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CORRE-
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Alaska Bar Assn.

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February 14, 1969

Mr. Barry Jackson, Esq.
Chairman,
House Judiciary Committee
Pouch Y
State Capitol
Juneau, Alaska 99801

Dear Mr. Jackson:

Thank you very much for your kind letter of February 6, 1969, asking that either I or my representative appear before the House Judiciary Committee to discuss Bar Association activities, plans and problems.

Mr. Stanely Howitt, the Executive Director of the Alaska Bar Association and myself will be in Juneau on February 17th through the 19th. Would it be possible for us to meet with the House Judiciary Committee at that time?

I apologize for this very short notice, but my recent schedule has been extraordinarily chaotic.

Very truly yours,

Lester W. Miller, Jr.
Lester W. Miller, Jr.

LWM:kw
cc: Mr. Stanley Howitt

Budget

March 2, 1970

The Honorable Bill Ray
Chairman, House Finance Committee
Pouch "V", Capitol Building
Juneau, Alaska 99801

Dear Mr. Ray:

The House Judiciary Committee has reviewed with the responsible administrators, the programs of the Court System, Department of Law, and Public Safety as budgeted for FY 1971.

While the committee did not review these budgets in detail to the degree that the Finance Committee will, I have been directed to state that the Judiciary Committee generally concurs with the Governor's recommendations for these agencies.

Very truly yours,

Barry W. Jackson, Chairman
House Judiciary Committee

BWJ/mm

Copies to: Representative Chancy Croft
Representative George Hohman
Representative Mike Bradner
Representative Ernie Haugen
Representative Dick Borer
Representative John Sackett

Alaska Court System

State of Alaska

ROBERT H. REYNOLDS
ADMINISTRATIVE DIRECTOR
RAYMOND W. GREGORY
ASSISTANT ADMINISTRATIVE DIRECTOR
ERNEST Z. REHBOCK
LEGAL ASSISTANT

OFFICE OF ADMINISTRATIVE DIRECTOR
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

February 11,1969

Hon. Barry M. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Dear Representative Jackson:

Your letter of February 5, 1969, requested that I or my representative meet with your committee in a general information meeting to deliver a formal oral presentation concerning the activities of the court system, our problems and our plans for the future. I note that Chief Justice Buell A. Nesbett received a similar letter and has accepted your invitation. I shall likewise be available.

Inasmuch as the Chief Justice and I will both be in Juneau from the 17th through the 21st of February, if you have any specific questions which would require back-up statistics we would appreciate an immediate response as this does not allow much time.

I note that the Chief Justice has outlined his itenerary and mine during our visit in Juneau. Even so, we shall contact you after our arrival.

Sincerely,

Robert H. Reynolds
Administrative Director

RHR/ld

March 13, 1970

The Honorable Bill Ray
Chairman, House Finance Committee
Pouch "V", Capitol Building
Juneau, Alaska 99801

Dear Mr. Ray:

The Judiciary Committee has reviewed the programs and analyzed the budget of the Division of Corrections in detail, with the assistance of Mr. Charles G. Adams, Jr., Director of the Division of Corrections.

The committee was pleased to note that the 1970-71 budget as approved by the Governor did include many provisions for increased services, all of which the committee approved.

Inasmuch as prisoner reformation and rehabilitation is the desired goal of the State under Article I, Section 12 of our Constitution, we would like to recommend the positions of Psychology Counselor I in the adult camp, Group Worker III in N.R.C.I., and Correctional Officer I at Wasilla. These additional positions will provide much needed counseling service so necessary to attitude changing.

Most of the inmates of our correctional institutions have no developed skills and poor work habits. Part of the rehabilitation process is learning skills. To this end the committee would like to see the budget include items proposed by the Division of Corrections for vocational training and job experience.

Food service is one area in which there is a marked shortage of workers in the State. It would seem advisable to fill the Cook II position in the N.R.C.I., enabling inmates in that institution to be trained in culinary arts insuring them of employment upon their release.

The expansion of the kitchen facilities and the addition of refrigeration at the adult camp would make possible food service training as well as the training in the processing and freezing of produce.

We know you are deeply interested in prisoner rehabilitation and wish to lend you the support of the Judiciary Committee in improving the State's program.

Sincerely yours,

Barry W. Jackson, Chairman
House Judiciary Committee

Copy to all House Finance Committee members

BWJ/mm

Budget Review

March 5, 1970

Bill Ray, Chairman
House Finance Committee
Pouch "V", Capitol Building
Juneau, Alaska 99801

Gentlemen:

The Judiciary Committee of the House of Representatives has carefully considered the proposed budget of the Alaska Public Defender Agency. After taking testimony and discussing the issues, the committee unanimously recommends that the budget of the agency be increased in the following specific particulars:

1. An Attorney V position in Anchorage to be responsible for appeals, cost $38,800 including secretary and necessary equipment;

2. Investigators for the Nome, Ketchikan, and Juneau offices, cost $55,537 including necessary transportation (the investigator can prepare the information for bail proceedings and assist in developing sentencing recommendations);

3. Counselors for Fairbanks and Anchorage, cost $38,111;

4. Two law students for summer internships in Fairbanks and Anchorage, cost $6,975;

5. A training program for agency staff, cost $1,000; and

6. Increased contractual services to offset reduction of personnel, cost $10,000.

Total cost of $150,000.

We feel that the addition of these items will very substantially improve the service of the agency, and will enable the agency to adequately and properly perform its duties.

Very truly yours,

Barry W. Jackson, Chairman
House Judiciary Committee

cc: Representative Chancy Croft
Representative George Hohman
Representative Mike Bradner
Representative Ernie Haugen
Representative Dick Borer
Representative John Sackett

BWJ/mm

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

PUBLIC DEFENDER AGENCY
Pouch AE, Juneau, Alaska
99801

February 18, 1970

The Honorable Barry W. Jackson
Chairman
Judiciary Committee
Alaska State House of Representatives
Juneau, Alaska 99801

Dear Mr. Chairman:

This letter is in response to your request for a letter confirming my testimony on February 17, 1970. Your questions concerned possible alternative positions to the proposed funding of the Alaska Public Defender Agency at a $500,000 level for the fiscal year beginning July 1, 1970.

Alternatives include:

1. an attorney V position in Anchorage to be responsible for appeals, cost $38,800 including secretary and necessary equipment;

2. investigators for the Nome, Ketchikan and Juneau offices, cost $55,537 including necessary transportation (the investigator can prepare the information for bail proceedings and assist in developing sentencing recommendations);

3. counselors for Fairbanks and Anchorage, cost $38,111;

4. two law students for summer internships in Fairbanks and Anchorage, cost $6,975;

5. a training program for agency staff, cost $1,000; and

6. increased contractual services to offset reduction of personnel, cost $10,000.

The above total is $150,000. The requested appropriation of $500,000 does not include any of the counselors,

investigators for Nome, Ketchikan or Juneau, neither Attorney V in Anchorage, no summer law students, and does not include the possibility of additional judges in Sitka, Kenai-Kodiak and Fairbanks.

Enclosed are copies of excerpts from the evaluation of the Offender Rehabilitation Project for the District of Columbia. Your continued interest in the Agency is appreciated.

Very truly yours,

VICTOR D. CARLSON
Public Defender

VDC:rj

Enc.

Excerpt from "An Evaluation of the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia"

BACKDROP FOR THE EVALUATION

A. Evolution of the Offender Rehabilitation Project

In the summer of 1964 the staff attorneys of the Legal Aid Agency for the District of Columbia discussed how they might improve overall services to their indigent clients. A part of their thinking arose from the understanding that their role as defense attorneys was far less importantly the romantic notion of vital adversary participation in a dramatic determination of guilt or innocence than it was competent representation of a client in working out a non-trial disposition and, more often than not -- trial or no trial -- representing a guilty defendant before the judge at sentencing.[6/] A major shortcoming, they felt, was the lack of comprehensive social background data and rehabilitative planning assistance in their cases, particularly at the time of sentencing when the judge based his decision largely on a probation office presentence report not available as of right

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6/ Upwards of 75 percent of the persons prosecuted in the District of Columbia are convicted. President's Commission on Crime in the District of Columbia, Report 240-41, 274-75 (1966), hereinafter cited as D.C. Crime Commission Report.

For a statement of the role of defense counsel at sentencing see American Bar Association Project on Minimum Standards for Criminal Justice (hereinafter cited as ABA Standards): Sentencing Alternatives and Procedures § 5.3 (Tentative Draft 1967).

to the defendant and his counsel.[7/] All the attorneys were full-time personnel carrying demanding caseloads, and it was concluded that if this important assistance was to be properly and beneficially rendered it would have to be done by specialized supplemental staff.[8/]

In applying shortly thereafter for a grant from the National Defender Project of the National Legal Aid and Defender Association, request was made to include two social service oriented staff persons among the additional attorneys, investigators, and clerical personnel sought for expansion of the Legal Aid Agency's total program. A $200,000 grant was received and from October 18, 1964, to March 31, 1966, two social service workers gathered social background information and developed rehabilitation plans for use by attorneys in selected cases. Used primarily at sentencing in the United States District Court for the District of Columbia, which has jurisdiction over all felonies prosecuted in the District,[9/] the attorneys generally found

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7/ F. R. Crim. P. 32 (c) (2), applicable in the U.S. District Court for the District of Columbia, makes disclosure of the contents of the presentence report discretionary with the court. The ABA Standards recommend that disclosure to the defendant's attorney be required. ABA Standards: Sentencing Alternatives and Procedures § 4.4 (Tentative Draft 1967). See also National Crime Commission Report 145.

8/ See ABA Standards: Providing Defense Services § 1.5 (Tentative Draft 1967) regarding the importance of adequate supporting services.

9/ See 11 D.C. Code § 521 (a) (2) (1967); cf. 11 D.C. Code § 963 (a).

these services helpful in several ways: attorneys could be a more effective part of the dispositional process, judges were receptive to sentencing alternatives and the somewhat new (to them) concept of community-based rehabilitative planning, defendants were greatly assisted toward more constructive functioning in the community by the individually tailored plans presented to the court in their behalf.

On April 1, 1966, the Institute of Criminal Law and Procedure made funds available to expand this first-of-its-kind social service staff to eight people -- a coordinator, a social worker supervisor, four social work assistants, and two secretaries. The results of this pilot project, lasting through March 1967, have been thoroughly reported;[10/] some of the basic concepts of the Offender Rehabilitation Project evolved directly from this pilot experience. An understanding of its evolution provides important insight to the expanded Project funded by the Office of Economic Opportunity and to the directions this Evaluation has taken in consequence.

The pilot project under the Institute of Criminal Law and Procedure was primarily focused toward defendants in the U.S. District Court. Seventy-three percent of its clients were involved in cases in that court and only 18 percent were from the

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10/ See Dash, Medalie, & Rhoden, Demonstrating Rehabilitative Planning as a Defense Strategy, 54 Cornell L. Rev. 408 (1969).

