

House Bill 340 would increase the floor to \$500 per month for the head of the household, and \$350 for a person not the head of a household, or 75 per cent, whichever is greater. The 75 per cent calculation is taken from the federal law, thus assuring that Alaska will at all times be in compliance with it. Thus to the extent that the wages of the head of the household subject to garnishment exceed \$666 per month, the Alaska floor figure of \$500 ceases to be operative and the per cent calculation is used. The same would be true for a single person at \$466 per month.

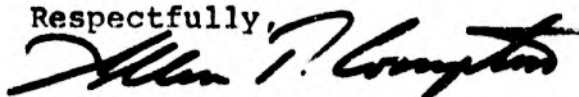
It should be pointed out that due to the superimposition of federal law in Alaska law, neither the head of the household nor the single person earning wages will ever realize the full benefit of the \$150 increase, since the net benefit will be less. The two attached examples will show this in detail.

The Bureau of Labor Statistics study of the average cost of living for a four person family in the lower economic level in Anchorage in 1969 disclosed that \$763 per month was required for clothing, food, shelter, medicine and recreation. Certainly a single person can live for less, and not every household consists of four persons. However, \$350 and \$200 is unrealistic in terms of minimum needs vis a vis Alaska's high cost of living. The new suggested floor of \$500 and \$350 is more realistic, and should present a fair balance between the state's interest in personal well being and the state's interest in insuring that valid claims can be satisfied.

The federal law provides that the state can do more in limiting garnishments than it has done. 15 U.S.C.A 1677. Furthermore, if this Bill does eventually become law, the State can apply for an exemption from the provisions of §1673(a), as authorized by §1675. Even if such an exemption was not specifically granted, the fact that Alaska's law provided at least equivalent protection, and in some instances greater protection would mean that reference would only have to be made to one law, making matters far more simple for all concerned.

I would be pleased to appear before the Committee if it is thought I could provide helpful information.

Respectfully,



Allen T. Compton
Supervising Attorney

ATC:fm

EXAMPLE "A"

\$2.10 per hour (Alaska minimum wage) times 40 hours per week time
4 1/3 weeks per month equals \$364 per month income from wages.

Current Alaska	- head of household	- \$350	- subj. to garn.	\$ 14.
Current Federal	- 75%	- \$273	- subj. to garn.	\$ 91.
Proposed Alaska	-	- \$500	- subj. to garn.	\$-0-

Current Alaska	- single person	- \$200	- subj. to garn.	\$164.
Current Federal	- 75%	- \$273	- subj. to garn.	\$ 91.
Proposed Alaska	-	- \$350	- subj. to garn.	\$ 14.

The head of the household, under current laws, would pick the Alaska exemption. The single person would pick the federal exemption. The net gain to the head of the household, under the proposal, would amount to \$14. To the single person, it would be \$77.

EXAMPLE "B"

Assume the person has \$600 per month income from wages.

Current Alaska	- head of household	- \$350	- subj. to garn.	\$250.
Current Federal	- 75%	- \$450	- subj. to garn.	\$150.
Proposed Alaska	-	- \$500	- subj. to garn.	\$100.

Current Alaska	- single person	- \$200	- subj. to garn.	\$400.
Current Federal	- 75%	- \$450	- subj. to garn.	\$150.
Proposed Alaska	- 75%	- \$450	- subj. to garn.	\$150.

The head of the household, under current laws, would pick the federal exemption. The single person would also pick the federal exemption. The net gain to the head of the household, under the proposal, would amount to \$50. To the single person, no gain would be realized, since he would choose the per centum calculation to obtain the maximum benefit; Alaska's per centum and the federal per centum being the same, his position would not be bettered by the proposal.

HB-340

AMOUNT OF WAGES EXEMPTED FROM GARNISHMENT, BY STATES

Alabama	75%
Alaska	\$350 (earned within 30 days) if married; \$200 if single.
Arizona	50% (30 days)
Arkansas	100% (60 days)
California	50% (30 days); 100% where debt not for necessities and needed to support debtor's family.
Colorado	70% for heads of families; 35% for single persons.
Connecticut	100% from attachment; post-judgment exemption set by court.
Delaware	90% (New Castle County); 60% (Kent and Sussex Counties).
District of Columbia	90% of first \$200 per month, 80% of next \$300, 50% of balance.
Florida	100%
Georgia	\$3 per day plus 50% of excess.
Hawaii	95% of first \$100 per month, 90% of next \$100, 80% of balance.
Idaho	50%; 75% where debt not for necessities and needed to support debtor's family (30 days); maximum, \$100 per month.
Illinois	85% or \$45 per week, whichever is more; maximum of \$200 per week.
Indiana	\$15 per week plus 90% of excess.
Iowa	\$15 per week for head of family plus \$3 for each dependent child under 18.
Kansas	90% (3 months); 100% from garnishment by collection agencies.
Kentucky	90% of first \$75 per month; maximum \$67.50.
Louisiana	80%; minimum \$100 per month.
Maine	\$30 (one month); minimum \$10.
Maryland	75% in some counties; \$100 in others.
Massachusetts	100% prior to judgment; \$50 per week after judgment.
Michigan	100% prior to judgment; 60% for householders having a family and 40% for others, with certain minima and maxima.
Minnesota	50%; 100% (30 days) where necessary for use of family.
Mississippi	\$100 for heads of families; \$50 for single persons.
Missouri	90% for heads of families.
Montana	50% (45 days); 100% where debt not for necessities and needed for use of debtor's family.
Nebraska	90% for heads of families.
Nevada	50% (30 days); 100% where debt not for necessities and needed for use of debtor's family.
New Hampshire	\$20 per week.

New Jersey	90%; minimum \$18 per week.
New Mexico	75% for heads of families.
New York	90%
North Carolina	100% (60 days) where needed for use of debtor's family.
North Dakota	\$35 per week or, if head of family, \$50 plus \$5 for each dependent, but no more than \$25 per week.
Ohio	80% of first \$300 per month and 60% of balance for heads of families (minimum \$150); \$100 (30 days) for others.
Oklahoma	75% (90 days); 100% where needed to support family.
Oregon	\$175 (30 days).
Pennsylvania	100%
Rhode Island	\$30
South Carolina	100% (60 days) where needed for use of debtor's family.
South Dakota	100% (60 days) where needed for use of debtor's family.
Tennessee	\$17 per week for head of family plus \$2.50 per week for each dependent under 16; \$12. per week for others.
Texas	100%
Utah	50% (30 days); \$50 minimum if married or head of household.
Vermont	50% or \$25, whichever is less.
Virginia	75%; minimum \$100 per month, maximum \$150 for heads of families; for others, 50% of the above.
Washington	\$35 per week and \$5 for each dependent; maximum \$50 per week, for persons who have families dependent on them; \$25 per week for others.
West Virginia	80%; minimum \$20 per week.
Wisconsin	60% (30 days) with certain minima and maxima.
Wyoming	50% (60 days).

Example "A". \$500 per month income after required withholding, husband, wife and two children, income necessary to support family. 27 states have a higher exemption; 1 state has the same exemption; 20 states have a lower exemption; 2 states can't be determined.

Example "B". \$500 per month income after required withholding, single person, income necessary to support self. 26 states have a higher exemption; 2 states have the same exemption; 20 states have a lower exemption; 2 states can't be determined.

The above schedule of state exemptions can be found in Brunn, Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev. 1214 (1965).

HR 341

POPE v. STATE

Alaska 801

Cite as, Alaska, 478 P.2d 801

Arile Roy POPE, Appellant,
v.
STATE of Alaska, Appellee.
No. 1127.

Supreme Court of Alaska.
Dec. 21, 1970.
Rehearing Denied Feb. 25, 1971.
See 480 P.2d 607.

Murder prosecution. The Superior Court Third Judicial District, Anchorage, Ralph E. Moody, J., rendered judgment, and defendant appealed. The Supreme Court, Erwin, J., held that it would not consider claim that burden of proof on insanity issue was improperly placed, although proper objection was made concerning burden of proof, where no objection was made, testimony presented, or instructions requested concerning intertwined issue of test for insanity.

Affirmed.

Connor, J., concurred in part and dissented in part and filed opinion.

1. Judges C-53

Defendant who did not exercise challenge to judge to whom case was reassigned within five days of reassignment, even during trial, waived right to peremptory challenge. AS 22.20.022.

2. Criminal Law C-589(1)

Refusal to grant continuance of five days to permit defendant time before trial to consider and file affidavit for peremptory disqualification of judge was not error. AS 22.20.022.

3. Criminal Law C-412.2(2)

Objection presented when officer approached scene of shooting, finding body surrounded by defendant and victim's wife, was not an "on-the-scene questioning" exception to Miranda warning requirement, and officer could ask defendant whether he had a gun and could search his person for weapons.

4. Criminal Law C-394.4(2)

Items taken from defendant's automobile at scene of shooting and allegedly pri-

478 P.2d 801

or to defendant's arrest was admissible where it was lying on front seat of automobile in plain view and thus not product of search.

5. Criminal Law C-1038(1, 3)

Supreme Court would not consider claim that burden of proof on insanity issue was improperly placed, although proper objection was made concerning burden of proof, where no objection was made, testimony presented, or instructions requested concerning intertwined issue of test for insanity.

James R. Clouse, Jr., Anchorage, for appellant.

Harold W. Tobey, Dist. Atty., Richard R. Felton, Asst. Dist. Atty., Anchorage, G. Kent Edwards, Atty. Gen., Juneau, for appellee.

Before BONEY, C. J., and DIMOND, RABINOWITZ, CONNOR and ERWIN, JJ.

OPINION

ERWIN, Justice.

Appellant, Pope, was convicted of second degree murder in connection with the death of one David Silva on July 9, 1968. According to his own testimony, he arose on that date at his usual hour and prepared himself for work. While driving to work he began to feel sick and decided to have only coffee in place of his usual breakfast. As appellant continued towards his job, the sickness became more severe and he decided to turn around and drive back to his motel. He testified that this condition of nervousness and sickness at his stomach had occurred with frequency in the period of time shortly before the shooting occurred.

After returning to his motel room, appellant consumed a little less than one-half of a pint of alcoholic beverage, remaining in his room and watching television. He made several attempts to reach his former wife, Irma Pope, and was at last successful.

However, Mrs. Pope refused to speak with him, slamming down the telephone. Appellant stated that the reason that he had attempted to call his former wife was that he felt really sick and was looking for help from someone.

After being rejected over the telephone, appellant described a strange feeling, "like something was spinning around the top of my head, from right to left, right underneath the skin against the skull and when you closed your eyes you could see—could see a streak of light coming around and around. * * *" He described the light as not being mean or anything, but the light said "kill him, kill him, kill him"—just kept repeating it; and finally he said it to himself and as soon as he did he felt very good and was not sick any more. Appellant further stated that after the lights had stopped in his head, he felt very sorry for David Silva because of what was going to happen; he did not think there was anything that he could do to prevent the killing of David Silva, and he knew he was going to do it, but he didn't yet know just how. When appellant finally agreed with the light in his head which told him to kill Silva, the nervousness disappeared, as did his upset stomach.

Appellant's recollection of the events that occurred after he left the motel was hazy and vague. He recalled only being near the parking lot at Anchorage Bedding and Furniture and next seeing the gun in his hand on the door ledge of his automobile. Appellant did not recall shooting the decedent, but only remembered watching the decedent sitting down and then lying backwards on the ground.

Officer Pavlovich was the first law enforcement officer to arrive on the scene. Upon arriving he observed the deceased, a woman at the head of the decedent, and another man, later identified as the appellant, alongside the decedent in either a squatting or kneeling position. Officer Pavlovich went over to the decedent, checked his pulse, and pronounced him dead. He next asked the woman what had happened. The woman, Mrs. Silva, indi-

cated that appellant had shot Mr. Silva. In response to this, Pavlovich stood the appellant up and started to search him for weapons.

At this point in the sequence of events there is a dispute as to the actual occurrences. A Mr. McConnell testified that he observed Officer Pavlovich going over to appellant and questioning him for a minute or two before finally searching him for a weapon. The officer, on the other hand, testified that after he had examined Silva he immediately started to search appellant. Appellant's version of the story is that as he was being frisked by Officer Pavlovich, he was asked if he had a gun, to which he responded yes, that it was in the car. Officer Pavlovich claims that the information about the gun was volunteered by Pope and that no such question had been asked.

Mr. McConnell stated that after eliciting this information, Officer Pavlovich proceeded to appellant's car, with his arm on appellant's arm, to retrieve the weapon, which was located in the middle of the front seat. Officer Pavlovich stated that after Pope had volunteered the information as to the whereabouts of the gun, Pope proceeded to the automobile and Pavlovich hurried to beat him to the car in an effort to retrieve the weapon.

On cross-examination Officer Pavlovich described the appellant's appearance as being dazed and testified that his feeling at the time was that appellant was not drunk, but either dazed or at least under the influence of alcohol—but he could not tell which. Officer Pavlovich further testified that although he detected nothing radically wrong with appellant, that is, appellant walked normally and spoke clearly and distinctly, albeit very slowly, he nevertheless seemed to be preoccupied. At another point in his testimony Pavlovich stated that he thought appellant was either under the influence of alcohol or in a state of shock. Furthermore, he was not sure whether appellant was in possession of his faculties at this time.

On August 5, 1966 the grand jury for and arraigned appellant entered a plea the trial date was 1968, before the Honorable Davis, Superior Court, on November quest of the prosecuting was held. On Superior Court entered effect that the appellant stand trial.

Because of continuing until February time the defendant Honorable Ralph E. Superior Court, rather Davis, to whom the case originally. Timely of appellant to the unananimous February 18, 1969, verdict of guilty of first degree. Notice of appeal

Appellant raises for error in the trial before the court is that the judicial error in reassignment from Judge Davis to the court giving appellant five

1. There was no advance of the reassignment of Judge Davis to Judge of trial. It should be quent to the trial here case of Roberts v. State 310 (Alaska 1969) potential problems of such resting that this method of a case should be avoided. A method should be to make assignment sufficiently in advance, with notice of the given to the parties, they can be afforded AS 22.20.022 without scheduled hearing or

2. The motion was as follows: Mr. Clouse: Your Honor, at this time, I have an objection to the court to go to trial at this

appellant had shot Mr. Silva. To this, Pavlovich stood the appellant and started to search him for

point in the sequence of events dispute as to the actual occurrence. Mr. McConnell testified that he saw Officer Pavlovich going over to appellant and questioning him for a minute before finally searching him for a gun. The officer, on the other hand, testified that after he had examined Silva he immediately started to search appellant.

