M O R A N D U M

TO: Senator Taylor, Chair
Judiciary Committee

FROM: Nancy Quinto NQ
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Miller has referred the following name for legislative confirmation to your committee for a hearing, recommendation and report:

Alaska Public Defender
Barbara Brink - Anchorage
Appointed: 01/24/97

Resume attached

NQ/hv

Public Defender

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

SUPPORTING DOCUMENTS

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
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State Capitol
Juneau, AK 99801-1182
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Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
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FROM: Laura Chase, Committee Aide lc

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PUBLIC COMMENT

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

February 3, 1997

Senator Robin Taylor
Chairman,
Senate 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

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