D.C. Court of General Sessions.[11/] The essence of the program, as with the initial social service assistants provided under the National Defender Project grant, was on providing defendant studies and rehabilitative plans which defense attorneys could use at the time of sentencing. That this was in fact the primary thrust is confirmed by the finding that at the time of initial referral to the pilot project, two-thirds of the defendants had already pleaded guilty to at least some of the original charges.[12/] The report on the pilot project, however, describes an important broadening of concern based on this experience:

> "As time went on, it became increasingly clear to the [Pilot] Project staff members that they should be brought into the case as early as possible after the defendant was assigned counsel. Early referral was seen as necessary to do the kind of thorough background study that was required and to get the defendant, if he was on bail, into a job situation, a training program or a form of therapy, if indicated, prior to trial and case disposition. This early attention to the defendant's needs was important not only for the ultimate disposition of the case, but was essential in order to help alleviate the impact and crisis confronting the defendant and his family as a result of the arrest and often as a result of the removal of the head of the household from the home.
>
> As the [Pilot] Project developed it became clear that early referral of a defendant . . . had a separate value and purpose. It permitted the development of background material on the defendant and a plan for rehabilitation that could be relevant for discussion between the defense

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11/ *Id.* (in original manuscript). The Court of General Sessions has trial jurisdiction over misdemeanors in the District of Columbia. 11 D.C. Code § 963 (a) (1967). Its judges also serve as committing magistrates for persons arrested on felony charges. 11 D.C. Code § 963 (c) (1967).

12/ Dash *et al.*, *op. cit. supra* n. 10 at 411.

> lawyer and the prosecutor even before trial. The concept of early diversion developed out of this recognition . . . . Under this concept, the same information that was being made available to the judge for sentencing purposes could be made available to the prosecuting attorney to guide him in exercising his discretion to divert the case out of the criminal system for a solution through other community resources."[13]

The concept of early diversion, endorsed by the National Crime Commission,[14] became a fundamental part of the expanded Project evaluated in this report. Moreover, an appreciation of the fact that the less serious criminal cases prosecuted in the Court of General Sessions were far more susceptible to such diversion also led to plans for the expanded Project to begin operations in that court, as had not been possible with the comparatively small staff of the pilot project. Indeed, it was recognized that defendants in the District of Columbia suffered from an anomalous situation: accused misdemeanants, who had not yet "graduated" to the status of accused felons in the U.S. District Court, had fewer services available -- especially from the Probation Department -- than U.S. District Court defendants, yet could most benefit from social services to interrupt the all-too-usual progression from lesser crimes to the more serious.[15]

Lack of early referral of defendants to the pilot project led to other problems as well. Defense attorneys frequently deferred

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13/ Id. at 414.

14/ National Crime Commission Report 151.

15/ D.C. Crime Commission Report 393, 396, -16.

making use of the program until they had determined for themselves a dispositional strategy in a particular case. Once the defendant had been referred, often after a guilty plea, it frequently left too little time for competent rehabilitative planning, much less an adequate opportunity to judge the appropriateness of the plan and the defendant's willingness and ability to follow it. In fact, a defendant's situation often deteriorated in the interim between arrest and referral because an already precarious social situation was aggravated by the pendency of a criminal charge. In many instances, too, the pilot project's experience was that the defense attorneys emphasized the need only for specific services, particularly employment, since they believed that was the most important factor in judges' dispositional decisions. The lawyers, consequently, were frequently making their own diagnoses of social service needs and doing so, quite naturally, from their own perspective concerned with immediate disposition rather than long-range rehabilitation. The net result was that the pilot project prepared only 88 defendant studies from among its 226 clients, 39 percent. Attorneys tended to request studies only in those cases where they thought a disposition could most likely be affected.[16/]

These problems, too, the expanded Offender Rehabilitation Project set out to correct. Under the Office of Economic Opportunity grant, the enlarged staff would permit automatic referral, as soon

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16/ Dash *et al.*, *op. cit. supra* n. 10 at 410, 416.

counsel was assigned, of practically all indigent cases for the full range of Project services as needs were determined by the Project staff. The Project was to be unique for its lack of restrictions on intake. Limited only by its primary obligation to the indigent clients of the Legal Aid Agency for the District of Columbia, it would service defendants ranging from those charged with murder to a traffic violation, those with the proverbial criminal record "as long as your arm" to the first offender charged with a misdemeanor -- a truly ambitious undertaking, as should be borne in mind in reading this report. A correlative aim of the Project, arising from the experience of the pilot effort, was to expend greater effort to sensitize defense attorneys, as well as others within the criminal justice system, to a greater awareness of the needs for and benefits of social services for all defendants.

Two additional departures were planned for the expanded Offender Rehabilitation Project. In addition to continuing its use of non-professional social work personnel, a manpower utilization endorsed by the National Crime Commission,[17/] the Project planned to utilize indigenous ex-offenders as "rehabilitative aides," later called "follow-up counsellors." This seemed appropriate both because the Project was to be funded by the "Poverty Program" and because, again, of the endorsement by the National Crime Commission:

> "People who have themselves experienced problems and come from backgrounds like those of offenders often can help

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17/ National Crime Commission Report 167-68.

> them in ways professional caseworkers cannot. Contact with a person who has overcome handicaps and is living successfully in the community could mean a great deal more to an offender than conventional advice and guidance."18/

These follow-up counsellors were to operate as a "follow-up unit" within the Project to prevent, by providing extended service, breakdown in rehabilitation plans and to assist defendants with other significant problems which might occur while released on bail or probation.

The Project planned also to utilize a part-time psychiatrist and a part-time psychologist to help identify mentally disordered or deficient offenders as early in the criminal process as possible and to recommend community-based therapeutic treatment programs if possible. These staff members were not themselves to give treatment, but were to provide psychiatric and psychological evaluation reports and testing for the assistance of Project personnel. Nor were they to assist defense attorneys in presenting insanity issues in court, though they would help to identify defendants with possible problems in that area so that the attorneys could pursue the usual channels for mental examination of indigent defendants.19/

In summary, the Offender Rehabilitation Project had a definite evolutionary basis for the direction and form proposed for it

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18/ *Id*. at 168.

19/ 24 D.C. Code § 301 (1967).

as an expanded two-year experimental project. It would continue to provide a valuable presentence service to the criminal defense. But in order to better perform that function, and in order to provide a new and additional component of involvement in the pretrial stages of the criminal process, it was to be brought into every new case as soon as counsel was assigned on an automatic basis not dependent upon selective referral by the lawyer. Further, it was to begin operating in misdemeanor cases in the Court of General Sessions, it was to utilize indigenous ex-offenders in a social work role, and it was geared to attempt to influence the criminal justice system toward a greater sensitivity to offender rehabilitation issues, including influence upon the community and governmental resources with potential for providing vitally needed social services to the criminal offender.

B. Underlying Features of the Evaluation

There are features about the Evaluation Program and its relationship to the Offender Rehabilitation Project which should be kept continually in mind in interpreting the evaluation results which follow.

First, the organization and staff of the Project and the Evaluation Program were separate and distinct entities. Each had virtual autonomy and each did its own job to the best of its ability affected at most by peripheral matters of cooperation with the other. When cooperation was required, from the Evaluation Program's

Excerpt from "An Evaluation of the Offender Rehabilitation Project of the Legal Aid Agency for the District of Columbia"

SUMMARY OF FINDINGS AND CONCLUSIONS

One June 1, 1967, a demonstration program known as the Offender Rehabilitation Project was funded by the Office of Economic Opportunity Legal Services Program. The purposes of the Project were to provide defense attorneys with social background information on indigent defendants for use in the criminal process; to work with those defendants to develop rehabilitation plans based on community social and rehabilitative services; and to embody the social information and planning in reports for the attorneys' use in facilitating, where appropriate, negotiated dispositions before trial or community based sentences for convicted defendants. The Project utilized college educated non-professionals and indigenous and ex-offender personnel supervised by professional social workers.

Since the Offender Rehabilitation Project was the first systematic effort in the nation to help public defender attorneys develop rehabilitative programming for their indigent clients, the Office of Law Enforcement Assistance, U.S. Department of Justice, concurrently funded a thoroughgoing evaluation of the Project. The aim was to discover as much as possible, within the time available for evaluation, about the Project's impact upon the defendants it attempted to service and upon the system of criminal justice. The Office of Economic Opportunity included funds in its grant for the Evaluation Program's research assistant personnel.

The evaluation was conducted on three levels: (1) the effect of the Project on defendants; (2) the impact of the Project on the criminal justice system; and (3) the internal functioning of the Offender Rehabilitation Project. Randomized experimental and control groups of defendants were set up so that the experimental group defendants had the services of the Offender Rehabilitation Project while the control group did not.

To provide perspective for the Evaluation, the Office of Law Enforcement Assistance requested the evaluators to conduct a nationwide survey to determine the existence and extent of social services provided by defender agencies throughout the nation. Among 133 defender agencies responding, 41 percent had one or more means of providing social services to their offender clients. Only two agencies were found to have their own formal programs providing social services to offenders, one of which was the Offender Rehabilitation Project. Nineteen agencies had formal or informal arrangements with outside resources in the community; in 44 agencies the attorneys made referrals; and in 23 agencies the attorneys themselves provided services to defendants. A mere 2.1 percent of the clients of all these agencies, however, were beneficiaries of the social services provided.

Part 1

As expected, the Offender Rehabilitation Project's clients were predominantly male, black, relatively young, often single, of relatively low educational attainment, unskilled, erratically employed, recidivists, and having generally marginal income. The experimental and control

groups of defendants were closely similar to each other and to all other Project clients; if anything, the experimental group was slightly more handicapped, being charged with a higher proportion of crimes against the person, having more previous juvenile arrests, and earning less income.

In the reports the Project wrote on its clients and transmitted to the defense attorney for his use, the Project made recommendations for probation or suspended sentence in 69 percent of them. The Project's sentencing recommendations were followed by the U.S. District Court (where felonies are prosecuted in the District of Columbia) 53 percent of the time. Its recommendations were followed 59 percent of the time in the Court of General Sessions (where misdemeanors are prosecuted, some of which are reduced felony charges). In the 342 full defendant reports examined, the Project suggested some 604 elements of rehabilitation plans for its clients. In addition, 59 separate community resources were mentioned 229 times in a total of 405 reports abstracted by the Evaluation.

The Project appeared to have, through direct and indirect means, a significant effect upon dispositions of criminal cases. In the Court of General Sessions only 52 percent of the experimental group defendants were convicted and 54 percent of these were sentenced to probation or given a suspended sentence. In the control group, on the other hand, 63 percent were convicted and of those, only 35 percent were sentenced to probation or given a suspended sentence. All other Project clients in the Court of General Sessions had a conviction rate of 57 percent and of those, 56 percent were sentenced to probation or given a suspended sentence.