McConnell's version of the story is that as appellant was being frisked by Officer Pavlovich, he asked if he had a gun, to which appellant answered yes, that it was in the car. Officer Pavlovich claims that the information about the gun was volunteered by appellant and that no such question had been

asked. McConnell stated that after eliciting information, Officer Pavlovich proceeded to appellant's car, with his arm on appellant's arm, to retrieve the weapon, which was located in the middle of the seat. Officer Pavlovich stated that appellant had volunteered the information as to the whereabouts of the gun, and he proceeded to the automobile and quickly hurried to beat him to the car in an effort to retrieve the weapon.

On cross-examination Officer Pavlovich impeached the appellant's appearance as being sober and testified that his feeling at the time was that appellant was not drunk, but either dazed or at least under the influence of alcohol—but he could not tell for certain. Officer Pavlovich further testified that although he detected nothing objectively wrong with appellant, that is, appellant walked normally and spoke clearly and distinctly, albeit very slowly, he nevertheless seemed to be preoccupied. At that point in his testimony Pavlovich testified that he thought appellant was either under the influence of alcohol or in a state of shock. Furthermore, he was not sure whether appellant was in possession of his faculties at this time.

On August 5, 1968, Pope was indicted by the grand jury for first degree murder and arraigned immediately thereafter. Appellant entered a plea of not guilty, and the trial date was set for December 12, 1968, before the Honorable Edward V. Davis, Superior Court Judge. Prior to trial, on November 29, 1968, at the request of the prosecutor, a competency hearing was held. On January 16, 1969, the Superior Court entered an order to the effect that the appellant was competent to stand trial.

Because of continuances, trial did not begin until February 10, 1969. At that time the defendant appeared before the Honorable Ralph E. Moody, Judge of the Superior Court, rather than Edward V. Davis, to whom the case had been assigned originally. Timely objection was made by appellant to the unannounced change. On February 18, 1969, the jury returned a verdict of guilty of murder in the second degree. Notice of appeal was duly filed.

Appellant raises four specifications of error in the trial below. His first specification is that the court committed prejudicial error in reassigning appellant's case from Judge Davis to Judge Moody without giving appellant five days from the date

1. There was no advance notice to counsel of the reassignment of this case from Judge Davis to Judge Moody on the day of trial. It should be noted that subsequent to the trial herein this court in the case of *Roberts v. State*, 458 P.2d 340, 346 (Alaska 1969) pointed out the potential problems of such a practice in suggesting that this method of reassignment of a case should be avoided in the future: "A method should be devised and utilized to make assignment of cases to judges sufficiently in advance of trial or hearing, with notice of the assignment being given to the parties, so that the parties can be afforded their rights under AS 22.20.022 without interfering with scheduled hearing or trial dates."

2. The motion was as follows: Mr. Clouse: Your Honor, for the record, at this time, I would like to state an objection to the Court's requiring us to go to trial at this time and not be-

of reassignment to consider and possibly file a peremptory challenge affidavit as provided in AS 22.20.022; his second, that the trial court erred in overruling the appellant's motion to suppress the evidence seized by Officer Pavlovich from the appellant's car prior to a lawful arrest; and his third, that the trial court incorrectly admitted the statements of appellant made prior to his being given the proper *Miranda* warnings and after he had become a suspect in the crime and had been substantially deprived of his freedom of action. Finally, he contends that the trial court should have ruled as a matter of law that the burden of proving sanity is on the state rather than the burden of proving insanity being upon the defendant, when there was some evidence in the record to indicate that sanity was at issue.

I

In his first claim of error, appellant contends that because of the assignment procedure used herein,¹ he did not have sufficient opportunity to determine and if necessary file an affidavit alleging he believed that he could not obtain a fair and impartial trial.

Trial proceeded on February 10, 1969, appellant making timely motion,² which motion was denied.

for the—Judge Davis who was previously assigned this case. This deprives the defendant of the opportunity to investigate and exercise any challenge that he may have within the five day period as provided by rule and statute.

The Court: Motion's denied since this is merely a procedural matter and it delays the—delays the carrying on of Court business if we give effect to that for the five days rule. Other than the objection, is defense ready to proceed? Mr. Clouse: Yes, your Honor.

AS 22.20.022 states in relevant part:

"Peremptory disqualification of a superior court judge. (a) If a party or his attorney in a superior court action, civil or criminal, files an affidavit alleging under oath that he believes that he cannot obtain a fair and impartial trial, the presiding judge shall at once, and without requiring proof, assign the action to another judge of that district,

Appellant correctly points out that the granting of the five-day period is to allow a party or his attorney an opportunity to investigate the judge to whom the case is assigned and if necessary file the requisite affidavit for disqualification, thus avoiding the waste of judicial time which would result if an affidavit or disqualification were not filed until the date of trial because this would mean that the case would have to be continued until another judge could be assigned and the disqualified judge would not be ready at that time to start the trial of another action.³ Appellant further correctly argues that the provisions of this statute have been interpreted by this court to mean that once the affidavit is filed, the judge involved is without power or jurisdiction to take any further action in the proceeding. *Channel Flying Inc. v. Bernhardt*, 451 P.2d 570 (Alaska 1969).

[1,2] But appellant has not shown that any harm resulted to him from the denial of his motion. Instead, he invites us to speculate that he suffered some possible prejudice, even though he did not challenge the trial judge because he felt that any challenge he made might have a prejudicial effect on the jury. The gist of appellant's argument appears to be that since any challenge might affect the jury he never seriously considered whether or not he should exercise the challenge because the reassignment made the choice more difficult. Since appellant could have exercised the challenge at any time within five days of reassignment, even during trial, we hold that his failure to do so was a waiver of his right to a preemptory challenge to the trial judge, and it was not

or if there is none, the chief justice of the supreme court shall assign a judge for the hearing or trial of the action. The affidavit shall contain a statement that it is made in good faith and not for the purpose of delay."

"(c) The affidavit shall be filed within five days after the case is at issue upon a question of fact, or within five days after the issue is assigned to a judge,

error for the court to refuse to grant a continuance of five days to permit appellant to ponder this matter at length.

II

Appellant claims that the trial court committed error in refusing to suppress as evidence (1) appellant's oral statement about the gun, and (2) the gun itself, which the officer seized in appellant's car. The argument is that this evidence is tainted because the required warnings under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) were not given by the officer until after the seizure of the gun, that appellant had already become a suspect in the crime, and that he had been substantially deprived of his freedom in a significant way. The test of when warnings must be given under *Miranda* is whether the accused has been "taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning." 384 U.S. at 478, 86 S.Ct. at 1630, 16 L.Ed.2d at 726.

We need not explore such problems as whether the "in custody" test of *Miranda* displaces the "focus" test of *Escobedo v. Illinois*, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed.2d 977 (1964), or whether the two tests can be regarded as alternatives to some extent.⁴ For it is plain to us that this case falls within an important exception stated by the court in its opinion in *Miranda*. After pointing out that it did not intend to hamper the traditional function of police officers in investigating crime, the court said:

General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-

whichever event occurs later, unless good cause is shown for the failure to file it within that time."

3. *Roberts v. State*, 458 P.2d 340, 340 (Alaska 1969).

4. *United States v. Hall*, 421 F.2d 540 (2nd Cir. 1969); *Graham, What is Custodial Interrogation?: California's Anticipatory Application of Miranda v. Arizona*, 14 U.C.L.A.L.Rev. 50, 114-15.

ing process is holding. It is an a-
ship for individ-
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enforcement. In su-
pelling atmosphere i-
of in-custody inter-
essarily present. 384
S.Ct. at 1629-1630,
726.

In interpreting *Miranda* we have had to draw lines between permissible investigatory custodial interrogation and Supreme Court itself that custodial interrogation place outside the state was "not free to go was 'under arrest.'" U.S. 324, 325, 89 S.Ct. Ed.2d 311, 314 (1966) determine, therefore the atmosphere and interrogation are of such a nature such significant the need for a *Miranda* but always agreement such a determination

[3] But the case for applying the "in custody" exception to the requirement. The officer of with a situation. A crime of violence was lying on the ground was more than one to protect his own safety, the officer had to determine what had happened which had obvious. For the same reason the officer also had the right to conduct a search ("frisk") for weapons under *Terry v. Ohio*, 392 U.S. 1, 8

5. See *Maze v. State*, 458 P.2d 340, 340 (Alaska 1969).

6. *Harris v. United States*, 392 U.S. 302, 88 S.Ct. 902, 1968 (1968); *Crellin v. United States*, 422 U.S. App.D.C.

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 Court itself has made it plain
 sial interrogation could take
 the station-house where one
 e free to go where he pleased but
 r arrest." *Orozco v. Texas*, 394
 325, 89 S.Ct. 1095, 1096, 22 L.
 311, 314 (1969). The courts must
 , therefore in each case whether
 atmosphere and setting of an interro-
 e of such coercive effect or indi-
 ch significant restraint as to trigger
 for a *Miranda* warning. There is
 agreement about the criteria for
 determination.

1] But the case at bar is a strong one
 applying the "on-the-scene question-
 exception to the *Miranda* warning re-
 . The officer here was present-
 with a situation of great emergency.
 of violence had occurred, the vic-
 was lying on the ground dead. There
 more than one person present. Both
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 the officer had to elicit information
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 which had obviously been used in the
 . For the same reason the officer
 the right to conduct a strictly
 search ("frisk") of Pope's person
 ns under the rule of *Terry v.*
 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.

2d 889 (1968), which he did.⁵ To hold
 that, that while a policeman faced with an
 emergency such as the one which con-
 fronted Officer Pavlovich may "frisk" a
 suspect for weapons he may not simultane-
 ously ask him whether he is armed, would
 be an unrealistic and unreasonable exten-
 sion of the *Miranda* rule.

[4] Appellant also contends that, be-
 cause the revolver was seized from Pope's
 automobile prior to the time he was placed
 under arrest, it was inadmissible because
 it was not the product of a search incident
 to arrest. The difficulty with this line of
 argument is that the gun was not the prod-
 uct of a "search" at all; it was lying on
 the front seat of the car in plain view.
 As soon as he saw it, Officer Pavlovich
 seized it and unloaded it, both to preserve
 it and its cartridges as evidence and to
 prevent appellant, who was standing be-
 side him, from getting hold of it. His con-
 duct was entirely justified.

It has long been settled that objects
 falling in the plain view of an officer
 who has a right to be in the position to
 have that view are subject to seizure and
 may be introduced in evidence.⁶

III

The final point raised by appellant is a
 challenge to the burden of proof in insanity
 cases as set forth in the opinion of this
 court in *Chase v. State*.⁷ A review of the
 record reveals that the only testimony be-
 fore this court in reviewing this point is the
 testimony of Officer Pavlovich, the appel-
 lant, Pope, Bill McConnell, and the cross-
 examination of appellant's ex-wife. Testi-
 mony given by Dr. J. Ray Langdon, a
 psychiatrist, and Marie Doyle, a psycholo-
 gist, at the trial, as well as the testimony of
 additional police officers and others at the
 scene of the crime, was not made a part of
 the record on appeal.

(1968); *Kloekenbrink v. State*, 372 P.2d
 958, 961 (Alaska 1970). See *Stevens*
v. State, 443 P.2d 600, 602 (Alaska
 1968).

7. 360 P.2d 997, 1003 (Alaska 1962).

State v. Pope, 425 P.2d 235, 238
 (Alaska 1967).

United States v. United States, 390 U.S. 234,
 88 S.Ct. 992, 993, 19 L.Ed.2d 1067,
 1068 (1968); *Creighton v. United States*,
 399 U.S. App.D.C. 115, 400 F.2d 651

While proper objections were made at the trial concerning burden of proof in insanity cases, no objection was made to instructions on the test for insanity as given by the trial court, nor was any testimony presented nor instructions requested concerning such an issue.

[5] Since in our opinion the burden of proof as to the defense of insanity and the actual test for insanity are inseparably intertwined,⁸ we are placed in the position of attempting to review the entire basis for the present rule on the defense of insanity in Alaska on an inadequate record without complete presentation of these issues to the trial court. This we decline to do.⁹

The importance of the defense of insanity has been underscored recently by a series of excellent opinions in federal courts which have considered, and in many cases adopted, the A.L.I. test for insanity,¹⁰ and a series of equally searching state court opinions which have noted more than one position, but have tended to retain the *M'Naghten* rule.¹¹ These opinions note that there are presently four separate tests for insanity¹² which have received vary-

ing degrees of judicial acceptance. They serve to underscore the difficulty of choosing a proper test for insanity and the corresponding burden of proof without complete presentation on the issue in the trial court and ultimately in this court.¹³

The judgment of the Superior Court is hereby affirmed.

CONNOR, Justice (concurring in part and dissenting in part).

I concur with the majority opinion except the portion dealing with the burden of proof in insanity cases, and allied questions. As to that portion of the majority opinion I must respectfully dissent.

This case went to the jury on instructions concerning the defense of insanity which were patterned on those approved by this court in *Chase v. State*, 369 P.2d 997 (Alaska 1962). Counsel for appellant objected to these instructions as improperly placing the burden on the accused to establish his insanity by a preponderance of the evidence. He thus raised and preserved for appeal the questions of what is the burden of proof and where it should be placed in

8. Approximately one-half of the states put the burden on the defendant while the other half and the federal courts put the basic burden on the prosecution. See annot. 17 A.L.R.3rd 10 (1968).

9. For a similar action by a federal court, see *Ramer v. United States*, 300 F.2d 561 (9th Cir. 1968).

10. *Wade v. United States*, 426 F.2d 64 (9th Cir. 1970); *Blake v. United States*, 407 F.2d 908 (5th Cir. 1969); *United States v. Chandler*, 193 F.2d 926 (4th Cir. 1953); *United States v. Shapiro*, 383 F.2d 680 (7th Cir. 1967); *Pope v. United States*, 372 F.2d 710 (3rd Cir. 1967), vacated on other grounds, 392 U.S. 651, 88 S.Ct. 2145, 20 L.Ed.2d 1317 (1968); *United States v. Freeman*, 357 F.2d 606 (2nd Cir. 1966); *Wion v. United States*, 325 F.2d 420 (10th Cir. 1963), cert. denied 377 U.S. 946, 84 S.Ct. 1354, 12 L.Ed.2d 301 (1964); *United States v. Smith*, 404 F.2d 720 (6th Cir. 1968).

11. FOR A.L.I.: *State v. White*, 93 Idaho 153, 456 P.2d 707 (1969).

FOR M'NAGHTEN: *State v. Malumphy*, 401 P.2d 677 (Ariz.1969); *State*

v. Moeller, 433 P.2d 136 (Hawaii 1967); *State v. Harkness*, 100 N.W.2d 324 (Iowa 1968); *Williams v. State*, 451 P.2d 848, 851 (Nev.1969); *State v. Gilmore*, 242 Or. 463, 410 P.2d 240 (1966); *Commonwealth v. Rightour*, 435 Pa. 104, 253 A.2d 644 (1969) (Aff'd by equally divided court).

12. (1) The *M'Naghten* Test, *Daniel M'Naghten* case, 8 Eng.Rep. 718 (H.L. 1843).

(2) *Durham* Test, *Durham v. United States*, 94 U.S.App.D.C. 228, 214 F.2d 802 (1954).

(3) American Law Institute Test, American Law Institute, Model Penal Code, Section 4.01(1) (Final Draft 1962).

(4) English Test, British Royal Commission on Capital Punishment, 1949-1953, 1953 Report at page 116, quoted in *United States v. Currens*, 200 F.2d 751, 774, n. 32 (3rd Cir. 1961).

13. Once before this court has refused to review the test for insanity for Alaska based on an inadequate record. See *Dimmick v. State*, 449 P.2d 774, 770 (Alaska 1969).

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es of judicial acceptance. They underscore the difficulty of choosing a proper test for insanity and the corresponding burden of proof without comment on the issue in the trial ultimately in this court.¹³ Judgment of the Superior Court is affirmed.

OR, Justice (concurring in part and dissenting in part).

I agree with the majority opinion except in its disposition dealing with the burden of proof in insanity cases, and allied questions. I dissent from that portion of the majority opinion which respectfully dissent.

In this case went to the jury on instructions concerning the defense of insanity which were patterned on those approved by the court in *Chase v. State*, 369 P.2d 997 (1962). Counsel for appellant objected to those instructions as improperly placing the burden on the accused to establish insanity by a preponderance of the evidence. He thus raised and preserved for review the questions of what is the burden of proof and where it should be placed in

¹³ *Waller*, 433 P.2d 136 (Hawaii 1967); *W. v. Harkness*, 160 N.W.2d 324 (Iowa 1968); *Williams v. State*, 451 P.2d 848, (Nev.1969); *State v. Gilmore*, 242 P.2d 403, 410 P.2d 240 (1966); *Commonwealth v. Rightmear*, 435 Pa. 101, 253 A.2d 644 (1969) (Aff'd by equally divided court).

¹⁴ The M'Naghten Test, Daniel M'Naghten case, 8 Eng.Rep. 718 (H.L. 1843).

¹⁵ Durham Test, *Durham v. United States*, 94 U.S.App.D.C. 228, 214 F.2d 449 (1954).

¹⁶ American Law Institute Test, American Law Institute, Model Penal Code, Section 4.01(1) (Final Draft 1952).

¹⁷ English Test, British Royal Commission on Capital Punishment, 1949-53, 1953 Report at page 116, quoted in *United States v. Currens*, 290 F.2d 774, n. 32 (3rd Cir. 1961).

¹⁸ Since before this court has refused to affirm the test for insanity for Alaska based on an inadequate record. See *Dunk v. State*, 449 P.2d 774, 776 (Alaska 1969).

He is properly entitled to a hearing on those questions.

The majority of my colleagues feel that the burden of proof question and the subject matter of insanity are interrelated. I agree. But for that very reason I believe the burden of proof logically can, and properly should, be determined by the court.¹

The lack of an adversary presentation of the legal arguments bearing upon the proper burden of insanity in criminal cases should not be an impediment to decision in this particular instance. Ultimately one must consult a large body of legal and psychiatric literature and even to become conversant with the subjects. Appellate briefs are of much more value here than in the resolution of most legal questions.² Surely this would be the first time that this court decided a case on grounds or under a doctrine not presented in the briefs.³

There is another reason why we should decide these questions now, not later. In the test currently obtaining under *Chase v. State*, supra, is so inherently defective as to dissuade either defendants or counsel from raising the defense of insanity or adducing evidence in support of it. Thus it is difficult to get the insanity defense before us on appeal.

The insanity defense is much like a conspiracy and avoidance. One virtually adjoins the actual elements of the crime but claims insanity as a special ground of exoneration. One claiming that he did not commit the offense, but who alternatively claims that he was insane when he did com-

¹ In a case in which a distinguished jurist took a relaxed view of the manner in which counsel raised the question of insanity test of insanity in the trial court see *United States v. Freeman*, 557 F.2d 124 (9th Cir. 1966). The failure of counsel in that case to object to the insanity test itself was not deemed error.

² The question of the test of insanity as a special defense has already been decided in *Chase v. State*, 369 P.2d 997 (1962). There the state urged that the M'Naghten test was not embraced by the American Law Institute test

mit it, has little hope of success. While such an approach is procedurally permissible, as a practical matter it is a foolhardy strategy. A person invoking the Alaska rule on insanity, even in a strong case, has almost precluded himself from an acquittal. The current test thus exerts a chilling effect upon one who might seek a change in the law through the appellate process. This is true even though he may have suffered from serious mental illness, of a psychotic type, at the time he committed the act with which he is charged. Because of the *in terrorem* effect of the current Alaska test, I see no reason to postpone corrective measures, especially if we believe that the test can be improved.

I

All discussion of the tests of criminal responsibility inevitably must refer to *M'Naghten's Case*, 10 Cl. & Fin. 200, 8 Eng.Rep. 718 (1843), which is regarded as the English source of the rule followed in most American jurisdictions for over a century. In that case Daniel M'Naghten attempted to assassinate Robert Peel, the Prime Minister. Because Peel, on the fatal day, happened to ride in Queen Victoria's carriage instead of his own, M'Naghten shot into the wrong carriage and killed Drummond, Peel's secretary. From all of the available information it seems quite plain that M'Naghten was suffering from psychotic delusions of persecution. At his trial Lord Chief Justice Tindal virtually directed a verdict in his favor.⁴

(discussed later herein) would be the most suitable.

3. One such case was *Grossman v. State*, 457 P.2d 226 (Alaska 1960), adopting an objective standard of entrapment, though neither party directly briefed that doctrine. Surely others could be found by searching the briefs and comparing them with the opinions rendered by this court during the last ten years.
4. Guttmacher & Weithofen, *Psychiatry and the Law*, 403 (1952); Roche, "Criminality and Mental Illness—Two Faces on the Same Coin," 22 U.Ch.L.Rev. 320, 324

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At the trial the medical witnesses and the court had been influenced by the writings and theories of such advanced thinkers as Dr. Isaac Ray, the first great forensic psychiatrist in America. It was Dr. Ray's thesis that insanity must be measured by evaluating the entire personality structure of an individual, and not by tests such as merely the ability to know right from wrong.⁵ At any rate, M'Naghten was acquitted. Unfortunately for the development of law, the case did not end there.

Despite commitment of the hapless M'Naghten to an insane asylum, Queen Victoria was outraged by the acquittal, probably because there had already been three attempts on her life and one on that of the Prince Consort. In a letter to Sir Robert Peel, the Queen deplored the action of the judges in allowing verdicts of not guilty by reason of insanity in cases of this kind because she was convinced that such malefactors "were perfectly conscious and aware of what they did." She pressed for legislation to require judges "to interpret the law in this and no other sense in their charges to the Juries."⁶ The House of Lords was convened, and the fifteen judges of the common law courts were called upon, in an atmosphere of political pressure, to answer five rather vacuous questions about criminal responsibility in English law. Interestingly enough, it was Lord Chief Justice Tindal who responded with a test more rigid than that which he had used when M'Naghten was tried before him. The M'Naghten rule in essence is:

"[T]o establish a defence on the ground of insanity, it must be clearly proved

(1955); Biggs, *The Guilty Mind*, 95-97, 102 (1955).

5. Dr. Ray's views have a modern ring. "[T]he insane mind is not entirely deprived of . . . power of moral discernment, but on many subjects is perfectly rational and displays the exercise of a sound and well balanced mind." Ray, *Medical Jurisprudence of Insanity* 13 (3d ed. 1853).

6. Biggs, *supra* n. 4, 103.

that, at the time of committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing: or, if he did know it, that he did not know he was doing what was wrong." 10 Cl. & Fin., at 210, 8 Eng.Rep., at 722.

Thus, in a case which was no longer a case, in response to hypothetical questions based on notions of phrenology and "monomania" which were then in vogue, the judges, in a dramatic departure from common law decisional technique, acting more as a governmental committee than a court, pronounced a rule which has been followed unthinkingly by many courts ever since. Of little avail was the restrained observation of Sir James Stephen that "every judgment delivered since the year 1843 has been founded upon an authority which deserves to be described as in many ways doubtful."⁷ The test could at least have been limited to cases of paranoia like that suffered by M'Naghten, but instead it was applied by many courts as a rule of universal and implacable validity, appropriate for all types of mental and emotional derangement.

The M'Naghten test has been supplemented in many jurisdictions by the "irresistible impulse" test, under which one suffering from a mental disease, of such severity that the freedom of will is destroyed, may be excused from culpability.⁸

In Alaska, before statehood, the right-and-wrong test, supplemented by the irresistible impulse test, was considered the applicable rule.⁹ In *Chase v. State*, 369 P.

7. II Stephen, *History of the Criminal Law of England* 153 (1883).

8. As of 1955, about 14 states, and the federal judiciary, had adopted the irresistible impulse addition to the test. Mod.Penal Code, Tent.Dr. No. 4,101 (1955).

9. *Matheson v. United States*, 227 U.S. 540, 33 S.Ct. 355, 57 L.Ed. 631 (1913); *Davis v. United States*, 165 U.S. 373, 17 S.Ct. 300, 41 L.Ed. 350 (1907); *Sauer v.*

10. *Chase v. State*, 369 P.2d 1007 (Alaska 1962), however, adopted a particular version of the rule as the M'Naghten rule. It is clear that in order for the defendant to be acquitted on the ground of such mental disease or derangement at the time of the act "as to render him incapable of knowing the nature and quality of his act and of distinguishing right and wrong in relation to such act which he is charged." 369 P.2d at 1007 (emphasis supplied.) This rigid formulation more rigid than the common law and without the irresistible impulse supplement which had previously been used in Alaska.¹⁰ In that sense the case is a retrograde decision in a time of forward legal progress.¹¹

The court in *Chase* relied on *Wesley v. State*, 202 Wis. 184, 231 N.W. 2d 1005 (1930); *Matheson v. State*, 10 Okl. 714, 63 P. 960 (1902); *Montgomery v. State*, 68 Tex.Cr. 513 (1912). As the Note "M'Naghten," UCLA-Alaska L.Rev. 152, 153-54 (Aug. 1970), these cases were decided before the modern advances in psychology were widely disseminated. Mod.Penal Code, Tent.Dr. No. 4,101 (1955).

United States, 241 F.2d 640 (1956); *United States*, 351 U.S. 940, 77 S.Ct. 1000, 165 L.Ed. 1539; *Rivers v. United States*, 359 F.2d 435 (1950).

11. That the Alaska test is more rigid than the M'Naghten test is apparent from the following example. One laboring under a psychotic delusion, such as that he is being persecuted or that God has commanded that he must kill, may be acquitted under the M'Naghten test because he is unable to appreciate the wrongfulness of his act. Under M'Naghten he would not be acquitted under *Chase* because he could appreciate the wrongfulness of his act. Cf. *People v. Schmidt*, 100 Cal. 110, 32 P. 915 (1915), per *Chase*.

12. This rigid formulation persists in Alaska because of the use of the conjunctive "and" in the instructions which were given in *Chase*. It is possible that the error possibly came about because of a clerical error by the court reporter or the trial court judge. If this is the case, the error is a clerical one and not a legal one. 369 P.2d at 1007.

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time of committing of the act, accused was labouring under defect of reason, from disease of mind, so as not to know the nature and quality of the act he was doing: or, if he knew it, that he did not know it was wrong." 10 Cl. & F. 10, 8 Eng.Rep., at 722.

A case which was no longer a response to hypothetical questions, notions of phrenology and monomania were then in vogue, the dramatic departure from commissioning technique, acting more as a mental committee than a court, a rule which has been followed by many courts ever since. Of course the restrained observation of Stephen that "every judgment since the year 1843 has been in an authority which deserves to be regarded as in many ways doubtful" could at least have been cases of paranoia like that of M'Naghten, but instead it was applied by courts as a rule of universal validity, appropriate for all mental and emotional derange-

M'Naghten test has been supplemented in many jurisdictions by the "irresistible impulse" test, under which one suffering from a mental disease, of such severity that freedom of will is destroyed, is excused from culpability.⁸

Before statehood, the right-impulse test, supplemented by the irresistible impulse test, was considered the rule.⁹ In *Chase v. State*, 369 P.

⁸ History of the Criminal Law, § 153 (1883).

⁹ In 1855, about 14 states, and the Secretary, had adopted the irresistible impulse addition to the test.