In the U.S. District Court 58 percent of the experimental group defendants were convicted compared to 88 percent of the control group defendants. All other Project clients were convicted at a rate of 78 percent. The effect of the Project on sentences in that court was less clear, though the incarceration rate was 42 percent of the total experimental group and 65 percent of the control group. Legal Aid Agency attorneys achieved a conviction rate 16 percentage points lower than private practitioners using the Project in the Court of General Sessions and 9 percentage points lower in the U.S. District Court.

A cost analysis comparison between the experimental and control groups shows a conservatively calculated correctional cost saving to the community of almost $540 per client over and above the cost of operating the Project itself. At the rate the Project serviced clients, this saving comes to approximately $360,000 per year. Not included are indirect savings from the fact that more Project defendants are in the community as taxpayers rather than in prison and unable to support their families. The average correctional time to which experimental group defendants were sentenced was 37 months compared to 48 months for the control group.

Recidivism was measured by rearrests of Project clients within the District of Columbia whether convicted or not convicted on the charge pending at the time of Project referral and without reference

to the length of time they had been in the community since referral. Twenty-two percent of the Court of General Sessions defendants recidivated as did 15 percent of the U.S. District Court defendants. A greater proportion of Court of General Sessions defendants were free in the community with opportunities to recidivate. In the Court of General Sessions 28 percent of the experimental group defendants recidivated compared to 44 percent of the control group defendants. In the U.S. District Court 15 percent of the experimental group defendants recidivated compared to 18 percent of the control group defendants. These differences are even more significant in light of the fact that more experimental group defendants were free in the community with opportunities to recidivate.

Part 2

Judges interviewed by the Evaluation could be analyzed in three groups in terms of their attitudes toward sentencing -- those who gave primary consideration to the defendant and his rehabilitative potential when considering an appropriate sentence, those who primarily considered protection of the public, and those who fell somewhere between the first two groups. The first group of judges was very enthusiastic about the Offender Rehabilitation Project and had had substantial contact with it through receipt of many of its defendant reports. The second and third groups of judges had had very little experience with the Project and were less enthusiastic about it. But since these judges were by no means negative toward the Project, the evaluation concludes that defense attorneys were unduly cautious in their "judge-shopping" and use or non-use of Project defendant reports at sentencing.

The Project has a very favorable image within the defense bar and enjoys a full and thorough appreciation of its use to the attorney at sentencing. Its role in pretrial negotiations is less well understood and less utilized. Public defender attorneys seem to have a broader appreciation of the Project's usefulness as well as a broader understanding of the defense role. Defense attorneys who had not utilized the Project showed much less comprehensive views of the attorney's role at sentencing and after. The strongest criticism of the Project by defense attorneys was that its services were not rendered quickly enough. This criticism was tempered, in a pretrial negotiations pilot study conducted by the Evaluation, by a finding that attorneys moved their cases too quickly for the Project to act in many instances.

Prosecutors did not exhibit a thorough understanding of the Offender Rehabilitation Project. One-third of them had received information in pretrial negotiations that they knew to have come from the Project. Few prosecutors were willing or able to rate the Project on any specific issue, but when informed more fully about the Project's operations all felt that it could provide valuable services and information to them. The nature and seriousness of the offense and the defendant's prior record were the most important factors cited by prosecutors in determining whether to prosecute or in negotiating a guilty plea.

The Court of General Sessions probation officers interviewed were younger and more hetrogeneous than the better educated, more experienced U.S. District Court officers. While the latter were considerably more negative toward the Project, the general attitude among all probation officers was one of cooperation with the Project even though there may not have been general sympathy with its aims, of crediting its innovative character, and of favorable recognition of its emphasis on rehabilitative planning and the use of community resources. Primary negative attitudes expressed were criticism of the Project's defendant reports and the overlap of effort to produce them, a feeling that the skills and abilities of Project personnel were inferior to those of probation officers, and the view that probation officers had a greater fund of information about defendants. The Evaluation concludes that the Project seemed to have broken down some communication barriers with probation officers and to have done so in an atmosphere of benign rivalry with them.

The Project was in contact with at least 137 community agencies and organizations in the Washington metropolitan area plus many private employers. A few agencies were used very heavily. There was some evidence of a tendency by the Project to become a service agency rather than a referral agency for its clients. The Project's major failing in the community resource area was its inability to develop and consistently execute a program for coordinated mobilization and use of community resources.

An instrument known as the "Decision Game" was used with probation officers, prosecutors, and Project workers to compare sentencing or dispositional recommendations, information utilized in making those decisions, and the effect of rehabilitative planning. Results showed the tendency toward somewhat more community oriented decisions by Project workers and the poor emphasis on rehabilitative planning by District Court probation officers in comparison to other players (except prosecutors). A significant effect of rehabilitation plans, comparable to those prepared by the Project, was also shown, especially upon prosecutors in a pretrial negotiation context. Information most often used in decisions made were the defendant's offense, his prior criminal record, his employment and his own statement about the offense.

Part 3

As originally organized, the Project designated two types of staff workers. Program developers were to work with and develop rapport with clients, develop community resources to serve them, and devise rehabilitation plans for them. Follow-up counsellors were cast in a supportive role to check on the suitability of rehabilitation plans and to help put them into effect. Program developers were college educated and most were white females. Follow-up counsellors were not highly educated, were black males, products of the ghetto, and the majority were ex-offenders. The Evaluation observed some degree of acculturation toward a middle class life style by the follow-up counsellors during the life of the Project. They seemed to be more self-confident than program developers and began to assume some of the duties originally

assigned to program developers. This caused some confusion and tension within the Project which was augmented by a salary differential between the two types of personnel.

The Evaluation found evidence of various communication difficulties within the Project, some of which related to misunderstandings about in-house training, staff and unit meetings, and a rising level of black militancy. Difficulties arose over inefficient deployment of psychological staff and employment counsellors. There were occasional problems of hurried and insensitive demands placed upon the Project by defense attorneys.

The Evaluation found that approximately 50 percent of all Project time accounted for during a ten-week test period was spent in travel or waiting. The Evaluation attributed much of this inefficiency to poor location of the Project's central office, a problem which has since been rectified. Analysis of non-travel or waiting time highlighted the planning functions of the Program developers and the community oriented, implementation functions of the follow-up counsellors. The data suggest that there was much less overlap in roles than was perceived or imagined by Project staff.

Conclusions

The Evaluation concludes that the legal dispositions achieved through utilization of the Project, while obviously good from the defendant's point of view, are acceptable from society's point of view only if the fundamental premise of the Offender Rehabilitation Project is accepted: that community oriented rehabilitation is more effective in reducing criminality and preventing recidivism than is correction through incarceration. The Evaluation accepts this premise as valid and feels its preliminary recidivism data tend to justify it. It therefore concludes that the Project succeeded, to a degree justified by its cost, in its goal of wrenching the legal system farther away from an orientation which tends toward incarceration because of failure to offer something better. The Evaluation further concludes that the Project is unique in that it was able to help all defendants to some degree. It concludes that Offender Rehabilitaton Project type services are more widely effective and desirable within a defense context at the present time. Disadvantages of adversary status and duplication of effort are outweighed by the need for adequate defense services, confidentiality, and a counter to secret probation office presentence reports.

The Evaluation concludes that the Project is better utilized by organized public defender attorneys. The Project's use in pretrial negotiations ought to be optimized, perhaps through the greater use of short form reports or automatic screening of Project defendants. Informal communication and cooperation with probation offices ought to be expanded and opportunities for joint in-service training ventures and staff programs explored. There should be full-time responsibility in one or more Project staff persons in the aggressive and dedicated

pursuit of community resource development. Further, there should be greater flexibility in recognizing latent talent among Project workers without arbitrary distinction based upon formal education. The Project's services ought to be expanded into Juvenile Court proceedings. Replications of the Offender Rehabilitation Project would more likely be benefitted by ongoing in-house evaluations.

File Budget Review

February 13, 1969

House Judiciary Committee
Alaska State Legislature

Attention: Mr. Barry Jackson, Chairman

This follows a narrative rundown of the activities, problems and future plans of the Division of Corrections in the Department of Health and Welfare, as requested in your letter of February 5, 1969.

To briefly introduce myself and touch lightly on personal qualifications, please be advised that I entered the Federal Bureau of Prisons System at Alcatraz in December of 1936. I retired from that service December 30, 1966. During 1967 I served as a consultant in penal management and operations to the Federal Bureau of Prisons and the American Correctional Association. As a consultant I did studies for the States of Maryland and Alaska and a survey of all the county jails on the Pacific Coast between Everett, Washington and San Jose, California. As a followup to the Alaska study, in March of 1967 at the request of the then Deupty Commissioner, Health and Welfare, Richard B. Lauber, on December 16, 1967 I came to Alaska as Director of the then Youth and Adult Authority, now the Division of Corrections.

Comments are based on varied experience and training and fourteen months as Director. I join other penal practitioners and share in the extreme difficulty of developing and understanding and explaining to the lay individual the purpose of modern day corrections. Unless the problem touches the lives of the individual, the concept of punishment transcends and literally eliminates all thoughts of corrections, or what is broadly referred to as rehabilitation of the individual. Thus the problem of correctional enlightenment in all its ramifications seems insurmountable, and our attempts to enlist the support and cooperation of government, labor, business, management, industry and the community at large is a discouraging and futile action. Yet crime and delinquency is increasing at an alarming rate and reaching deeper and deeper into our youth, tomorrow's society. In short, it is a matter of one's point of view.

For many months I have felt the urgency of statistical support for our programs, and a means of conveying to the uninitiated the growth and seriousness of crime in Alaska. I am reliably informed that soon the Department of Health and Welfare will become a member in the electric data processing system which

will provide the Division of Corrections with the information essential to annual and semi-annual reports and support for our correctional program effort.

I believe that Alaska at this point is at the crossroads and can look back with considerable satisfaction to the accomplishments in updating the institutions since becoming a state. The future, however, is limited by the desire for continuing progressive action. The vision and concern of legislators attending early sessions brought into existence the new Regional Institutions in Fairbanks, the McLaughlin Youth Center in Anchorage, and this year the Regional in Juneau. During the past year we have changed the name from Youth and Adult Authority to the Division of Corrections. Programs implemented the past year are, in part, the Citizens Action Committee at Fairbanks, which works closely with the community at large in the area of foster home placement, post-release employment, and public education. From the existing staff at Fairbanks we have developed a teacher working with the juvenile and the adult groups. A number of cases are on work furlough; others care for the lawns and gardens of the Pioneers Home, which is adjacent to the Fairbanks Institution.

In Anchorage we have a class of adults working toward a certificate in GED. There are group counselling sessions with trained employee group leaders. We have the largest number at Anchorage on work furlough.

In Juneau we have a full-time and approved vocational training class in food service, also individual counselling sessions.

At the Adult Conservation Camp, Palmer, fire fighting crews are trained and moved to various points throughout the State to combat fires. The only full-time instructor is at Palmer, teaching adult basic education. There are group and individual counselling sessions.