Code, Tent.Dr. No. 4,161

¹⁰ *Chase v. State*, 227 U.S. 540, 35 S.Ct. 631 (1913); *Davis v. State*, 165 U.S. 373, 17 S.Ct. 631, 41 L.Ed. 750 (1897); *Sauer v.*

24 997 (Alaska 1962), however, this court adopted a particular version of what it regarded as the M'Naghten rule. The test laid down there was that in order to exculpate the defendant he must be laboring under such mental disease or derangement at the time of the act "as to render him incapable of knowing the nature and quality of his act and of distinguishing between right and wrong in relation to the act with which he is charged." 369 P.2d, at 998. (Emphasis supplied.) This results in a formulation more rigid than the M'Naghten test, and without the irresistible impulse supplement which had previously obtained in Alaska.¹⁰ In that sense the *Chase* case is a retrograde decision in a time of generally forward legal progress.¹¹

The court in *Chase* relied on three cases: *Jessner v. State*, 202 Wis. 184, 231 N.W. 634, 71 A.L.R. 1005 (1930); *Maas v. Territory*, 10 Okl. 714, 63 P. 960 (1901); and *Montgomery v. State*, 68 Tex.Crim. 78, 151 S.W. 813 (1912). As the Note, "Criminal Insanity," UCLA-Alaska L.Rev., 8 Alaska L.J. 152, 153-54 (Aug. 1970), points out, these cases were decided before many of the modern advances in psychiatry had been widely disseminated. Moreover, the instructions given in these cases lacked

United States, 241 F.2d 640 (1957), cert. denied 354 U.S. 940, 77 S.Ct. 1405, 1 L.Ed.2d 1539; *Rivers v. United States*, 270 F.2d 435 (1959).

¹⁰ That the Alaska test is more restrictive than M'Naghten is apparent from the following example. One laboring under a psychotic delusion, such as that he is being persecuted or that God has ordained that he must kill, may well know the nature of the act committed, yet not be able to appreciate its wrongfulness. Under M'Naghten he would not be culpable, but under *Chase* he could not be acquitted. Cf. *People v. Schmidt*, 216 N.Y. 324, 110 N.E. 945 (1915), per Cardozo, J.

¹¹ Speculation persists in Alaska legal circles that the use of the conjunctive "and" in the instructions which were validated in *Chase* possibly came about through a typographical error by the secretary to the trial court judge. If this is so, then

clarity and therefore were extremely confusing. *Jessner* and *Montgomery* indeed held that the phrases "the nature and quality of the act" and "the difference between right and wrong" were synonymous; if the defendant could not understand the one, he could not distinguish the other. However, as the Note, *supra*, indicates, these phrases are not at all synonymous in ordinary speech.

To torture English into performing such a linguistic cakewalk requires unusual skill. Since juries are composed of but ordinary reasonable laymen, additional complicated instructions would have to be given to insure that the jury does not consider the terms according to their usage in common everyday speech and thereby misapply the law. Such verbal gymnastics should not be employed in jury instructions. The purpose of jury instructions is to instruct and enlighten the jury on the law, not to confuse them.¹²

It also appears that the instructions in *Jessner*, focused solely on the defendant's ability to distinguish between right and wrong, ignoring completely his ability to understand the nature and quality of his act.¹³ In *Maas*, the actual instruction did follow the disjunctive form of the M'Nagh-

Chase is no less an historical accident than M'Naghten's Case.

¹² "But 'glory' doesn't mean 'a nice knock-down argument,'" Alice objected.

"When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you can make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."

L. Carroll, *Through the Looking Glass, in The Annotated Alice* 269 (1960).

This nonsensical repartee brings sharply into focus a problem which has plagued logicians since at least the time of William of Occam. A lack of awareness of this problem has led to much mischief in legal interpretation.

¹³ 202 Wis. at 186, 231 N.W. at 639.

ten test.¹⁴ If anything, this case stands for an adoption of the true *M'Naghten* rule, not the rule of *Chase*. In sum, I do not find any of these cases of sufficient precedential value to warrant an adherence by this court to what is little more than a modified "wild beast" test.¹⁵

Since the *M'Naghten* case, and even in the eight years since *Chase v. State* was decided, a great deal of critical evaluation and development has occurred, in an effort to achieve more advanced and just techniques for handling this serious problem.

The torrent of legal writing is so vast that it is nearly impossible for all but a few to read or comprehend everything which has been said on this basic issue of criminal responsibility. Still, certain broad outlines can be stated. There is nearly universal dissatisfaction with the *M'Naghten* rule on the part of scholars, jurists, and psychiatrists who have seriously inquired into the subject. The main difficulty with the *M'Naghten* rule is that it focuses exclusively on the cognitive element in mental life, that is, the knowledge of right and wrong or of the nature of one's act. One of its underlying assumptions is that mental illness is a failure of intellectual function. This reflects an artificial dualism of mind and emotions which ignores the affective aspects of the human personality. While there are many schools of psychiatric thought, there is broad agreement that mental illness can be understood only by

looking at man as an integrated, psychobiological whole.¹⁶ Because the *M'Naghten* rule views man within the artificial strictures of cognition, courts and juries are deprived of much of the benefit to be gained from the modern science of psychiatry.¹⁷

Other criticisms of the *M'Naghten* rule would probably be applicable to any verbal formulation.¹⁸ The difficulty stems from the different functions and purposes of law and psychiatry. The aim of psychiatry is to examine human behavior and mental disease in a scientific manner and to develop therapeutic methods of dealing with the emotional problems of mankind. On the other hand, it is the task of the law to develop normative rules to control human behavior. It has always been recognized that certain persons must be regarded as not the proper subjects of criminal conviction, and that because of their mental aberrations it would be unjust to hold them responsible for their conduct.¹⁹ Ultimately this is an ethical and social judgment and not a medical determination.

Scholars and jurists have expended great effort over the years to achieve a standard reflecting both society's need for criminal accountability and the converse demand for a rule flexible enough to cover the varieties and combinations of serious emotional and mental illness which destroy the capacity to commit a crime, in any just conception of the term.

One great developmental breakthrough occurred with the famous decision in *Durham v. United States*, 94 U.S.App.D.C. 228,

214 F.2d 862 (1954). There Judge Hand laid down a test under which a defendant was to be held not responsible for a lawful act was the product of a mental disease or mental defect." 214 F.2d 862. This was an adaptation of a rule which previously existed solely in England, and which had developed through the influential work of Dr. Ray. 5 D.N.H. 399 (1870). While Dr. Ray's test was a courageous attempt to establish a standard of responsibility, difficulties were encountered in its application. For example, the use of the term "product" created difficult questions of causation.²⁰ And as Judge (now Chief Justice) Burger complained, in *Blocker v. United States*, 110 U.S.App.D.C. 288 F.2d 853, 860 (1960), "In many cases put the legal determination of the hands of psychiatric witnesses rather than judge and jury. Finally, in *United States v. Smith*, 129 U.S.App.D.C. 444 (1967), Judge Burger pointed out certain shortcomings of the *Durham* test that it allowed the psychiatrist to make many legal and moral judgments which should be within the province of the judge. In substance, he appears to have adopted at least partially to the view of Judge Burger that psychiatrists should not be permitted to render an opinion as to whether the act was a "product of a mental disease." A lengthy form of instruction was adopted to clarify the responsibilities of expert witness and juror. Shortly after the *Durham* decision, the American Law Institute

14. 10 Okl. at 717, 63 P. at 961.

15. *Rex v. Arnold*, 16 How.St.Tr. 695, 734 (1724).

16. "Psychiatry may be defined as that branch of medicine which deals with the genesis, dynamics, manifestations and treatment of such disordered and undesirable functionings of the personality as disturb either the subjective life of the individual or his relations with other persons or with society. * * * Viewed a little differently, psychiatry may be regarded as the science which deals with the psychopathological aspect of human biology. The latter considers man not only as a living organ-

ism but also as a thinking, feeling and striving one." Noyes & Kolb, *Modern Clinical Psychiatry* (5th Ed. 1958), 1.

17. P. Roche, *The Criminal Mind* (1957), 168-195, 244-274.

18. F. Allen, *The Borderland of Criminal Justice* (1964), 111.

19. A. Platt & B. Diamond, "The Origins of the 'Right and Wrong' Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey," 54 *Calif.L.Rev.* 1227 (1966). In early law the "insane" were considered homologous to children.

20. *Wichofen*, "The Flow ring of Hampshire," 22 *C. of Chi.L.* 20 (1955).

21. In addition to the above cited cases, see *United States v. Currens*, 151 F.2d Cir. 1961; *Blake v. United States*, 107 F.2d 908 (5th Cir. 1942); *United States v. Smith*, 129 U.S.App.D.C. 444 (1967); *United States v. Smith*, 363 F.2d 680 (7th Cir. 1966); *Pope v. United States*, 129 U.S.App.D.C. 719 (5th Cir. 1967) (en banc); and other grounds, 392 U.S. 2145, 20 L.Ed.2d 1317 (1968); *United States v. Smith*, 325

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Scholars and jurists have expended great effort over the years to achieve a standard that balances both society's need for criminal accountability and the converse demand for a law flexible enough to cover the various combinations of serious emotional and mental illness which destroy the capacity to commit a crime, in any just conception of the term.

The great developmental breakthroughs were achieved with the famous decision in *Dirks v. United States*, 94 U.S.App.D.C. 225

(1954). There Judge Bazelon held that a defendant should be held not responsible "if his criminal act was the product of mental disease or mental defect." 214 F.2d at 874. This was an adaptation of a rule which had previously existed solely in New Hampshire and which had developed under the judicial work of Dr. Ray. *State v. Pike*, 10 N.H. 377 (1870). While *Durham* represented a courageous attempt to state a modern standard of responsibility, certain deficiencies were encountered in its administration. For example, the use of the term "product" created difficult problems of interpretation.²⁰ And as Judge (now Chief Justice) Burger complained, concurring in *Dirks v. United States*, 110 U.S.App.D.C. 288, 288 F.2d 853, 860 (1960), the test in *Dirks* cases put the legal determination in the hands of psychiatric witnesses rather than the judge and jury. Finally, in *Washington v. United States*, 129 U.S.App.D.C. 29, 383 F.2d 444 (1967), Judge Bazelon noted the shortcomings of the *Durham* test, but that it allowed the psychiatrist to make legal and moral judgments which should be within the province of the jury. In *Washington*, he appears to have acceded to the test partially to the view of Judge *Dirks* that psychiatrists should no longer be permitted to render an opinion on whether the act was a "product" of mental disease. A lengthy form of instruction was adopted to clarify the respective functions of expert witness and jury.

Shortly after the *Durham* rule was announced, the American Law Institute prom-

ulgated a draft rule on this subject. This rule represents the collective efforts of some of the leading thinkers in this field. After nine years of research and consideration, the proposed rule was stated as follows:

"(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

"(2) The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct."

A.L.I. Mod. P. Code § 4.01 (final draft) (1962).

Since then this test, or some variant of it, has met with increasing judicial acceptance, particularly in the federal courts. In a luminous opinion by Judge Kaufman, the Second Circuit adopted the test in *United States v. Freeman*, 357 F.2d 606 (2d Cir. 1966). Chief Judge Haynsworth adopted it for the Fourth Circuit in *United States v. Chandler*, 393 F.2d 920 (4th Cir. 1968) (en banc), and the Ninth Circuit has now embraced it in *Wade v. United States*, 426 F.2d 64 (9th Cir. 1970) (en banc). The *M'Naghten* test has now been overthrown in all but the First Circuit.²¹ These cases contain excellent disquisitions on the *M'Naghten* rule, its deficiencies, and the legal and psychiatric framework underlying

16. Noyes & Kolb, *Modern Clinical Psychiatry* (5th Ed. 1958), 1-105, 244-274.

17. Allen, *The Borderland of Criminal Justice* (1964), 111.

18. Platt & B. Diamond, "The Origins of the 'Right and Wrong' Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey," 54 *Calif.L.Rev.* 1227 (1966). In early law the "insane" were considered homologous to children.

19. Wolfen, "The Flowering of New Jurisprudence," 22 *U. of Chi.L.Rev.* 350, 351 (1955).

20. In addition to the above cited cases, see *United States v. Currens*, 200 F.2d 101 (2d Cir. 1954); *Blake v. United States*, 407 F.2d 908 (5th Cir. 1969) (en banc); *United States v. Smith*, 404 F.2d 1005 (5th Cir. 1968); *United States v. Currens*, 393 F.2d 680 (7th Cir. 1967) (en banc); *Pope v. United States*, 372 F.2d 710 (8th Cir. 1967) (en banc), various other grounds, 392 U.S. 651, 88 S.Ct. 2115, 20 *L.Ed.2d* 1317 (1968); *United States v. United States*, 325 F.2d 420

(10th Cir. 1963) (en banc), cert. denied, 377 U.S. 946, 84 S.Ct. 1354, 12 *L.Ed.2d* 300 (1964). While not all of these cases embrace the A.L.I. test totally, they reject the *M'Naghten* rule and include a test whereby the effect of mental illness on one's capacity to conform his conduct to law is stressed. Judge (now Chief Justice) Burger, in his separate concurring opinion in *Blocker v. United States*, 110 U.S.App.D.C. 41, 288 F.2d 853 (1960), laid great emphasis on a test which would focus on the relationship between mental illness and one's capacity to refrain from wrongdoing.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
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ORIGINAL.

ing the A.L.I. test. As Chief Judge Haynsworth said of the A.L.I. test:

"With appropriate balance between cognition and volition, it demands an unrestricted inquiry into the whole personality of a defendant who surmounts the threshold question of doubt of his responsibility. Its verbiage is understandable by psychiatrists; it imposes no limitation upon their testimony, and yet, to a substantial extent, it avoids a diagnostic approach and leaves the jury free to make its findings in terms of a standard which society prescribes and juries may apply. [Footnotes omitted.]" *United States v. Chandler, supra*, 393 F.2d at 926.

This wide acceptance of the American Law Institute test is significant. I believe that this formulation affords a workable standard, permitting realistic expert testimony about the personality and characteristics of the defendant as a whole man, but leaving to the court and jury the ultimate legal pronouncement. It avoids many of

the problems encountered under the *Durham* rule.

No verbal formulation of this standard can achieve perfection: as there may always be doubt about the application of general terms to marginal situations. Yet the American Law Institute standard, in the view of many, does represent the best current thinking on this subject. It is the standard which should be employed in Alaska.²² I regard it unfortunate that we are not taking this step today.

II

Appellant has raised the question of where the burden of proof should be placed in these cases. In *Chase v. State, supra*, this court adopted the rule that the burden was on the defendant to establish his insanity by a preponderance of the evidence. Approximately one-half of the states follow this rule.²³ But in the rest of the states, and in the federal courts, the accused need only show some evidence of insanity. The prosecution must then prove his sanity beyond a reasonable doubt.²⁴

22. The standard need not be frozen entirely within only one rigid form of words. In appropriate cases the testimony might require some amplification of the test in the instructions to the jury. Nor is this an occasion to consider the undue resort to diagnostic labels and conclusory medical terms which plagued the court under the *Durham* rule and which the court sought to limit in *Washington v. United States*, 129 F.Supp. 20, 300 F.2d 444 (1967). Hopefully, care would be taken to see that experts explain such labels and terms in language understandable to the jury.

23. Alabama, *Knight v. State*, 273 Ala. 480, 142 So.2d 890 (1962); Alaska, *Chase v. State*, 300 P.2d 997 (Alaska 1962); Arkansas, *Kelley v. State*, 154 Ark. 240, 242 S.W. 572 (1922); California, *People v. Monk*, 50 Cal.2d 288, 14 Cal.Rptr. 633, 363 P.2d 865 (1961); Delaware, *Longo v. State*, 3 Storey 311, 53 Del. 311, 168 A.2d 695 (1961); Georgia, *Rosa v. State*, 217 Ga. 569, 124 S.E.2d 280 (1962); Iowa, *State v. Drosow*, 253 Iowa 1152, 114 N.W.2d 526 (1962); Kentucky, *Tunget v. Commonwealth*, 303 Ky. 834, 198 S.W.2d 785 (1947); Maine, *State v. Park*, 150 Me. 329, 103 A.2d 1 (1963);

Minnesota, *State v. Finn*, 257 Minn. 138, 100 N.W.2d 508 (1960); Missouri, *State v. King*, 375 S.W.2d 34 (Mo.1961); Montana, *State v. DeHann*, 88 Mont. 407, 292 P. 1109 (1930); Nevada, *State v. Behlter*, 55 Nev. 230, 20 P.2d 1000 (1931); New Jersey, *State v. Kudziowski*, 106 N.J.L. 155, 147 A. 453 (1929); North Carolina, *State v. Swink*, 220 N.C. 123, 47 S.E.2d 852 (1948); Ohio, *State v. Stewart*, 170 Ohio St. 150, 108 N.E.2d 430 (1964); Oregon, 14 Or.Rev.Stat. 136.390 (1960); Pennsylvania, *Commonwealth v. Updegrave*, 413 Pa. 509, 195 A.2d 534 (1964); Rhode Island, *State v. Gaultes*, 161 A.2d 818 (R.I.1960); South Carolina, *State v. Tidwell*, 100 S.C. 248, 81 S.E. 778 (1915); Texas, *Wenck v. State*, 238 S.W.2d 793 (Tex.Cr.App. 1951); Virginia, *Christian v. Commonwealth*, 202 Va. 311, 117 S.E.2d 72 (1960); Washington, *State v. Mays*, 65 Wash.2d 58, 395 P.2d 758 (1965); West Virginia, *State v. McCauley*, 43 S.E.2d 454 (W.Va.1947). See 17 A.L.R.3d 146 (1968).

24. Those states following the federal rule are: Arizona, *State v. Schantz*, 98 Ariz. 200, 403 P.2d 521 (1965); Colorado, *Castro v. People*, 140 Colo. 403, 340 P.2d

those who place the burden of proof on the defendant under this accords with the principle. Because there is a presumption that the prosecution should be to proving that which is not presumed upon it. But under the presumption of sanity is operative until so disproved which adequately by the sanity of the defendant upon then disappears and the burden of the defendant to prove becomes an essential element beyond a reasonable doubt.²⁵

It has been said that the burden of insanity should be placed on the defendant because sanity is not an offense but a quality of the defendant. *Chase v. State, supra*, 300 P.2d 997. But this overlooks the consideration that once sanity is a fact to be established it is the fact essential to culpability. *United States Supreme Court* in *Davis v. United States*

300 U.S. 161, 57 S.Ct. 297, 70 L.Ed. 100 (1959); Connecticut, *State v. Farrell v. State*, 101 Conn. 101, 103 A.2d 130 (Hawaii 1967); Idaho, *State v. Clokey*, 83 Idaho 322, 343 P.2d 162, 174 N.E.2d 82 (1961); Illinois, *People v. Whitaker v. State*, 248 Ill. 212 (1900); Kansas, 189 Kan. 243, 300 P.2d 100; Maryland, *Jenkins v. State*, 269 A.2d 610 (1965); Massachusetts, *Commonwealth v. Mays*, 229 N.E.2d 550 (1966); New Mexico, *People v. Eggleston*, 180 N.M. 944 (1965); Michigan, *State v. Mays*, 249 Mich. 247, 210 P.2d 100 (1963); Nebraska, *Thompson v. State*, 159 Neb. 68, 68 N.W.2d 100; North Dakota, *State v. Bartlett*, 128, 92 N.W. 809 (1902); Oregon, *State v. Bartlett*, 128, 92 N.W. 809 (1902); New Mexico, *People v. Kelly*, 300 N.M. 397, 60 P.2d 600 (1965); New York, *People v. Kelly*, 300 N.Y. 100, 103 N.E.2d 532 (1965);

encountered under the *Dur-*

formulation of this standard perfection, as there may be about the application of general marginal situations. Yet the law Institute standard, in the view, does represent the best in the field on this subject. It is the view which should be employed in the law. It is regrettable that we have not taken this step today.

II

has raised the question of the burden of proof should be placed on the defendant. In *Chase v. State*, *supra*, the court adopted the rule that the burden of proof to establish insanity is on the defendant to establish his insanity by a preponderance of the evidence. Only one-half of the states follow this rule.²³ But in the rest of the states, in the federal courts, the accused must show some evidence of insanity. If the prosecution must then prove insanity beyond a reasonable doubt.²⁴

State v. Finn, 257 Minn. 138, 38 S.W.2d 508 (1960); *Missouri, State v. ...*, 875 S.W.2d 34 (Mo.1994); *State v. DeHann*, 88 Mont. 407, 100 (1930); *Nevada, State v. ...*, 35 Nev. 236, 20 P.2d 1000 (1935); *New Jersey, State v. Kudzinow*, 135 N.J.L. 155, 147 A. 453 (1929); *North Carolina, State v. Swink*, 229 N.C. 100, 100 S.E.2d 852 (1948); *Ohio, State v. ...*, 170 Ohio St. 150, 108 N.E.2d 100 (1954); *Oregon, 14 Or.Rev.Stat. 1000*; *Pennsylvania, Commonwealth v. Updegrave*, 413 Pa. 599, 108 (1964); *Rhode Island, State v. ...*, 101 A.2d 818 (R.I.1960); *South Carolina, State v. Tidwell*, 100 S.C. 778 (1915); *Texas, Wenck*, 238 S.W.2d 793 (Tex.Cr.App.1951); *Virginia, Christian v. Commonwealth*, 102 Va. 311, 117 S.E.2d 72 (1955); *Washington, State v. Mays*, 65 (1958), 395 P.2d 758 (1965); *West Virginia, State v. McCauley*, 43 S.E.2d 140 (1947). See 17 A.L.R.3d 140

states following the federal rule: *Arizona, State v. Schantz*, 98 Ariz. 1, 1 P.2d 521 (1965); *Colorado, People v. ...*, 140 Colo. 493, 346 P.2d

POPE v. STATE

Cite as, Alaska, 478 P.2d 801

Alaska 813

Those who place the burden of establishing insanity on the defendant usually argue that this accords with the presumption of sanity. Because there is a presumption, it is said that the prosecution should not be put to proving that which normally is not imposed upon it. But under the federal rule, the presumption of sanity is still employed. It is operative until some evidence is produced which adequately brings into issue the sanity of the defendant. The presumption then disappears and the mental capacity of the defendant to commit the crime becomes an essential element, to be proved beyond a reasonable doubt, like any other.²⁵

It has been said that the burden of establishing insanity should be placed on the accused because sanity is not an element of the offense but a quality of the one who commits it. *Chase v. State*, *supra*, 369 P.2d at 1003. But this overlooks the important consideration that once sanity is in issue it is a fact to be established like any other ultimate fact essential to culpability. The United States Supreme Court made this plain in *Davis v. United States*, 160 U.S.

1020 (1959); *Connecticut, State v. Joseph*, 90 Conn. 637, 115 A. 85 (1921); *Florida, Farrell v. State*, 101 So.2d 130 (Fla.1958); *Hawaii, State v. Moeller*, 433 P.2d 136 (Hawaii 1967); *Idaho, State v. Clokey*, 83 Idaho 322, 361 P.2d 150 (1961); *Illinois, People v. Robinson*, 22 Ill.2d 162, 174 N.E.2d 820 (1961); *Indiana, Whitaker v. State*, 210 Ind. 676, 168 N.E.2d 212 (1960); *Kansas, State v. Penry*, 189 Kan. 243, 368 P.2d 60 (1962); *Maryland, Jenkins v. State*, 238 Md. 451, 209 A.2d 616 (1965); *Massachusetts, Commonwealth v. McHoul*, 352 Mass. 511, 226 N.E.2d 556 (1967); *Michigan, People v. Eggleston*, 186 Mich. 510, 152 N.W. 914 (1915); *Mississippi, McGarrh v. State*, 210 Miss. 247, 148 So.2d 401 (1963); *Nebraska, Thompson v. State*, 159 Neb. 685, 68 N.W.2d 267 (1955); *North Dakota, State v. Barry*, 11 N.D. 428, 92 N.W. 809 (1902); *New Hampshire, State v. Bartlett*, 43 N.H. 221 (N.H.1861); *New Mexico, State v. Roy*, 40 N.M. 397, 60 P.2d 646 (1936); *New York, People v. Kelly*, 302 N.Y. 512, 99 N.E.2d 552 (1951); *Oklahoma,*

469, 16 S.Ct. 353, 40 L.Ed. 499 (1895), when it said:

"No man should be deprived of his life under the forms of law unless the jurors who try him are able, upon their consciences, to say that the evidence before them, by whomsoever adduced, is sufficient to show *beyond a reasonable doubt* the existence of *every fact necessary* to constitute the crime charged." (Emphasis supplied.) 160 U.S. at 493, 16 S.Ct. at 360.

Realistically speaking, when sanity is an issue, it is not only a major element of the criminal proof, it may be the central factual issue in the case. For that matter, it may be the only issue. Logically, sanity is an essential element of a crime because *mens rea* is a necessary primary factor. If insanity exists at the time of the criminal act, *mens rea* fails, there is no jointure of act and intent, and under the traditional analysis no crime has been committed. As Mr. Justice Frankfurter noted, dissenting in *Leland v. Oregon*, 343 U.S. 790, 803, 72 S.Ct. 1002, 1009, 96 L.Ed. 1302 (1952):

"Even though a person be the immediate occasion of another's death, he is not

Whisenhunt v. State, 270 P.2d 360 (Okla. Cr.1954); *South Dakota, State v. Waugh*, 80 S.D. 503, 127 N.W.2d 420 (1964); *Tennessee, Jordan v. State*, 124 Tenn. 81, 135 S.W. 327 (1911); *Utah, State v. Green*, 80 Utah 102, 40 P.2d 901 (1935); *Wisconsin, State v. Esser*, 10 Wis.2d 567, 115 N.W.2d 505 (1962); *Wyoming, State v. Pressler*, 10 Wyo. 214, 92 P. 806 (1907). The District of Columbia also follows this rule: *Jones v. United States*, 100 U.S.App.D.C. 111, 284 F.2d 245 (1960). See 17 A.L.R.3d 146 (1968).

25. *Fitts v. United States*, 284 F.2d 108 (10th Cir. 1960). There the court said: "When, however, evidence of insanity is produced, from whatever source, the presumption of sanity disappears, and the mental capacity of the accused to commit the crime becomes an essential element to be proved by competent evidence beyond a reasonable doubt." 284 F.2d at 112.

This is the general rule which is followed in approximately one-half or more of the jurisdictions of the United States.

a decedant to be forfeited like a thing in the medieval law. Behind a muscular contraction resulting in another's death there must be culpability to turn homicide into murder."

Placing the burden on the prosecution has substantial advantages. First, it accords with the presumption of innocence and the thesis that the accused need not undertake to prove anything in a criminal case.²⁶

An additional advantage is that the jury is not given the confusing task of juggling two different burdens, each of which carries a different standard. This anomaly is pointed out by Professor McCormick:

"Thus it seems inconsistent to demand as to some elements of guilt, such as an act of killing, that the jury be convinced beyond a reasonable doubt, and as to others, such as duress or capacity to know right from wrong, the jury may convict though they have such doubt. Accordingly, the recent trend both in English and American decisions is to treat these so-called matters of defense as situations wherein the accused will usually have the first burden of producing evidence in order that the issue be raised and submitted to the jury, but at the close of the evidence the jury must be told that if they have a reasonable doubt of the fact on which the justification is based they must acquit." McCormick, Evidence § 321, p. 684 (1954). (Footnote omitted.)

There are also important aspects of constitutional policy to be weighed in the balance. It has been held unconstitutional to shift the burden of persuasion on the defense of alibi to the accused. *Stump v. Bennett*, 398 F.2d 111 (8th Cir. 1968) (en banc), and cases cited therein. This may or may not represent some future trend.

26. As a practical matter the accused often must undertake to adduce proof of insani-

ty if he is to prevail in creating a reasonable doubt on the whole evidence.

But when it comes to shifting burdens, there is not much difference between proof that a defendant was physically present, and not elsewhere, at the commission of a crime, and that he was "mentally present," in the sense that he was sane. Lastly, the experience of the federal courts, in their treatment of the burden of persuasion, is of value. The federal courts have worked under the rule of *Davis v. United States*, *supra*, since 1895, and have not found it a handicap in effecting criminal justice. In my view, when sanity is in issue, the burden of persuasion should be upon the prosecution to establish the sanity of the accused beyond a reasonable doubt.