At the youth institutions we have active educational programs--at McLaughlin Youth Center, with instructors supplied by the Anchorage Borough School District, and at the Youth Conservation Camp, Wasilla, with teachers from the Mat-Su Borough School District. Several youngsters are leaving the McLaughlin Youth Center and attending community schools. At the Alcantra Youth Conservation Camp, Wasilla, educational classes are conducted by the Mat-Su Borough School District with emphasis, due largely to educationally retarded students, on the program learning instead of the formal classroom setting.

Many of the offenders sent to outside "contract" institutions, largely because of length of sentence, or that our facilities are not adequate for their needs, are engaged in advanced programs of education, vocational training, and social adjustment activities. At a given point they are reclassified for

return to the Alaska institutions. Contracts for the adult and the deeply troubled youth are with the Federal Bureau of Prisons; with California and Utah Youth Authorities for the less troubled youth, and to the Good Shepherd Homes of Spokane, Denver and Seattle for the pre-delinquent boy and girl.

Our efforts at education, pre-vocation and vocational training, and social adjustment, are broad and demanding. Recognizing this I have worked closely with Commissioner Hartman, Department of Education, in hopes of enlisting help for our specialized needs. At the adult level, four to five and occasionally six years exist in educational achievement between the same age group in the community. Further, larger numbers are without a salable skill; consequently the revolving jail door for those unprepared to cope with the demands of a competitive society. At the juvenile level are youngsters who fail in school, who are unable or unwilling to conform, consequently become involved in runaway, truancy, and reveal pre-delinquent tendencies. As a result of my conversations with Dr. Hartman and members of his staff, the Department of Education included in their fiscal year 1970 budget an employee qualified to serve the needs of the Division of Corrections. I am reliably informed this position was removed during early budget considerations.

Some of the problems presently confronted by the Division of Corrections:

1. Full-time employee in the Department of Education to serve as a liaison in the specialized field of correctional education, pre-vocational and vocational training.

2. Enlarge upon the furlough program to include not only the privilege of work, but also study and home visits where indicated. This places greater responsibility on the institution classification committee that only those eligible are accorded this privilege.

3. Under the judicial banner:

   (a) Furlough is the responsibility of the institution and not the courts. However, their recommendation is well received and encouraged.

   (b) We are having problems with the amended sentence. We perform extensive preliminary work only to discover the original sentence has been amended to "time served."

   (c) Sentences that require the individual serve sentence in the jail weekends and evenings only. The responsibility for booking and release, the control of contraband, inventory of clothing

and personal property, is vital to the security and is working a hardship on the institutions.

4. Employee training to effectively cope with the increasing number and different type individual, juvenile and adult, committed to our institutions. During recent months there is noticeable increase in the numbers of the criminally sophisticated, prison-wise offenders entering our system. The attraction of the economic development and availability of work is bringing this element in with legitimate interests.

5. Division of Corrections should be permitted the flexibility of placing the aggressive and mature 17, 18 and 19 year old juvenile offender in an institution best suited to the interests of the community and the individual. Example--the Adult Conservation Camp at Palmer or even placement in a correctional institution. Many of today's older youth are hardened beyond their years; consequently disrupt the atmosphere of the juvenile institution and the cost of "outside" commitment is high.

6. Long-range study of the physical needs of the Division of Corrections:

   (a) Replacement of the Anchorage State Jail

   (b) Completion of McLaughlin Youth Center

   (c) Rebuilding the Youth Conservation Center at Wasilla

   (d) Removing the children from the jail settings of Fairbanks and Juneau.

7. Adequate staffing in the institutions and the field units. Strengthen the Central Office personnel complement. There is critical need for more space in the Central Office.

8. Community involvement--citizen participation.

9. Labor-Management sharing in our treatment efforts.

10. State use industries. Productive and contributing to the economy of the state at large, yet providing a salable skill and a better educated individual upon release. In this latter connection, agreement has been made with the Department of Natural Resources, Division of Lands, to preserve and maintain historical monuments throughout the State. For example, Chilkoot

Trail, wayside parks, and picnic areas, thereby making them inviting to resident and tourist alike.

Engage in experimental programs of tree culture, creating a nursery at the Youth Camp, and otherwise engage in statewide reforestation projects. Also, remain in constant state of readiness for fire-fighting.

11. Uniforms to implant pride and dignity to correctional work--distinguish employee from inmate.

12. Salary imbalance as compared to like work.

13. In many cases "concurrent" sentence meaningless.

14. Remove impediments and eliminate delays to speedy justice.

"Justice delayed is justice denied!"

calendar crowding

pre sent. report delay - 3 weeks

appeal

Demands on p.s. report

21 par. pers.

115 caseload

compared w 50 standard

75 (could do it)

MISC . [illegible]
Budget Review

JUNEAU BAR ASSOCIATION RESOLUTION

RELATING TO THE DEDICATION OF A PORTION OF DIVISION OF CORRECTION'S INSTITUTION BUDGET TO THE REHABILITATION OF THE ALCOHOLIC CRIMINAL OFFENDER.

BE IT RESOLVED BY THE JUNEAU BAR ASSOCIATION:

WHEREAS the overwhelming majority of prisoners institutionalized by the State of Alaska at anytime, are Alcoholics or problem drinkers; and

WHEREAS most of these prisoners are recidivist as a direct or indirect result of alcohol consumption; and

WHEREAS it costs the tax payer approximately $18.00 per day or $6,500.00 per year to incarcerate these individuals in present facilities; and

WHEREAS the present facilities are security institutions and cost approximately $20,000.00 per bed to construct; and

WHEREAS the present facilities are not equipped to rehabilitate the alcoholic and have no programs specifically calculated to rehabilitate the alcoholic; and

WHEREAS there is no need for costly security jails and a disproportionate number of guards to detain the alcoholic; and

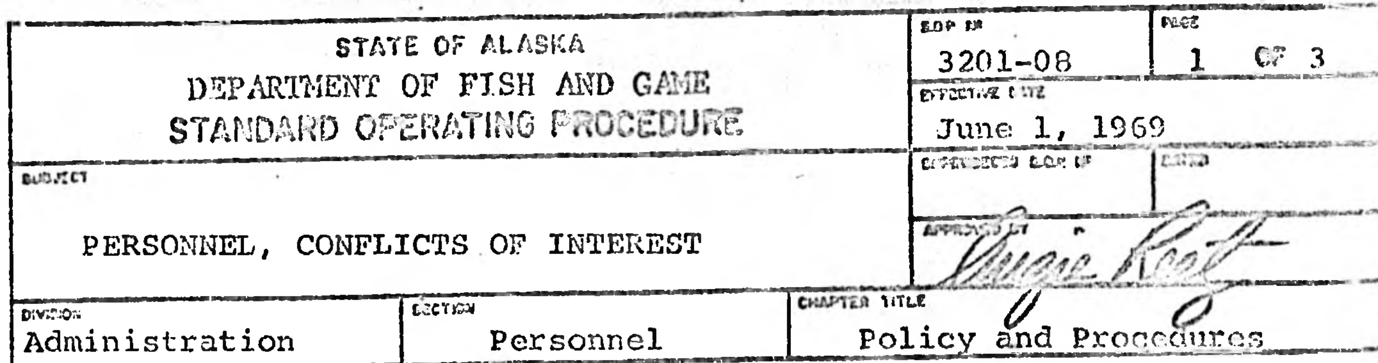
WHEREAS to continue the present system will only continue the problem and perpetuate a wasteful and ineffective method which has totally failed;

BE IT RESOLVED both legislative and administrative action be taken which will result in the dedication of a portion of Division of Corrections Institutional budget to institutions and programs specifically calculated to rehabilitate the incarcerated Alcoholic Criminal Offender; and be it

FURTHER RESOLVED the Alaska Bar Association is respectfully requested to join the Juneau Bar Association in supporting and implementing this objective by it's inclusion in it's legislative program; and be it

FURTHER RESOLVED that a copy of this resolution be sent to the Honorable Lester W. Miller, Jr., President of the Alaska Bar Association and to Stanley Howitt, Executive Director and Bar Counsel and to each member of the Alaska Bar Association Board of Governors, and to Glen Wilcox, Director of Alcoholism, Department of Health and Welfare, and to the Health, Welfare and Education Committee, Judiciary Committee and Finance Committee of each house of the Alaska Legislature, the Honorable Keith H. Miller, Governor, and the Honorable J. Scott McDonald, Commissioner of the Department of Health and Welfare.

FG-95



STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
STANDARD OPERATING PROCEDURE

SOP NR	PAGE
3201-08	1 OF 3
EFFECTIVE DATE	
June 1, 1969	

SUBJECT: PERSONNEL, CONFLICTS OF INTEREST

APPROVED BY

DIVISION	SECTION	CHAPTER TITLE
Administration	Personnel	Policy and Procedures

Purpose:

To establish guidelines for personnel participating in activities which may conflict with the interest of the State or Department.

Distribution:

All manual holders.

Definition:

A conflict of interest occurs when a Departmental employee participates in an activity which results in one or more of the following:

(a) Employment which reflects adversely the good will, reputation or public faith in the Department or State.

(b) Uses for personal gain information not available to the general public.

(c) Results in personal gain from participating in commercial fishing, guiding, trapping or other profit ventures under departmental control.

(d) Participation as a member of Fish and Game Advisory Committees or as an officer of a conservation group or societies or sportsmans group.

(e) In violation of Rule 13 of the Personnel Rules of the State of Alaska.

POLICY:

Outside Employment:

Approval must be obtained from the Commissioner prior to acceptance of any outside employment.

Use of Information:

Departmental employees are encouraged to prepare general or technical articles or papers on Department work on official time. However, information not generally available to the public should not be used in articles being sold. Clearance shall be obtained from the Commissioner before articles or photographs, based on departmental activities, are submitted for publication.

Commercial Fishing, Guiding, Trapping:

These commercial activities are under the control of the Department, and employees shall refrain from engaging therein. Our efforts are directed to conserving resources for the public use, and employees who guide, fish or trap for profit jeopardize their responsibility both to the resource and the State. Approval is required by the Commissioner for any special situations under which the employee may engage in these activities.

Advisory Committees, Sportsmans Clubs, Conservation Societies (Sierra Club, Wilderness Society, Alaska Conservation Society, Audubon Society, etc.):

Departmental employees are encouraged to assist Advisory Committees and serve as technical consultants - but cannot be voting members.

Departmental employees are encouraged to participate in sportsmans clubs and conservation societies. They may serve as technical assistants or non-voting secretaries to the governing body, but are not permitted to serve as officers or voting members of the governing body. Employees who are appointed or elected as officers, without their knowledge, shall request relief from the President or Chairman of the governing body.