III

In fairness, to avoid surprise, the prosecution should be entitled to notice that it must adduce evidence of the defendant's sanity. Because the mental status of an accused, in terms of sanity, is usually not in issue in a criminal prosecution, it would be an unfair burden to require the state invariably to guess at whether this issue might be raised at trial, and possibly to prepare on this issue, only to have it not raised at all. Nor is it fair for defendants to wait in ambush until trial to inject the sanity issue as a surprise tactic.

Therefore, if we were to alter our insanity rules, we should also change our procedural rules to require that at the time of plea, or within a certain number of days thereafter, one intending to raise the issue of insanity at his trial must specially plead that he was insane at the time he committed the act charged.

For the reasons given I would reverse and remand for a new trial.

Bert L. SHANNON, J.
v.
CITY OF ANCHORAGE
corporation, App
No. 1186.

Supreme Court of
Dec. 21, 1970

Action against city for injury when ladder was injured when ladder extended from face of municipal dock. The Superior Court District, C. J. Occhipinti, judgment for city and affirmed. The Supreme Court held that even if city had Jacob's ladders for dock facilities, city's decision on evening crew to use large ladder extending from dock could not be approximated in view of custom of members to use barges. Ladders were unavailable was high enough.

Affirmed.

Admiralty §2

The "saving to suitors" provision of the Judiciary Act of 1789 gave federal courts the same powers to cases of admiralty jurisdiction meeting an in personam subject to sue in a "court of law" through an ordinary action, the state substantive law applied the suit been in a federal court. 28 U.S.C. Const. art. 3, § 2. The publication Word for other judicial corporations.

Admiralty §20

for personal injury aboard vessels w

HB-350

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 136

Amending Criminal Rules
6 and 18

In order to carry out the provisions of Chapter 126 SLA 1971, effective September 2, 1971, and the decision of the Supreme Court of Alaska in Alvarado v. State of Alaska, Op. No. 704, July 6, 1971, within the framework of the judicial system's budget for the fiscal year 1971-1972, we hereby promulgate the following temporary order concerning venue of civil and criminal cases, and designating the sites for the convening of grand juries.

IT IS ORDERED:

A. The location where grand juries shall be convened:

In order to investigate crimes in the various election districts throughout Alaska, the grand jury shall be convened at the place as set forth herein. The presiding superior court judge of the judicial district which encompasses the appropriate election district shall convene the grand jury in conformity with the applicable statutes and rules of criminal procedure.

In regard to offenses committed in the various election districts (as set forth in official 1965 reapportionment map) grand juries shall be convened at the following locations:

As to offenses committed in election districts 1, 2 or 3, the grand jury shall be convened at Ketchikan or Sitka, Alaska.

As to offenses committed in election districts 4 or 5, the grand jury shall be convened at Juneau, Alaska.

As to offenses committed in election districts 7 and 8, the grand jury shall be convened at Anchorage, Alaska.

As to offenses committed in election districts 6, 9, 10 or 11, the grand jury shall be convened at Kenai or Kodiak, Alaska.

As to offenses committed in election districts 11, 12, or 13, the grand jury shall be convened at Kodiak, Alaska.

As to offenses committed in election districts 14, 15, 17, 18 or 19, the grand jury shall be convened at Nome, Alaska.

As to offenses committed in election district 16, the grand jury shall be convened at Fairbanks, Alaska.

B. Criminal Cases, Place of Trial: The trial of all criminal cases shall take place in the election district where the crime was committed subject to the convenience of the parties and witnesses and the change of venue provisions of AS 22.10.040. The place of the trial shall be the nearest urban center within the appropriate election district of the alleged crime where there are facilities available to house the court and jury.

In order to provide the court with information concerning the appropriate facilities the presiding superior or presiding district court judge of the judicial district shall request the Administrative Director's office to investigate the availability of appropriate facilities and to report in writing. This report shall contain a specific recommendation as to the feasibility of holding trial at the place where the crime was committed, and shall also contain a recommendation as to alternate places of trial. Preference should be given to those urban centers having appropriate facilities which are located nearest the place where the crime was committed.

This report of the Administrative Director's office shall become a permanent part of the record.

C. Civil Cases, Place of Trial: The trial of all civil cases except as hereinafter provided shall take place in the judicial district where the cause of action arose or the district where the defendant was personally served with preference being given to the nearest urban center where the superior court conducts regular sessions of the superior court as set forth in Administrative Rule 29 or where the district court holds regular sessions of the district court as set forth in Administrative Rule 32.

(1) The trial of all actions in ejectment or for recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall commence in the judicial district in which the real property, or any part of it affected by the action, is situated.

(2) Failure to make timely objection to improper venue waives the requirements of this rule.

(3) Nothing in this order shall be construed to affect the trial of civil cases within the jurisdiction of the magistrate court.

D. Selection of Grand and Petit Jurors: The jurors selected for service on a grand or petit jury shall have the qualifications set forth by law and shall be drawn and selected in conformity with existing statutes and rules with the following additional provisions:

(1) grand jury - jurors who serve on the grand jury shall be selected from a fifty-mile radius of the designated place of meeting of the grand jury as set forth in Part A of this order.

(2) petit jury - jurors to serve on the petit jury shall be selected from a radius of fifty miles of the urban center designated as the site of the criminal or civil trial as set forth in Parts B and C of this order.

E. This order shall supercede all other rules of the court which may be in conflict with the procedure announced herein.

DATED: August 27, 1971.

/s/ George F. Boney
Chief Justice

/s/ Jay A. Rabinowitz
Associate Justice

/s/ Roger G. Connor
Associate Justice

/s/ Robert C. Erwin
Associate Justice



LAWS OF ALASKA

1971

Source

CSSE 153 AHA

Chapter No.

126

AN ACT

Relating to the place of trial; and changing Rule 18, Rules of Criminal Procedure.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 22.10.030 is amended to read:

Sec. 22.10.030. WHERE ACTIONS ARE TO BE BROUGHT.

(a) All actions in ejectment or for the recovery of the possession of, quieting title to, for the partition of, or the enforcement of liens upon, real property shall be commenced in the superior court in the judicial district in which the real property, or any part of it affected by the action, is situated.

(b) If, in a civil action other than one specified in (a) of this section, a defendant can be personally served within a judicial district of the state, the action against that defendant shall be commenced in that judicial district or in the judicial district in which the claim arose.

(c) All prosecutions for crimes and offenses shall be commenced in the judicial district in which the crime or offense was committed.

(d) Subject to sec. 40 of this chapter, a trial and any precedent or antecedent hearings in an action shall be conducted in an election district within the judicial district at a location which would best serve the convenience of the parties and witnesses.

(e) Actions in cases not covered by this section may be commenced in any judicial district of the state.

(f) Failure to make timely objection to improper

Chapter 126

venue waives the requirements of this section.

* Sec. 2. In sec. 1 of this Act, AS 22.10.030(d) has the effect of changing Rule 18, Rules of Criminal Procedure, by requiring criminal prosecutions to be had not only in the judicial district in which the crime or offense was committed, but in the election district within that judicial district at a location convenient to the parties and witnesses.

* Sec. 3. It is the intent of this Act to make the administration of justice more accessible to the people of rural areas of the state. In conjunction with the amendments in this Act, it is the legislative intent that AS 22.10.140, providing for the temporary assignment of superior court judges anywhere in the state, be fully implemented.

New Map

* OFFICIAL MAP *

ALASKA ELECTION DISTRICTS

As determined in accordance with provisions of the

CONSTITUTION
OF THE
STATE OF ALASKA

*Following the official
1965 reapportionment by
Governor William A. Egan*

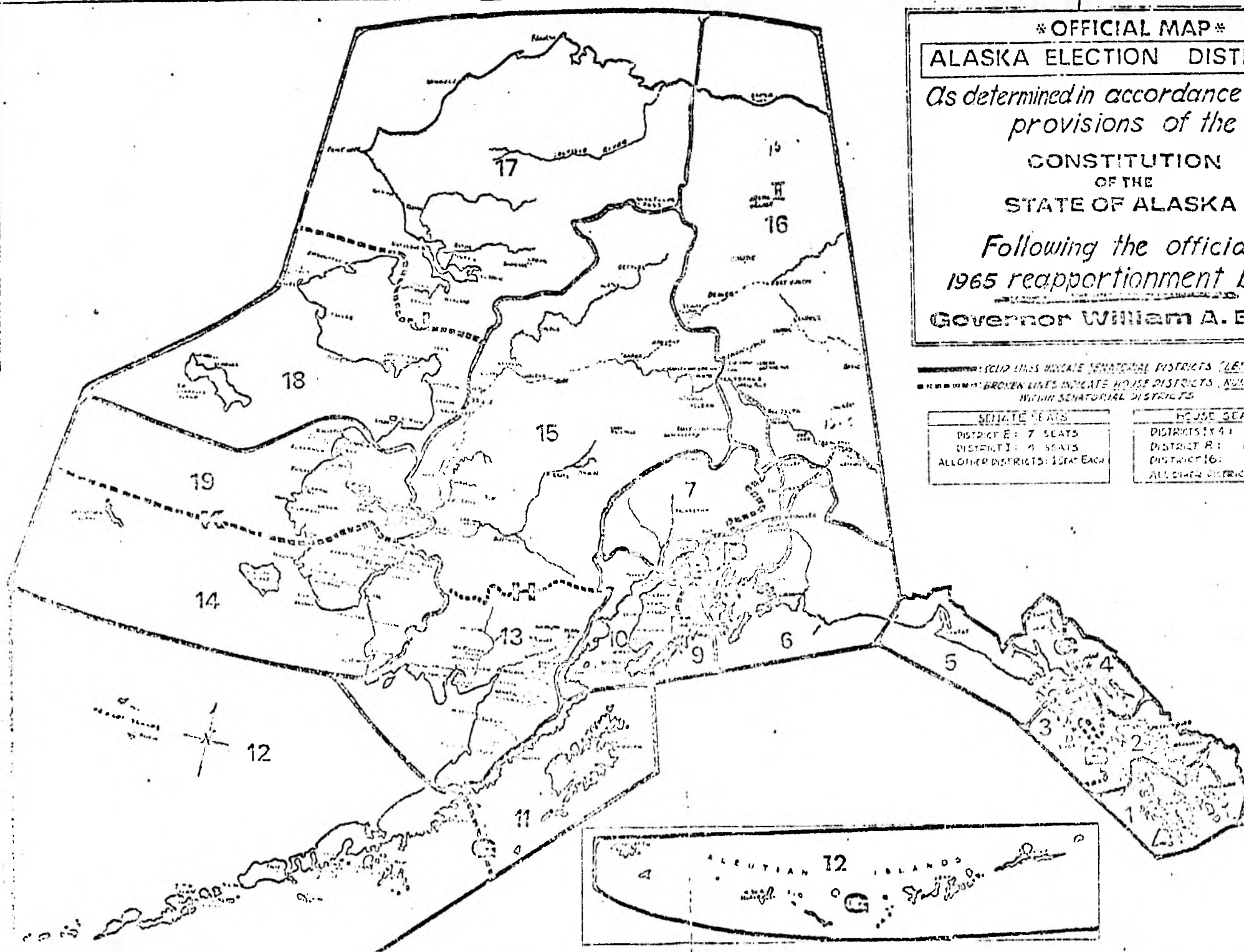
————— SOLID LINES INDICATE SENATORIAL DISTRICTS (LETTERS)
- - - - - BROKEN LINES INDICATE HOUSE DISTRICTS (NUMBERS)
WITHIN SENATORIAL DISTRICTS

SENATE SEATS

DISTRICT E: 7 SEATS
DISTRICT I: 4 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH

HOUSE SEATS

DISTRICTS 4 & 11: 2 SEATS EACH
DISTRICT R: 14 SEATS
DISTRICT 16: 7 SEATS
ALL OTHER DISTRICTS: 1 SEAT EACH



HB-350



Supreme Court

State of Alaska

February 16, 1972

941 FOURTH AVENUE
ANCHORAGE, ALASKA
99501

CHIEF JUSTICE
GEORGE F. BONEY

ASSOCIATE JUSTICES
JOHN H. DIMOND
JAY A. RABINOWITZ
ROGER G. CONNOR
ROBERT C. ERWIN

Honorable Robert Ziegler, Sr.
Alaska State Senate
Juneau, Alaska 99801

Honorable William J. Moran
Alaska House of Representatives
Juneau, Alaska 99801

Gentlemen:

I am enclosing descriptions for the judicial districts and a map showing how they would look. These descriptions have the advantage of simplicity of location and would permit the state the economic benefits which flow from the fact that the judicial districts and transportation routes are aligned.

The court is in favor of such alignment, but wants the description clearly understandable to all. I am asking all presiding superior and district court judges to comment directly to you with a cross-copy to me.

Sincerely yours,

Robert C. Erwin
Robert C. Erwin
Associate Justice

RCE:kf

CC: Mr. Herb Soll
Honorable John H. Dimond
Honorable George F. Boney
Honorable Jay A. Rabinowitz
Honorable Roger G. Connor
Honorable Robert Boochever
Honorable Thomas B. Stewart

Honorable William H. Sanders
Honorable James M. Fitzgerald
Honorable Warren Wm. Taylor
Honorable Bruce Monroe
Honorable Maurice Kelliher
Honorable Paul B. Jones
Honorable Hugh H. Connelly

FIRST JUDICIAL DISTRICT

The First Judicial District shall include that portion of Alaska east of the official boundary between Alaska and Canada running on a line from the Arctic Ocean to the Gulf of Alaska.

SECOND JUDICIAL DISTRICT

The Second Judicial District shall include that portion of Alaska enclosed by starting from a point commencing at 70° N. Latitude and 164° W. Longitude; thence east along 70° N. Latitude to 70° North Latitude and 156° W. Longitude; thence south along 156° W. Longitude to that point where it meets the Arctic Circle; thence west along the Arctic Circle to 160° W. Longitude; thence south along 160° W. Longitude to 63° N. Latitude; thence west along 63° to the Bering Sea, to include all islands of Alaska offshore from such land mass.