In matters pertaining to the fish and game policies or programs of the Department or State Administration, the employee

FG-9.5

STATE OF ALASKA DEPARTMENT OF FISH AND GAME STANDARD OPERATING PROCEDURE	SOP NO 3201-08	PAGE 3 OF 3
	EFFECTIVE DATE June 1, 1969	
SUBJECT PERSONNEL, CONFLICTS OF INTEREST	SUPERSEDES SOP NO	DATED
	APPROVED BY [signature]	

DIVISION	SECTION	CHAPTER TITLE
Administration	Personnel	Policy and Procedures.

is obligated to defend those policies or, if he is not in accord with such policies, refrain from any comment on the matter.

Professional Societies (American Fisheries Society, The Wildlife Society):

Departmental employees are encouraged to participate and serve as members and officers of professional societies and organizations; however, when these groups become involved in fish and game matters contrary to the policies and programs of the Department or State Administration, the employee is obligated to defend those policies or, if he is not in accord with such policies, refrain from any comment on the matter.

Licensing of Architects and Engineers

This material is on a separate subject

March 24, 1970

Mr. William J. Moran
Attorney at Law
P. O. Box 1891
Anchorage, Alaska 99501

Re: <u>Revision of AS 08 48.260</u>

Dear Bill:

I do agree that this section should be amended, but I think it is too late now to introduce a bill and get it through this session.

Hopefully, it can be included in the Revisor's Bill next year or in a general revision of AS Chapter 48.

Sincerely,

Barry W. Jackson
Chairman
House Judiciary
Committee

BWJ/mm

~~HB 754~~

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99801

March 20, 1970

M E M O R A N D U M

TO: Barry W. Jackson, Chairman
House Judiciary Committee

FROM: Arthur H. Peterson
Revisor of Statutes

SUBJECT: Bill Moran's March 13 letter regarding AS 08.48.260
(licensing of architects and engineers)

As Mr. Moran pointed out, the revisor's note (written by my predecessor) under AS 08.48.260 states: "Subsection (b) is incomplete and conflicts with paragraph (1). Legislative action will be needed to correct this conflict." That section, in more-or-less its present form, was derived from sec. 5, ch. 111 SLA 1949, the relevant part of which stated:

(5) (Holders of certificates from other state or country.) The board shall from time to time examine the requirements for the registration of professional engineers and professional architects in other states, territories and countries and shall record those in which, in the judgment of the board, standards not lower than those provided by this Act are maintained. The secretary of the board, upon the presentation to him by any person of satisfactory evidence that such person holds a certificate of registration issued to such person by proper authority in any state, territory or country so recorded, may, upon approval by an examining quorum of the board hereunder:

(a) Reciprocity Registration: Issue a certificate of registration as provided hereunder, upon submission by the applicant of satisfactory proof of his fulfilling the residence requirements for examination, of this Act and upon payment by him of a transfer fee of Twenty ($20.00) Dollars and such annual license fees as are prescribed herein.

(b) Non-resident Permit: Issue a non-resident permit for a period of not to exceed one year, for a non-resident within the meaning and intent of this Act, upon presentation by the applicant of a detailed description of the work upon which such applicant will be engaged within Alaska

and upon receipt by the board of a non-resident Permit Fee of $250.00. Such non-resident permit shall cover the work specifically described in the application therefor.

That was amended by sec. 2, ch. 84 SLA 1951 to delete the provision on non-resident permits and add the confusing language presently in AS 08.-48.260(b)(1), below. The conflict is as follows: the lead-in line in (b) gives (or used to give) the registration authority to the secretary of the board with the approval of an "examining quorum" (three out of the nine members [see AS 08.48.090]), whereas (1) now gives the authority directly to the board without mentioning the type of quorum (under AS 08.48.090 a regular quorum is five members); in addition, (1) recognizes registration by certain national professional organizations. The 1951 amendment wasn't made to fit the lead-in line, which makes the material between the present "(b)" and "(1)" (the last part of the material between the "(5)" and the "(a)" in the 1949 version, above) look incomplete.

I haven't checked with the architects or engineers and I don't know how AS 08.48.260 has been interpreted, but, assuming that they would prefer the most recent and broadest language, and assuming that the quorum matter is not important, my suggested amendment is as follows:

* Section 1. AS 08.48.260(b) is amended to read:

(b) [THE SECRETARY OF THE BOARD, UPON THE PRESENTATION TO HIM OF SATISFACTORY EVIDENCE THAT A PERSON HOLDS A CERTIFICATE OF REGISTRATION ISSUED BY PROPER AUTHORITY IN ANY STATE, TERRITORY OR COUNTRY SO RECORDED, MAY, UPON APPROVAL BY AN EXAMINING QUORUM OF THE BOARD HEREUNDER:

(1)] The board may, upon application and payment of a fee of $20, issue a certificate of registration as a professional engineer or professional architect to a person who holds a certificate of qualification or registration issued to him by proper authority of the National Council of State Boards of Engineering or Architectural Examiners, or of the National Bureau of Engineering or Architectural Registration, or of any state or territory or possession of the United States, or of any country. However the applicant shall meet the requirements of this chapter and the rules established by the board.

Presumably that last sentence refers to the character and education and experience requirements in AS 08.48.160. It should perhaps be noted that although AS 08.48.150 requires registration and licensure before practicing professional engineering or architecture, and several sections talk about an examination, there is nothing in AS 08.48 that <u>requires</u> a person to take an examination in order to become registered and licensed. Also, it is not clear what function AS 08.48.260<u>(a)</u> serves; it requires the board to make a list of states, etc., in which

the standards are not lower than those specified in AS 08.48, but when (b) refers to other states, etc., it doesn't mention standards; perhaps (a) should be deleted (repealed) too. As Felix Toner indicated at yesterday's House Judiciary Committee meeting (with regard to HB 626), some architects and engineers organization is planning a completely revised licensing chapter.

AP:ic

cc: William J. Moran, Esq.
Box 1891
Anchorage, Alaska 99501

PHONE 272-4441
AREA CODE 907

WILLIAM J. MORAN
ATTORNEY AT LAW
P. O. BOX 1891
ANCHORAGE, ALASKA 99501

March 13, 1970

Hon. Barry W. Jackson
Chairman, Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Revision of AS 08.48.260

Dear Barry:

I had occasion to review the subject section of the article dealing with the registration of professional engineers and architects. The revisor's note reflects the observation that sub-section (b) thereof is incomplete and in conflict with paragraph (1) - an observation with which I heartily agree, but I have found no evidence that legislative action has been taken to correct the error. I should think it important that appropriate action be taken.

Sincerely,

William J. Moran

cc: Arthur H. Peterson, Esq.
Legislative Affairs Agency
Pouch V
Juneau, Alaska 99801

Judicial Council

Supreme Court
State of Alaska
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE
GEORGE F. BONEY, ASSOCIATE JUSTICE
ROGER G. CONNOR, ASSOCIATE JUSTICE

February 11, 1969

Hon. Barry W. Jackson
Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Dear Rep. Jackson:

Yours of February 6 requests that I or my representative meet with your committee in a general information meeting to deliver a formal oral presentation concerning the activities of the Judicial Council, court system problems and plans for the future.

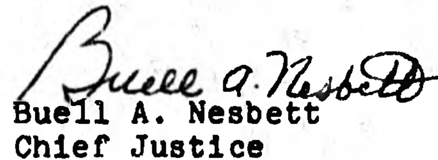
I accept your kind invitation.

Senator Phillips has arranged for the annual meeting between all members of the Alaska Judicial Council and the legislators to be held at 4 p.m. February 20, 1969. In past years these meetings have included the President, Speaker, Majority and Minority leaders and the Chairmen of the Finance and Judiciary Committees of both houses plus any other interested legislators.

The Administrative Director and I will be in Juneau presenting our 1969-1970 budget to the finance committees on February 18. On February 19 there will be meetings of the sub-committees and of the full statewide committee of the Alaska Judicial Council on sentencing. (Notices were mailed to you as a member) At 9 a.m. on February 20 the Alaska Judicial Council meets in the library of the Supreme Court. Sometime between 11 a.m. and 4 p.m. on the 20th the Council will meet with the Governor, and, as mentioned, at 4 p.m. it will meet with the legislators.

I will contact you after my arrival in Juneau to arrange a time satisfactory to all concerned.

Sincerely yours,



Buell A. Nesbett
Chief Justice

cc: Senator Brad Phillips
Robert H. Reynolds
Justice Dimond

Alaska Judicial Council
941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

February 6, 1969

TO: All Members Alaska Judicial Council Statewide Committee on Sentencing

A meeting of the Alaska Judicial Council Statewide Committee on Sentencing will be held in Juneau in the Superior Court courtroom, 5th floor, Capitol Building, Juneau, Alaska, commencing at 3:00 p.m., February 19, 1969.

All members desiring transportation and/or hotel reservations should immediately notify Mr. Robert H. Reynolds, Administrative Director of Courts, 941 Fourth Avenue, Anchorage, telephone 272-1587.

Please do your best to attend and bring with you the background research material furnished you in the past.

Sincerely yours,

Buell A. Nesbett
Chairman, Alaska
Judicial Council

Judicial Qualifications
Judicial Original

Supreme Court

State of Alaska
Pouch U
JUNEAU, ALASKA
99801

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

April 1, 1969

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

Dear Mr. Jackson:

Enclosed are copies of my letter to you of March 4, 1969 together with the proposed bill mentioned in that letter.

In my letter of March 4 I neglected to explain the reason for including section 22.30.145 which is on page 5 of the proposed bill. It would appear that under AS 44.62.330(b) the Administrative Procedure Act would not be applicable so far as adjudication is concerned. However, it may be that the provisions of the Administrative Procedure Act relating to filing and publication of regulations, procedure for adopting regulations, etc. may be applicable. I suggest that they should not be because the rules which will be adopted deal only with judges of the Alaska Court System and are not the kind of rules or regulations which have general application to persons throughout the state. What the commission plans to do once the rules have been adopted is to make copies available

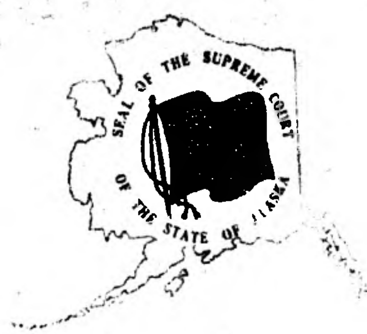
to every judge and to every member of the Alaska Bar Association and to all other persons who may be interested.

Sincerely yours,

John H. Dimond

John H. Dimond

Set up file



Supreme Court

State of Alaska
Pouch U
~~BOX 2601~~
JUNEAU, ALASKA
99801

BUELL A. NESBETT, CHIEF JUSTICE
JOHN H. DIMOND, ASSOCIATE JUSTICE
JAY A. RABINOWITZ, ASSOCIATE JUSTICE

March 4, 1969

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
State Capitol Building
Juneau, Alaska 99801

Dear Mr. Jackson:

As you know, the last session of the Alaska legislature enacted SLA 1968, chapter 213, which established the Commission on Judicial Qualifications. At the same session House Joint Resolution No. 74 was approved. This resolution proposed amendments to the Alaska Constitution which would also establish the Commission on Judicial Qualifications. The membership provided for in the resolution differs somewhat from that established in chapter 213, in that the resolution provides for three superior court judges whereas the statute provides for only two, and the resolution provides for only one district court judge whereas the statute provides for two.

The amendments to the constitution proposed in the resolution were approved by the voters at the August 1968 primary election. It appeared logical to assume that the provisions of the constitution would govern the membership of the commission. Therefore, membership of the commission was selected according to the provisions set out in the resolution rather than those set out in the statute.

The commission believes that the statute should be made to conform to the resolution. In order to accomplish this, among other things, the enclosed proposed bill has been prepared. I spoke to Mr. Kerttula, Speaker of the House, as to how to go about getting the bill introduced. He suggested that I refer the matter to you with the thought that perhaps the House Judiciary Committee would introduce and sponsor this legislation. I shall appreciate it if you can let me know whether or not your committee will introduce this legislation.

Here are some specific comments on the proposed bill:

1. Section 3 on page 2 would take care of a situation where a judge might be charged with a serious offense involving moral turpitude but will not have been tried and convicted. It seemed to the commission that such a charge, even before final determination by a court, might be such as to bring disrespect upon the judiciary and that in such a situation a suspension of the judge might well be in order.

2. Section 4 on page 2 is included to make certain that when a judge is removed by the supreme court he will not lose his retirement rights and benefits.

3. The new sections under Section 5, beginning on page 2, line 26, are provisions which the commission thought should be included in the law in order to confer upon the commission sufficient authority to perform its functions. These sections are taken from the California statute on judicial qualifications.

I shall be very happy to answer any questions that you may have regarding this proposed legislation.

Sincerely yours,

John H Dimond

John H. Dimond

KALAMARIDES & McVEIGH

ATTORNEYS AT LAW

SUITE 204-209 CRAWFORD BUILDING

TELEPHONE 272-7431

507 E STREET ANCHORAGE, ALASKA 99501

PETER J. KALAMARIDES
RICHARD L. McVEIGH

April 11, 1969

The Honorable Barry Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
House of Representatives
Juneau, Alaska

Dear Barry:

In this morning's Anchorage Daily News, Friday, April 11, 1969, there appeared the original of the enclosed xerox copy of inquiry with respect to Hubert A. Gilbert.

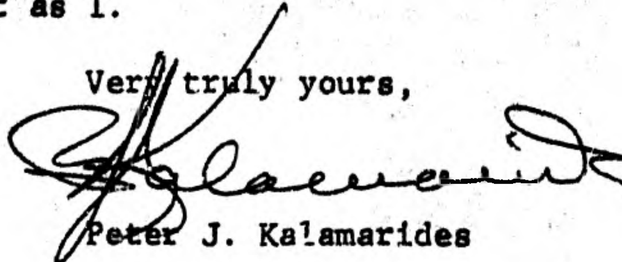
The 1968 legislature passed a statute authorizing the appointment of a Judicial Qualifications Committee to whom, it was anticipated, all inquiries would be directed regarding the qualifications of any judge in the state of Alaska.

I strenuously object to the methods utilized by the writer of this ad who is seeking information. Primarily, because it implies a failure of qualification and/or dereliction in performance of his judicial duties. Frankly, it smells of McCarthyism and is a type of character assassination which the members of the judiciary should not be exposed to. I can certainly see and anticipate that the nature of the replies to this ad would be hearsay and when the mass of hearsay from disgruntled litigants is presented to the Judicial Qualifications Committee and they seek affidavits in support of the so-called charges, and these affidavits could not be produced then, of course, both the Bar and the judiciary would be accused by the non-lawyers interested, of working hand in hand to deprive the non-lawyers of a proper hearing. Contrary to this, proper grievance methods, both as to attorneys and the judiciary, have been utilized in the past and I have been advised rules of procedure will soon be adopted by the Judicial Qualifications Committee.

The Honorable Barry Jackson
Chairman, House Judiciary Committee
Alaska State Legislature
Page Two

It is my opinion that the judiciary committees of both the senate and the house should take forceful action to avoid putting members of our judiciary before the public in a like manner as has been presented here. Proper methods of procedure are available without the necessity of impugning, even by implication, the character of any member of the judiciary. I trust you will see this in the same light as I.

Very truly yours,



Peter J. Kalamarides

PJK:jo
Encl:
cc: Hon. T. B. Miller
Chmn., Senate Judiciary Committee

Information is sought

on the professional performance of

Hubert A. Gilbert,

a State Superior Court Judge

who has served in Nome, Anchorage and Ketchikan.

All inquiries confidential.

Write: Blind Box 888
c/o Anchorage Daily News
Box 1660
Anchorage, Alaska 99501

Fri, April 11, 1969, Anch. Daily News

Box 1309
Fairbanks
Alaska 99701
February 14, 1969

Fairbanks Legislative Delegation
Alaska State Legislature
Juneau, Alaska 99801

Sir:

For the past six months I have been handling a substantial percentage of the juvenile appointments in the Fairbanks Superior Court. My clients come from an area between Barrow and Bethel with about half of them from the Fairbanks area. I have been continually shocked by the existing detention and treatment facilities and by the cumbersome and somewhat unfair procedures for juvenile delinquents and dependents.

At any one time there are between fifteen and thirty juveniles held in the Juvenile Detention Wing of the Fairbanks State Jail. Both delinquent and dependent children are held in the jail with no separation. There is absolutely no program of any kind available to these children: no schooling, no physical exercise program and no therapy. (There is a library with very few books, almost all of which are unsuitable and unattractive.) The first four days of detention are spent in solitary confinement awaiting physical examination and are immediately followed by physical abuse from other inmates; the juveniles regularly beat each other up with potentially serious injuries; a child with the "proper" attitude can gradually advance in the pecking order and become the abuser rather than the abused. Some of the children go "stir crazy" while others become withdrawn and still others obtain an unfortunate sophistication about their new way of life. None of them can really understand that his detention isn't punishment but is rather a step on the road to rehabilitation. In addition, due to the construction of the ceiling there is free secret access between the boys' and girls' dormitories. The children are exposed to both sexual and homosexual experiences. Almost all of the children held in "temporary" detention stay there more than two months, and I know of one girl detained there for eight months. As a result each child held there is in danger of losing a year of school, especially those who are placed outside of the available but inadequate State institutions. Most of them are in academic trouble anyway, and this loss becomes too great to overcome.

The problems in the Juvenile Detention Wing of the Fairbanks State Jail are acute, but solutions to these problems should not be exceedingly difficult. I understand that a proposal (for which there are available funds) has been made to provide

the Fairbanks Jail with two part time teachers and a psychologist, that this proposal was forwarded to Mr. May, that his reaction could be termed lukewarm at best because the problems have not as yet caused enough pressure upon anyone at that high a level in the Department, and that he turned this proposal over to Mr. Hartman upon whose desk it is now collecting dust.

Prior to adjudication a child may be detained although the District Attorney's Office does not yet have possession of a police report from which to draw up a petition against him; the State need only make a prima facie showing of cause for temporary detention at a short hearing at which no defense attorney is present. The State can then wait thirty days before the next hearing at which the child is to admit or deny the allegations against him. In the meantime the State has time to collect information on which to base its petition; it could never put an adult in jail without a complaint against him. If the child denies the allegations against him, there is further delay until the hearing on the truth of the allegations. In addition, it has happened that a child's papers are lost and nobody knows he is in jail. One of my clients was there for 64 days before he could admit or deny the allegations, and after he denied them, the State couldn't even prove its case. Once a child is adjudicated dependent or delinquent, the bureaucracy and red tape of the Department of Health and Welfare keep him in jail for a further unconscionable length of time. There is no real program planned for the children until after adjudication, and the planned program must go through so many channels for modification and approval that it is not unusual for a child to spend at least another six weeks in jail before he is sent anywhere for "rehabilitation".

There are problems also with the legal proceedings against juveniles. Sometimes the State will bring a petition of delinquency against a child to remove him from an intolerable home situation because this is a more convenient procedure than proving dependency or terminating parental rights or because there are more facilities available for delinquents than dependents. This is done more often to children from the bush whose parents do not understand what is really happening, find it inconvenient, if not impossible, to come all the way to Fairbanks to protest. In general, the legal proceedings are supposedly aimed at the best interest of the child, but the juvenile is not provided with the basic rights afforded an adult defendant. A child can be institutionalized for many years for an act which would not be a crime if committed by an adult or for a longer period of time than provided by statute for adult criminals. In addition the juvenile rules of procedure state that an allegation must be proved only by a preponderance of the evidence although the State must prove charges against adults beyond a reasonable doubt. The purpose of the secret juvenile proceedings is to remove the stigma of crime from delinquency and to rehabilitate the child, but at the moment the tight secrecy surrounding treatment of

juveniles also serves to keep the public unaware of existing conditions. In Fairbanks attorneys are routinely appointed for juveniles, but, from my experience, this is not true in Anchorage or in the small native communities of the State. Also, some of the judges feel that children should not be subject to the trauma of a trial; this means that the child should admit the charges whether or not the State has acted properly in the matter. Many of my clients resent this attitude and refuse to admit inaccurate charges or charges where they feel some State official has violated their confidence. Some of the charges are also unrealistic. I have yet to have a client who will admit associating "with vagrant or immoral people", and I have also had difficulty when the charge is being "uncontrolled by parents". Either of these charges is sufficient for delinquency, but it seems to be psychologically difficult for the child to call his friends "immoral" or to admit his parents are unable to handle him.

The State facilities for treating delinquents are inadequate, overcrowded, understaffed and unprofessionally staffed; they are vastly superior to the facilities for dependent children when a foster home cannot be found. In some cases the institutional environment is actually worse for the child than it would be if he were returned to the community after his "brief" stay in jail. In addition, for some reason children from Fairbanks and the bush are not accepted by McLaughlin Youth Center but are almost always sent to other institutions.

No proper physical examination is given to most of the juveniles at any time during their institutionalization. The examination at the jail when the child is first taken into custody is mainly to check for communicable diseases. Any child who is not sent permanently to McLaughlin is not tested further unless an obvious need presents itself. Children sent to Alcantra Youth Camp are often shipped through McLaughlin, but no diagnostic work-up is done. It seems to me as a layman that these children should be tested for such things as epilepsy, diabetes and low blood sugar, all of which can influence criminal behavior and can be treated. In addition, many of these children need extensive psychological evaluation.

In considering these problems I cannot in all fairness blame the local authorities who are almost all acting in complete good faith, but they have no authority and no money to help these children. The procedure to get a child's papers through the committee at McLaughlin, which decides where to place the children, is very slow, and the committee often ignores the the local probation officer's recommendation, sometimes sending a child to an institution which cannot help him. Much of this is due to the lack of space and programs, but having the power to decide the child's placement in a body outside of the community presents real problems. The parents or anyone in the community interested in a child have no real recourse when a poor placement decision is made. The probation officer and the judge

who know the child also have little power over the decision. The child and the family resent this naturally, especially when the local probation officer informs them of the program he will recommend, and another program is put into effect. Generally, the recommended program is more palatable to the family than the program finally decided upon.