THIRD JUDICIAL DISTRICT

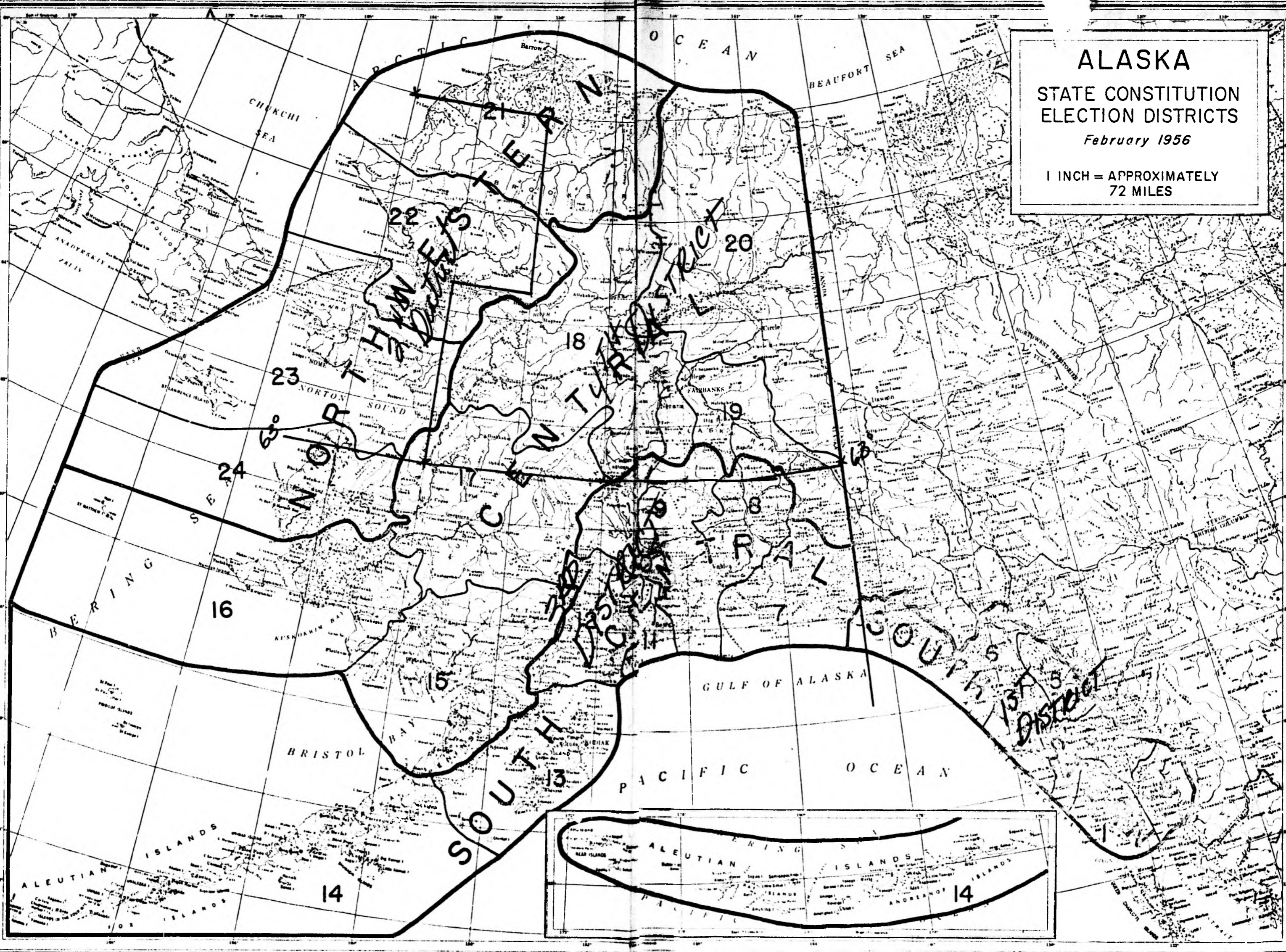
The Third Judicial District shall include that portion of Alaska south of 63° N. Latitude, except for the area set forth in the First Judicial District.

FOURTH JUDICIAL DISTRICT

The Fourth Judicial District shall include that portion of Alaska north of 63° N. Latitude except for the area set forth in the Second Judicial District.

ALASKA
STATE CONSTITUTION
ELECTION DISTRICTS
February 1956

1 INCH = APPROXIMATELY
 72 MILES



STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

HB-350

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

January 17, 1972

MEMORANDUM

TO : Rep. William J. Moran, Chairman
House Judiciary Committee

FROM : Arthur H. Peterson, ^{AT} Revisor of Statutes

SUBJECT: Reapportionment and redistricting

This is a brief reply to your question, "What can the legislature do about reapportionment and redistricting?" It is based on a quick review of our constitution and statutes but not on extensive research into the case law and analytical commentary of authorities.

As you know, the Alaska Constitution's art. VI deals with this subject (referring to the districts set out in art. XIV) and does not specify a legislative role; nor do the statutes specify a role for the legislature in the redistricting process. Three types of action appear open: (1) amend the statutes, (2) amend the constitution, (3) seek judicial redress. In the comments below, distinction is to be made between action which could be taken with regard to the recent redistricting proclamation of the governor and that which could be taken in anticipation of the next decennial redistricting.

- (1) AS 15 could be amended by adding guidelines for the reapportionment board's activities and recommendations, supplementing basic requirements stated in art. VI, sec. 6 of the Alaska Constitution and by the courts. If there is concern about the recent proclamation's early termination of some Senate terms, a statute prohibiting that would probably be constitutional and appropriate. Legislative control of the budget is, of course, one means of affecting the composition of the reapportionment board. One thing that could not be done is the enactment of a (valid) statute nullifying the recent proclamation; if the proclamation was issued in accordance with the constitution, such a statute would be invalid.
- (2) The two statutory possibilities mentioned above could be used in the constitution instead. In addition, the constitution could state differently or more specifically

the composition of the reapportionment board (such as by requiring bipartisan or multi-partisan representation on the board). Or an amendment could change the method of selection of the board, perhaps to require legislative confirmation or legislative naming of certain members or the naming of some members by a person or body other than either the governor or the legislature such as the chief justice or the central committee of each major political party. Or the reapportionment board could be given more than a mere advisory role, which would strengthen the legislative voice if the method of selecting board members is changed. And art. VI could and should be substantially amended to reflect court decisions handed down since our constitution became effective; i.e., the periodic redistricting of the Senate districts should be specified, with appropriate tailoring of various provisions in that article. In making any changes in the constitution, the legislature would, of course, want to avoid assuming too dominant a role because of the inherent conflict of interests involved.

- (3) It would seem that the only way to change the recent proclamation would be through court action. Art. VI, sec. 11 of the Alaska Constitution provides for legal action in the superior court "to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment." This approach is available to "any qualified voter." Possible grounds for such an action would be the composition of the reapportionment board, the particular districts established (if they are felt to be in violation of judicial decisions or the standards set out in the Alaska Constitution), the early termination of some Senate terms (there being some question as to whether the governor can legally terminate constitutionally established terms), the failure to treat all Senate terms alike (with regard to early termination) and all present multi-member districts alike (there being some question as to whether the equal protection guarantees of the Alaska and United States Constitutions have been satisfied). Needless to say, this brief statement of possible grounds for questioning the proclamation should not be interpreted as an assurance of the success of the court action. A challenge on the sole ground of the board's composition at this late date seems likely to fail through application of the doctrine of laches or the art. VI, sec. 11 time limits. At any rate an action to "compel correction of any error in redistricting or reapportionment" must be brought within 30 days following the proclamation, i.e., by January 29 (or rather January 28, since the 29th is a Saturday).

****PLEASE NOTE****

THE ORIGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

HB-350

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. _____

ESTABLISHING RECORDING DISTRICTS
FOR THE STATE OF ALASKA

Effective Date: _____

PREFACE

- (1) Under the provisions of AS 22.05.160 -

The supreme court is empowered to establish, modify or discontinue recording districts or precincts; to prescribe the records to be maintained and the instruments to be recorded and the accounting for recording fees; to engage and compensate recorders, deputy recorders and clerks, to require district judges to act as recorders where, and to the extent, necessary; to prescribe recording fees and to do all things necessary to maintain the recording system established under the laws of this state.

(2) Pursuant to the above statutory authority, the supreme court established recording districts and places of recording within each district by Order No. 12, dated April 25, 1960. That order was revised on December 1, 1964, and later was amended on June 16, 1967, August 15, 1967, October 16, 1969, and September 11, 1970.

(3) Order No. 12, as revised and amended, contains the geographical descriptions of each recording district. In addition, the supreme court adopted as the official maps describing the boundaries of each recording district the maps in a set entitled: "Alaska Recording District Portfolio, Dated September 1, 1964", as prepared by Tryck, Nyman & Hayes, Consulting Engineers,

Anchorage, Alaska. This set of maps consisting of approximately 153 sheets is available for inspection in the office of each recorder.

(4) Order No. 12, as revised and amended, establishes 36 separate recording districts in Alaska. This Order No. ___ reduces that number to three recording districts for the entire state, with one place of recording and filing in each of the three districts.

(5) This action has been taken, giving consideration -

(a) to the necessity of securing better means and facilities to preserve documents and instruments permitted or required by law to be recorded or filed, from damage, loss, deterioration, or destruction by reason of time, fire and other elements, and other factors;

(b) to the existence of modern technological facilities for microfilming instruments or documents, with provision for immediate retrieval so that copies can be obtained quickly and at modest cost;

(c) to the existence of modern means of transportation and communication;

(d) to the reduction in cost to the public that will result from this action.

(6) Attached to this order is a map of Alaska showing the boundaries of the recording districts established by this order.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. _____

IT IS ORDERED:

(1) There are established in the state of Alaska
3 recording districts, with places of recording, as follows:

(a) Juneau Recording District.

The Juneau Recording District shall include that portion of Alaska south of the line of 60 degrees north latitude, and west of the meridian of 128 degrees west longitude to the meridian of 140 degrees west longitude.

Place of Recording: Juneau, Alaska.

(b) Anchorage Recording District.

The Anchorage Recording District shall include that portion of Alaska south of the line of 64 degrees north latitude, and west of the meridian of 140 degrees west longitude, and east of the meridian of 172 degrees east longitude.

Place of Recording: Anchorage, Alaska.

(c) Fairbanks Recording District.

The Fairbanks Recording District shall include that portion of Alaska north of the line of 64 degrees north latitude, and west of the meridian of 140 degrees west longitude.

Place of Recording: Fairbanks, Alaska.

(2) All districts adjacent to tidal waters shall extend three nautical miles seaward of mean lower, low water or headlands.

(3) The filing and recording of all documents or instruments required or permitted by law to be filed or recorded within a particular recording district shall be filed or recorded by recorders designated by the supreme court for each recording district. Such filing and recording shall be done in accordance with law, and with instructions of this court or the Administrative Director of Courts.

(4) If there is reasonable uncertainty because of a boundary line separating recording districts whether a filing or recording should take place in one district or another, such filing or recording may be made in more than one recording district.

(5) The degrees and lines of longitude and latitude referred to in this order are as shown on the attached map of Alaska, entitled "Alaska Recording Districts - Boundaries". Copies of the larger editions of this map, which show more detail, may be obtained at a cost of \$ _____ each from the following places:

(Here name appropriate places, such as the Administrative Director of Courts, the Clerk of the Supreme Court, the offices of the recorders, clerks of other courts, etc.)

(6) This order shall be effective on _____, and shall govern all filings and recordings commencing on that date.

(7) The recording districts established by Supreme Court Order No. 12, as revised and amended, are abolished on the effective date of this order. All records, files and books relating to such original recording districts shall be transferred to the appropriate recording districts established by this order, in accordance with instructions from the Administrative Director of Courts. The effectiveness of filings and recordings made in accordance with Order No. 12 as revised and amended, prior to the effective date of this order, shall not be affected by this order.

EFFECTIVE DATE: _____

Chief Justice

Associate Justice

Associate Justice

Associate Justice

Associate Justice

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- Dept/Pub Safety (1)
- Div Mines & Mins (10)
- Univ/Alaska-Mines (10)
- All Title Cos (5)

§ 22.05.140

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§ 22.05.150

JUDICIARY

§ 22.05.160

(b) No salary warrant may be issued to a justice of the supreme court until he has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the justice for opinion or decision has been uncompleted or undecided by him for a period of more than six months. (§ 14 ch 50 SLA 1959; am § 4 ch 115 SLA 1965; am § 2 ch 83 SLA 1967; am § 1 ch 101 SLA 1969; am § 1 ch 193 SLA 1970)

Effect of amendments. — The 1965 amendment increased the compensation of the chief justice from \$23,500 to \$25,500 and of each associate justice from \$22,500 to \$24,500 in the first sentence of subsection (a).

The 1967 amendment, effective July 1, 1967, substituted "\$27,000" for "\$25,500" and "\$20,000" for "\$24,500" in the first sentence of subsection (a).

The 1969 amendment, effective July 16, 1969, substituted "\$30,000" for "\$27,000"

and "\$28,000" for "\$26,000" in the first sentence of subsection (a).

The 1970 amendment, effective July 16, 1970, rewrote the first sentence in subsection (a).

Legislative committee report. — For report on ch. 83, SLA 1967 (HB 141), see 1967 House Journal, pp. 339-340.

Am. Jur. and C.J.S. references. — 30A Am. Jur., Judges, §§ 25 to 30.

48 C.J.S. Judges §§ 34 to 39.

Sec. 22.05.150. Administrative director. The chief justice of the supreme court shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system. (§ 15 ch 50 SLA 1959; am § 31 ch 32 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "supreme court" for "chief justice" following "at the pleasure of the."

Legislative committee report. — For report on ch. 32, SLA 1971 (HB 111 am), see 1971 House Journal, p. 138.

Sec. 22.05.160. Recording districts. The supreme court is empowered to establish, modify or discontinue recording districts or precincts; to prescribe the records to be maintained and the instruments to be recorded and the accounting for recording fees; to engage and compensate recorders, deputy recorders and clerks, to require district judges to act as recorders where, and to the extent, necessary; to prescribe recording fees and to do all things necessary to maintain the recording system established under the laws of this state. (§ 26(3) ch 181 SLA 1959; am § 3 ch 24 SLA 1966)

Effect of amendment. — The 1966 amendment substituted "district judges" for "magistrates."