As I understand it, the police say that only one out of every twenty-seven serious delinquents in Fairbanks is prosecuted; only one out of every nine cases involving at least three felonies is prosecuted. In the city this backlog is not due to the police; the police reports have already been prepared and are sitting on someone's desk. The State facilities are already overcrowded; the Division of Corrections employees are already overworked; it is probably impossible with the present facilities and personnel to do anything about these children. However, I cannot understand why the Division of Corrections does not make the Legislature aware of the need for much more money, for better and bigger facilities, and for more and better qualified personnel. It seems to me that more expensive programs can be made palatable to the taxpayer if he is made to realize the high cost of delinquency and the general failure of rehabilitation. One might almost say that the current Alaskan treatment of juvenile delinquency is aimed less (in practice, not, of course, in theory) at rehabilitating delinquents than at putting them away for several years, thereby merely deferring and sometimes actually contributing to their potentially serious criminal behavior. Experiments in California have shown that expensive, almost individual treatment of delinquents with highly qualified and highly salaried personnel leads to a lowering of the recidivism rate to the extent that the taxpayer actually saves money in the long run in terms of the cost of crime and of institutionalization.

Up to this point I have refrained from attempting long-term drastic legal action or attempting to publicize the atrocities of the present system because I was afraid the local authorities might well receive the blame,and they are not at fault. However, if something isn't done soon, I shall feel morally obliged to attempt what I can. The present problems are threatening to multiply to the extent that the cost to the State would be astronomical, and the seeming indifference and lack of understanding of the administrators in the Division of Corrections and the Department of Health and Welfare must be corrected.

If I can be of any assistance to you in this matter, please do not hesitate to call on me. I would be happy to give you further information and anonymous case histories if you wish. In addition, Judge Arthur Robson is extremely knowledgeable in this area and will probably be coming to Juneau to discuss the public defender bills. He would be happy to discuss any of these matters with you.

I can no longer in good conscience refrain from attempting

to publicize these problems, but I would prefer practical legislative solutions to merely shocking the public conscience. However, I do also hope to arouse community interest and action in this area.

Very truly yours,

Elinor B. Levinson

(Miss) Elinor B. Levinson
Attorney at Law

cc: Fairbanks Legislative Delegation (11)

Stanley Cornelius; Tom Fink; Gene Guess; Willie Hensley; George Hohman; Wendell Kay; Richard McVeigh; Moses Pauken; John Sackett; Charles Sassara; Nicholas Begich; Raymond Christiansen; Joseph Josephson; John Rader. House and Senate Judiciary, Health, Education and Welfare and Finance Committees.

Governor Keith Miller; Mike Gravel; Ted Stevens; Howard Pollock; Commissioner of Health & Welfare; Commissioner of Education; Director of Division of Corrections.

Jessen's Daily; Fairbanks Daily News-Miner; Robert Zelnick.

Alaska, Tanana Valley, Anchorage & Juneau Bar Associations; Fairbanks Chapter of the American Civil Liberties Union; Alaska Legal Services.

Supreme & Superior Court Justices; Alaska Judicial Conference; Legislative Council.

Arthur Robson; Ross Ward; Gertrude Cunningham; Gerald Van Hoomissen; Morgan Grude.

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

Native Land Claims

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

February 5, 1970

The Honorable Henry Jackson, Chairman
Committee on Interior and Insular Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Jackson:

This memorandum is with reference to the brief of Solicitor Melich of the Department of the Interior of October 23, 1969 on the subject of Alaska Native Land Claims.

The memorandum of the Solicitor concluded the following: "Congress thus cannot impair the title to lands granted to the State of Alaska by Section 6 by the imposition of the two percent royalty urged by the Alaska Natives." The State of Alaska agrees with that conclusion, and merely observes that the conclusion of the Department of the Interior is in agreement with Opinion of the Attorney General No. 6, September 5, 1969, of the State of Alaska. That opinion, as well as Supplemental Opinion of October 3, has already been sent to you.

The State of Alaska, however, strongly disagrees with the legal conclusion that "Congress may grant the Natives a royalty interest in proceeds received under the Mineral Leasing Act, 41 Stat. 437 (1920), as amended, 30 U.S.C. sec. 181, et seq (1964)." The reasons for that disagreement are contained in this memorandum.

The legal basis of the Solicitor's memorandum is the following. The Solicitor first argues that Section 28(b) of the Statehood Act is not a part of the compact between the State and the Federal Government because it was not a clause inserted in the Alaska Constitution and only those clauses included in the Alaska Constitution which were repeated in the Statehood Act constitute the compact. The Solicitor next argues that the ratification of the Statehood Act by Alaskan voters did not relate to Section 28(b) of the Statehood Act because it was not a grant of property within the meaning of Section 8(b)(3) of the Statehood Act. This memorandum will discuss each of the arguments of the Solicitor.

First, Section 28(b) of the Statehood Act is part of the compact between the State of Alaska and the Federal Government. The State Constitution did not constitute the offer which led to the compact between the State and the Federal Government. It should be readily evident that the purpose of a state constitution is not an offer to the Federal Government to form a compact, but is only intended to relate to those domestic affairs which are the province of a state. The delegates to the Alaska Constitutional Convention certainly did not believe that they were offering to form a compact with the Federal Government. The nature of the clauses contained in the State Constitution, for example, the complete absence of any land grant to the State, militate against such a construction. The only clause in the State Constitution which directly relates to the compact is Article XII, Section 13, which states: "All provisions of the act admitting Alaska to the Union which reserve rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property, are consented to fully by the State and its people." This clause, of course, is a substantial restatement of Section 8(b)(3) of the Statehood Act, which was approved by the Alaska voters when it ratified the Statehood Act on August 26, 1958.

Further, the basic law of contracts demonstrates that the State Constitution did not constitute an offer of a compact. The language of the document and the circumstances surrounding it indicate that the document adopted by the Constitutional Convention on February 5, 1956 and approved by the people of the Territory on April 24, 1956 constituted a pre-compact petition or solicitation by the people of the Territory of Alaska to the Congress for admission to statehood. It manifested the intention of the people of the Territory to become a State, but it did not indicate the terms upon which it would become a State. In legal terminology, the document constituted a solicitation of an offer and not the offer itself. Restatement of the Law of Contracts §24. The offer of statehood itself was the Statehood Act, and the acceptance of that offer by the people of the Territory occurred with its ratification by the people of the Territory in the referendum election held on August 26, 1958. The State Constitution did not become operative as a legal document until January 3, 1959 when Alaska officially became a state of the Union with the signing of a presidential proclamation.

Next, the Statehood Act itself, when looked at as a whole rather than piecemeal, shows that the State Constitution did not constitute the offer of statehood. Section 1

of the Statehood Act provides, in pertinent part: ". . . the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the Constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence and is hereby accepted, ratified, and confirmed. (emphasis added) Section 3 of the Statehood Act provides: "The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence." (emphasis added) The Constitution of the United States, Article IV, Section 4, provides in pertinent part: "The United States shall guarantee to every state in this Union a republican form of government. . ." It should be clear from a comparison of these quotations from the Statehood Act and the U. S. Constitution that the legal reference between the Statehood Act and the State Constitution is that the Statehood Act "accepted, ratified, and confirmed" the State Constitution as being in conformity with the U. S. Constitution as "republican in form" and that the Statehood Act in no way recognized the State Constitution as an offer of a compact.

Second, Section 28(b) of the Statehood Act is included within the language of Section 8(b)(3) of the Statehood Act which was ratified by the people of Alaska on August 26, 1958. Section 8(b)(3) provides: "All provisions of the Act of Congress approved.........(date of approval of this Act) reserving rights or powers to the United States as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people." (emphasis added) The Statehood Act itself, as well as the history of Section 28(b) make it clear that Section 28(b) was a grant of "other property" within the meaning of Section 8(b)(3).

The history of Section 28(b) of the Statehood Act clearly shows that it was a grant of property. Senator Barrett of Wyoming and Senator Anderson of New Mexico were

responsible for the inclusion of the 90% grant in the Statehood Act and the record of the 1957 Statehood hearings reflect that they believed that the people of Alaska had a right to these revenues based on the Treaty of Cession. The entire discussion of the Senate hearings on this point are included in this memorandum at this point because of the importance of the question.

> "SENATOR BARRETT. Mr. Chairman, I would like to ask a question or two. I have to leave here very shortly.
>
> Governor Gruening, I am somewhat concerned now about the economic status of Alaska when it becomes a State. I am rather intrigued by your reference here to the treaty with Russia when these lands were ceded to the United States.
>
> It is my interpretation of that treaty, which by the way, of course, is the highest law in the land, and certainly binds this country explicitly without any question of doubt--I may say to you that it is my understanding of this phase in the treaty: "shall be admitted to the enjoyment of all of the rights, advantages, and immunities of the citizens of the United States and shall be protected in the free enjoyment of their liberties, sovereignty, and religion," has been used in several treaties in substantially the same language, first with the treaty with France in 1803 and later with the treaty with Mexico nearly half a century later.
>
> The courts have interpreted that language to mean that the--territory--which is the way they referred to lands in those days, shall be held in trust for the States to be carved out of the lands granted for the benefit of the people of the States.
>
> Now, when they speak here "shall be admitted to the enjoyment of all the rights, advantages, and immunities of the citizens of the United States," they mean that the people up there will enjoy certain rights as citizens of the State of Alaska and they come into those rights by virtue of their citizenship in the State of Alaska.
>
> As a consequence, I think it is very important here when we consider this legislation that we

take into consideration the rights that those people have up there in natural resources of that new State and in your intense desire to get statehood I hope that you will not fail to stand up and assert the rights that you are entitled to under this treaty which you mention here, and under the law of the land which, of course, has been somewhat forgotten for a long period of time, in my judgment.

Now, to be specific, I think that the territory up there belongs to the people of Alaska and not to the people of the present 48 States. I think that you have to have those resources if you are going to develop and control your own destiny as a State, and you will need them.

And I think it is unwarranted for the Congress to take any action that would deprive you of that income.

Now, under the leasing act of 1920, unfortunately as far as my State is concerned, we got thirty-seven and a half percent of the royalties from leasing act minerals that were produced within our State.

Fifty-two and a half percent went to reclamation fund and 10 percent was retained by the Federal Government.

Just to show you what that amounts to since that act went on the books, about $155 million or $160 million has been taken into the Treasury of the United States from royalties from the minerals produced in Wyoming alone.

Now, that law is applicable to Alaska and fifty-two and a half percent of the leasing act minerals produced in Alaska goes to the reclamation fund.

DELEGATE BARTLETT. No.

SENATOR BARRETT. I have just checked with counsel and he says they do.

DELEGATE BARTLETT. Could I answer that particular provision?

We are in a worse situation than that, Senator Barrett. We get thirty-seven and a half percent and all the remainder goes to the Federal Government.

SENATOR BARRETT. That is what I said.

DELEGATE BARTLETT. We are not under the Reclamation Act so we get no benefit at all.

SENATOR BARRETT. I did not say you were under the Reclamation Act. What I said is this:

That under existing law fifty-two and a half percent of the income from the Leasing Act minerals produced in Alaska goes to the Reclamation fund; thirty-seven and a half percent goes to Alaska, and 10 percent is retained in the Federal Treasury.

Now, you do not get any benefits from the Reclamation Act, I know that, but that makes it all the worse as far as you are concerned.

So I think it would be eminently fair and just and right and proper, when we write this bill up, that we provide here that the Leasing Act of 1920, as amended, and let them retain the title to the lands up there except that which is granted--personally I hate to see that done, but to be realistic we probably have to do that--let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out.

I believe you need it; I think it ought to be done. I think that the banker, Mr. Rusing, who just got through testifying here, was hitting the nail right on the head, if this State is going to have a chance to develop and to become one of the strong States of the Union, certainly you need your own assets up there and if you are only a one percent stockholder, that is bad.

I would like to give you a fair shake on the thing.

Now, what do you think about that?

MR. GRUENING. I appreciate that very much. I think that would be excellent, Senator Barrett. I hope that will be done.

I understand that in a House bill it is planned to do that.

DELEGATE BARTLETT. Upon that particular point, the House committee has approved and there is now on the House consent calendar a bill which will give the Territory ninety percent of these proceeds.

SENATOR BARRETT. It is not in this bill here over in the House?

DELEGATE BARTLETT. No.

SENATOR BARRETT. But it is in a separate bill?

DELEGATE BARTLETT. That is right.

SENATOR BARRETT. I think that is a very wise piece of legislation. I think you are certainly entitled to it.

If the Department has no objection to it, I think it ought to be incorporated right here in this bill.

MR. GRUENING. I know Alaskans will certainly appreciate that, Senator Barrett." Senate Hearings on S. 49 and S. 35, March 25 and 26, 1957, pp. 29-31. (Emphasis added)

"SENATOR BARRETT. Mr. Chairman, I agree with the statement that Mr. Bartlett made about the improvement in this legislation. I think it could be improved quite a little bit. I am offering an amendment here for the consideration of the committee. I think this is probably as good a time as any to do it.

I discussed this amendment this morning when you were absent, Senator Anderson. I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the

income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

When I mentioned that this morning, Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.

Maybe it would be well to have in these hearings a copy of the report that the Secretary of the Interior made on the House bill.

SENATOR JACKSON. Without objection, the report and the amendment of the Senator from Wyoming will be included in the record at this point, if this is agreeable. The report and the amendment should go together.

(The documents referred to are as follows:)

BARRETT AMENDMENT TO S. 49

Sec. 22. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U.S.C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil,

> oil shale, gas, and sodium on the public domain", approved February 25, 1920, as amended (30 U.S.C. 191), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof". Ibid, pp. 66-68. (Emphasis added.)

The Senate Report on S. 49 adopted the Barrett Amendment which granted 90% of federal revenues to the State. See S.Rep. 1163, 85th Congress, 1st Session 3. The identical provision was later incorporated into H.R. 7999 as a section of the Statehood Act.

The inclusion of revenue grants to the State in the Statehood Act further evidence that it was the intention of Congress to make the grant a permanent right of the State of Alaska. If this were not the case, it would make no sense to include the provision in the Statehood Act. Public Law 85-88, approved July 10, 1957, Sec. 2 had already provided that the Territory of Alaska receive 90% of the mineral revenues. The proper place for a statutory formal revision of Public Law 85-88 to change "Territory" to "State" would have been the Omnibus Act and not the Statehood Act. The inclusion of the revenue provision in the Statehood Act meant and was understood to mean that it was part of the compact between the people of Alaska and the Federal Government.

The language used in the Statehood Act also shows that Section 28(b) was included within the Section 8(b)(3) "grants of . . . other property. . . ." It is useful at the outset to consider how the term "property" has been defined by various courts. Generally the term property has been afforded a broad definition by most courts which have had cause to interpret it. Unfortunately, none of the cases which interpret the word property interpret it quite in the context in which it is used in the Statehood Act. Typical of the cases is <u>Goldsmith v. Albion Public Schools, Calhoun County</u>, 373 Mich. 397, 129 N.W.2d 377 (1964), which was a proceeding to test the validity of a school bond election. The question presented was which persons were entitled to vote in the elections as property holders. Some plaintiffs were contract vendees under land sale contracts and others owned property pursuant to deed but their names did not appear as such on the assessment rolls. The court stated

that all of those persons held interests in property and defined the term as follows:

> The word "property" is susceptible of broad definition. In a broad sense, it is defined as any valuable right or interest considered primarily as a source of wealth [case cited]. The word is said to be so all-embracing as to include every physical object, intangible benefit, and prerogative, susceptible of ownership, possession, or disposition. (129 N.W.2d at 379).

The concept of property as a source of wealth is one employed by many cases and its use in the Calhoun County case is not an isolated one.

The Supreme Court of Maine in McInnes v. McKay, 141 A. 699, 127 Me. 110 (1928) discussed the concept of property. This case was an action by plaintiff to recover a certain sum of money for services. The defendant objected to the jurisdiction of the court by way of attachment and in reviewing the history of the particular attachment statute then applicable, the court had occasion to define the word property:

> Property in legal conception is the total of the rights and powers incident to a thing rather than the thing itself. The legal right to use and derive a profit from land or other things is property. (141 A. at 702)

It is noteworthy that in the McInnes case the court again tied the concept of property to the right to derive a profit from land.

The United States Supreme Court in a series of early cases in which it had to adjudicate the significance of property rights acquired under the laws of earlier sovereigns to territory then in the United States, defined in several instances what that term meant. Soulard v. United States, 29 U.S. 511 (1830), was an action by plaintiff to quiet title to certain lands in the Louisiana Purchase under title which plaintiff had derived from the former Spanish Government. The court held the matter in abeyance until more light could be shed on the nature of plaintiff's claim. The court noted that in the Treaty of

Purchase, the United States stipulated that the inhabitants of the ceded territory should be protected in the free enjoyment of their property. The court stated:

> The term "property" as applied to lands, comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which lie in contract, those which are executory as well as those which are executed. (29 U.S. at p. 522)

Thus the Supreme Court recognized that property could be an inchoate right, the existence of which depended upon the terms of a contract which had not yet been executed.

Strother v. Lucas, 37 U.S. 410 (1838) was an action in ejectment where plaintiffs based their claim to certain property upon the Treaty of Cession of Louisiana by France to the United States. The Treaty stated that the inhabitants of that territory should be protected in the free enjoyment of their property. The court again defined property:

> This Court has defined property to be any right, legal or equitable, inceptive, inchoate, or perfect, which before the Treaty with France in 1803, or with Spain in 1819, had so attached to any piece or tract of land, great or small, as to affect the conscience of the former sovereign with a trust, and make him trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice, and rules of equity. (37 U.S. at 436)

Thus, in Strother the concept of property is recognized not only to be legal but to be equitable in nature and if the right which is sought to be protected as property should be protected according to the principles of justice and rules of equity, then that right is no less a property right.

The Supreme Court in the same case also defined the term "grant":

> This Court has also uniformly held that the term "grant" in a treaty, comprehends not only those which are made in form, but also any concessions, warrant, order or permission to survey,

> possess or settle, whether evidenced by writing or parol, or presumed from possession . . . . (37 U.S. at 436)

Thus, a grant need not be in any particular form and need not be a warrant but it would be a concession.

It could be stated that 30 U.S.C. §191 is an assignment from the United States to the State of Alaska of 90 per cent of the money in the form of sales, bonuses, royalties and rentals of public lands received by the United States. Specifically, what is assigned by this section is a right to money and there is no doubt that that money is property. Also, what is assigned is the interest of the United States as to certain rights which it has retained as lessor in certain leases of public mineral land. The interest of which the United States is possessed in respect to that land can be characterized in several ways. The interest is a right to rents and royalties and bonuses under its mineral lands. All of these terms have been considered in Summers in his treatise or oil and gas law and he has had no difficulty in determining that they are property rights. Volume 3(a), Summers Oil and Gas, § 572 (1955), discusses the legal significance of the term "rent" or "royalty". Summers states:

> The question which usually arises as to the nature of the royalty interest is whether it is real or personal property.

Also, Summers states:

> All jurisdictions recognize that the right to receive royalties under the existing lease may be transferred apart from the land, ...

Thus, the rental or royalty interest is either real or personal property and it is a right which may be transferred apart from the land to which the right attaches. It is elementary contract law that an assignee takes the same rights as the transferor in the thing transferred, no more or no less.

Summers also states:

> But where the lease is limited to a definite term of years and the royalty under

> the lease is assigned, the interest may be properly classed as a chattel real and in that sense personal property.

If the royalty is unaccrued, Summers states:

> . . . unaccrued royalties, if the lease may continue indefinitely, are incident to the reversion in the land or minerals, and pass with a sale thereof, and when separately transferred are usually held to be interests in land.

Thus, Summers recognizes that unaccrued royalties may be transferred separately and when they are, they are usually an interest in land. Again that interest has been defined as a property interest.

Summers also defines at section 586 of his work, the term bonus:

> "Bonus" is usually defined as any consideration given for a lease in addition to the usual royalties reserved in the lease, whether paid in cash or payable out of production.

Bonus then, like royalty, is a right to payment to the owner of the land arising initially out of his ownership of the land. There should be no reason why as in the case of a royalty, a bonus which is an amount payable in addition to the usual royalty may not be assigned with all rights of the assignor.

Thus, there is ample authority to support the proposition that the term property as used in section 8(b)(3) of the Statehood Act encompasses the money, either accrued or unaccrued, to which the State of Alaska would be entitled by virtue of the provisions of section 28(b) of the Statehood Act.

Sincerely,

G. Kent Edwards
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GKE:jt

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February 14, 1969

The Honorable Barry Jackson
Alaska State House of Representatives
State Capitol Building
Juneau, Alaska

Dear Barry:

Your letter to the bar association regarding the proposed probate code was read at our weekly meeting today. A committee has been appointed to study the code and will be reporting to you shortly.

I would wish to remind you that, according to the last draft which I had seen, Sections 13.20.330 and 13.20.340, the wrongful death statutes, are repealed. There is no statute comparable reenacted in the proposed code. I am sure that not even the most reactionary insurance company would seriously contend that the action for wrongful death be repealed.

Very truly yours,

INGRAHAM AND NIEWOHNER

BY: Millard F. Ingraham

MFI:sjb

CC: John Elliott