Chapter 10. The Superior Court.

Section

- 10. Establishment of superior court
- 20. Jurisdiction
- 30. Where actions are to be brought
- 40. Change of venue
- 50. General powers and sessions
- 60. Effect of adjournment
- 70. Seal of court
- 80. Process

Section

- 90. Qualifications of judges
- 100. Vacancies
- 110. Oath of office
- 120. Number of judges
- 130. Appointment and duties of presiding judges
- 140. Chief justice may assign superior court judges

Section

- 150. Approval or rejection
- 160. [Repealed]
- 170. Impeachment

Section

- 180. Restrictions
- 190. Compensation

Sec. 22.10.010. Establishment of superior court. There shall be one superior court for the state. The court shall consist of four districts bounded as follows:

First District: the area within election districts numbered one to six both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959;

Second District: the area within election districts numbered 21 to 24, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959;

Third District: the area within election districts numbered seven to 15, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959; and

Fourth District: the area within election districts numbered 16 to 20, both inclusive, as said districts are described in art. XIV of the state constitution on March 19, 1959. (§ 16 ch 50 SLA 1959)

Am. Jur. and C.J.S. references. — 14 21 C.J.S. Courts §§ 136, 137, 147 to 163;
Am. Jur., Courts, § 1 et seq. 48 C.J.S. Judges §§ 12 to 28.

Sec. 22.10.020. Jurisdiction. (a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as further provided by this section. No appeal may be taken by the state, except to test the sufficiency of an indictment or information. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 180 days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from upward or downward. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

(b) In case of an actual controversy within the state, the superior court, upon the filing of an appropriate pleading, may declare the rights

Rep. Tharion

HB-350

February 9, 1972

M E M O R A N D U M

TO: Chief Justice Boney
Justice Rabinowitz
Justice Connor
Justice Erwin
Justice Boochever

INFO: Robert N. Reeves, Administrative Director
Josephine M. McPhetres, Clerk

FROM: Justice Dimond (Retired)

SUBJECT: Recording Districts

(1) I presume that the recording districts established by Supreme Court Order No. 12 originated from the old recording districts of territorial days established under the authority of section 18-1-1, ACLA 1949.

(2) The territorial recording districts were geared to judicial divisions, and after statehood, to judicial districts. Thus, each judicial district had within its boundaries a number of complete recording districts.

But later changes evolved. The Noatak-Kobuk Recording District, with place of recording at Kotzebue, which is within the Second Judicial District, was consolidated with the Fairbanks Recording District in the Fourth Judicial District. And later the Wade-Hampton Recording District, also located in the Second Judicial District, was consolidated with the Bethel Recording District, which is in the Fourth Judicial District.

(3) Under state law there is no necessary relationship between the location of a judicial district and a recording district. In 1959 four judicial districts were established, and they were described in accordance with the 24 election districts established by article XIV of the state constitution. See AS 22.10.010. For your information I enclose a map of the election districts as they existed at the time of statehood, and from this and AS 22.10.010 you can find the boundaries of the existing judicial districts. This, however, is subject to change

Subject: Recording Districts
February 9, 1972
Page 2

by the legislature. For example, the Governor has had introduced this year Senate Bill No. 295 which would change to some extent the boundaries of the judicial districts. A copy of that bill is enclosed.

The power to establish recording districts is contained in a different section of the law, i.e., AS 22.05.160. This statute, which confers upon the supreme court the power to establish recording districts, says nothing as to the necessity of those districts being related to judicial districts. For that matter, I suppose, the entire state could be made one recording district.

(4) Also, there is no necessary relationship between election districts and recording districts. By the power of reapportionment, the Governor can change the size and area of election districts under article VI, section 6 of the constitution. There is nothing in the constitution relating to recording districts, and as I have noted, the legislature, by AS 22.05.160, has given the authority to the supreme court to establish recording districts.

(5) There are presently 36 recording districts in Alaska. I believe that the public convenience and necessity would be better served by a much lesser number. This may not have been true in the early territorial days before the advent of modern means of communication and transportation. But with technological progress, such as efficient and speedy air travel, computers, and microfilm, it seems to me that the time has come to greatly reduce the number of recording districts.

(6) I believe there is ample justification for this action at this time, or in the near future. The multitude of documents that are required by law to be filed or recorded in designated recording districts are not, in many occasions, secure. (A brief description of many of the documents required to be filed or recorded is contained in the Magistrates' Handbook at pages 280-290.) These documents are subject to damage or loss by fire or other elements, or simply by reason of fading by the passage of time, or by inadequate storage facilities, or by the inefficient keeping of the records by magistrate-recorders. To remedy this in each recording district by the construction of proper, fireproof facilities, and the installation of microfilm facilities or other efficient copying equipment, would involve a prohibitive cost, which would not bear any reasonable relation to the convenience of the public. Furthermore, in some areas it may be impossible to find magistrates to act as recorders who will be able to perform all of the recording functions efficiently and effectively.

Subject: Recording Districts
February 9, 1972
Page 3

(7) I believe this situation can be remedied by establishing three large recording districts with a place of recording for each district in a city which will allow for the installation of adequate, modern facilities, such as microfilm equipment, fireproof storage, training new personnel, etc. In order to give you my present thoughts on this matter, I have prepared the enclosed form of order, where I suggest three recording districts, with places of recording, and of filing, at Juneau, Anchorage and Fairbanks. (As to the necessity of filing instruments, as distinguished from recording them, see the Uniform Commercial Code, AS 45.05.768.)

(8) I thought that perhaps the most simple method of describing the boundaries of these districts would be by degrees of meridians and lines of degrees of latitude, which will appear on any official map of Alaska. This does away with the very complex geographical descriptions contained in Order No. 12, and the 153 maps of existing recording districts in the official recording district portfolio, dated September 1, 1964, as prepared by Tryck, Nyman & Hayes, Consulting Engineers, of Anchorage. These maps, by the way, are cumbersome because of their bulk, and because segments of certain recording districts are contained on a number of different sheets which are not filed in sequence. I think by using the degrees and lines of longitude and latitude, geographical descriptions would be unnecessary.

(9) The areas I have suggested are, of course, tentative. They can be modified, using the same system. For example, the degrees of longitude (or meridians) on the existing official recording district map go by "fours". I presume the degrees in between could be scaled by a cartographer or engineer and placed on a map of Alaska to show the boundaries of the recording districts. Also, there may be alternative methods of describing the boundaries without getting into complex geographical descriptions such as in Order No. 12. Possibly boundaries could be described by lines on the map going from one city or village or obvious landmark to another.

(10) Whatever method is adopted, I would suggest that you enlist the assistance of a trained cartographer or engineer before deciding on the final boundaries, in order to make certain that they are described accurately and represent what you intend to accomplish.

Subject: Recording Districts
February 9, 1972
Page 4

(11) One beneficial effect, among others, that this new arrangement would have, would be to free magistrates and district judges from time consuming recording functions so that they could devote more of their time to their primary function of performing their judicial duties of administering justice in the courts.

(12) Using the longitude-latitude concept, there are a large number of variations that can be made. For example:

(a) A recording center could be established at Nome, if thought desirable, by taking a portion of what I have suggested now be included in the Anchorage and Fairbanks districts and calling it the Nome Recording District.

(b) Similarly, a recording center could be established at Ketchikan by using an appropriate degree-line of latitude dividing Southeast Alaska into a Juneau Recording District and a Ketchikan Recording District.

(c) If it is considered advisable by the legislature, this same method of defining boundaries could be used to define the boundaries of judicial districts, instead of attempting to define those boundaries by election districts - the latter being subject to change by the Governor under the constitution. However, the considerations which might govern the legislature in creating judicial districts may not necessarily be the same as those which would influence the supreme court in creating recording districts. The latter may vary from time to time with shifts in population and air routes, highways, etc. And whether the legislature would wish to align judicial districts with certain recording districts as defined by the supreme court, is a question I cannot answer.

(13) Order No. 12 has been revised and amended so many times, I would suggest that if you choose to adopt this new approach, a new order number be used.

(14) If this suggested approach to the problem is not adopted, and Order No. 12 is retained, then it ought to be revised again (and the maps would have to be revised also) to show the consolidation of the Noatak-Kobuk district with the Fairbanks district, and the Wade-Hampton district with the Bethel district, and other changes that have been made.

Subject: Recording Districts
February 9, 1972
Page 5

(15) For your convenience, I am attaching copies of the existing recording district maps, upon which I have outlined with red ink the boundaries of the recording districts I suggest be created.

(16) If new recording districts are established, I would also suggest that the order be printed on letter size paper, with a title cover, and bound in the manner of binding briefs. Also, there probably should be included with the order, at the end, a map showing the boundaries of the recording districts.

(17) I trust that you will not feel I am intruding in any way in the function committed to the supreme court by the legislature. The reason I have done what I have is that I have been interested in this type of project for quite some time, but did not have the time until now to do anything about it. If I can be of further assistance, I shall be happy to help out in any way I can.

(18) On February 7 I had occasion to call Justice Erwin in Anchorage and I spoke to him about what I was doing. He suggested that I send copies of this memo and the attachments to Senator Ziegler and Representative Moran, which I am doing. If I can be of any assistance to either of these gentlemen and their respective committees, I shall be most happy to do whatever I can to help them. They can reach me by calling me at home: 364-3325, and I can be available at their convenience.

JHD
JHD

cc: ~~Senator Ziegler~~
~~Representative Moran~~

JUDICIARY COMMITTEE
Pouch V
Juneau, Alaska 99801

January 24, 1972

The Honorable George F. Boney
Chief Justice of the Supreme
Court of Alaska
941 Fourth Avenue
Anchorage, Alaska 99501

Re: HB 350 - Creating Fifth Judicial District

Dear Mr. Chief Justice:

The above-named bill was introduced in the First Session of the Seventh State Legislature by Representatives Hohman and Moore. It would create a fifth judicial district with headquarters in Bethel. While I can understand that the administration of justice in rural Alaska might be facilitated by the enactment of HB 350, or a similar proposal, this committee has had no recommendation for such action from the Judicial Council, nor was such action recommended in your State of the Judiciary message to the Joint Session on January 20. (I noted, of course, that you did comment on the subject of "bush" justice, and made recommendations with respect to both judicial officers and facilities for rural Alaska.)

The House Judiciary Committee is also developing legislation to correct the problem created by the fact that, whereas venue was placed in the several election districts pursuant to Ch. 126, SLA 1971, the geographical limits of some of such districts have been changed pursuant to Governor Egan's Proclamation of Reapportionment and Redistricting, dated December 30, 1971. Not all such changes will make a difference for judicial purposes but the change in the former Election District Eight (Anchorage), if no other, will require legislative action at this session. (Legislation incidentally, which we hope to draw without prejudice to any judicial review of the validity of the proclamation.)

At various times during the last session, and again during this session, mention has been made of problems, administrative and otherwise, which are caused by the fact that air routes and other considerations are not always compatible with the allocation of areas to each of the Second and Fourth Judicial Districts. I understand, also, that the further division of these judicial districts into election districts, while probably serving the political purpose, do not serve equally well the judicial purpose.

The Honorable George F. Boney
January 24, 1972
Page 2

The House Judiciary Committee requests that the Judicial Council give consideration to a study of:

1. The present organization of the several judicial districts with respect to the appropriateness of their boundaries; and
2. The appropriateness of the election district as the geographical consideration determining venue within a judicial district.

Section 1, Article IV, of the Alaska Constitution provides that judicial districts shall be established "by law," i.e., by action of the Legislature. If memory serves me, the State act establishing the four judicial districts followed the boundaries of the judicial divisions as they were established in earlier times by act of Congress and as they had become traditional to Alaska. The very significant changes which have since occurred mandate our reviewing the appropriateness of these districts.

Although we may anticipate that reapportionment and redistricting will only follow each decennial census, the fact is, as mentioned, that the delineation of such districts pursuant to the "one man, one vote" rule, or any other rule concerned with insuring reasonably equal representation of our citizens in the legislative process, may not only not serve the judicial purpose, but may tend to defeat that purpose. This committee requests, therefore, that you consider whether it would be more appropriate to provide another method for delineating the local areas for the purpose of establishing venue.

The committee understands that the study requested may not be completed in time for legislative action at this session of the Legislature. The urgency of dealing with the current problem of redistricting, as it affects venue, requires that action not abide the completion of this study. The committee will maintain close contact with your office in formulating the interim solution.

Sincerely yours,

William J. Moran
Chairman

WJM:mm

No. 4.

HB-451
c
HB-452
January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

Re: ✓HB 451 - Uniform Foreign Money - Judgement
Recognition Act
HB 452 - Uniform Enforcement of Foreign
Judgements Act

Dear Mr. Wheatley:

In the First Session of the Seventh Alaska Legislature (1971), I introduced, and the House passed, the subject bills. They are now in the Senate Judiciary Committee. At the time of their introduction, I knew that both uniform acts had been adopted in Oklahoma. Although Sen. Robert H. Ziegler, Chairman of the Senate Judiciary Committee, has agreed that his committee will consider these bills, you will appreciate that they are not matters about which great interest and enthusiasm are likely to be generated. Of course, I think they would be useful additions to Alaska law.

Because of your association with the National Conference, and because of your experience with such matters in Oklahoma, I am requesting that, in the course of your visit with us later this month, you discuss these two bills with Senator Ziegler and me, and, possibly the Senate Judiciary Committee. I am enclosing copies of both bills as passed in the House.

Please accept my very personal thanks for your assistance.

Sincerely,

William J. Moran

Enclosures

WJM/dsg

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HB-451
2
HB-452

January 21, 1972

Richard Wheatley, Esquire
University Bank
Post Office Box 1067
Stillwater, Oklahoma 74074

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Dear Mr. Wheatley:

In the First Session of the Seventh Alaska Legislature (1971), I introduced, and the House passed, the subject bills. They are now in the Senate Judiciary Committee. At the time of their introduction, I knew that both uniform acts had been adopted in Oklahoma. Although Sen. Robert H. Ziegler, Chairman of the Senate Judiciary Committee, has agreed that his committee will consider these bills, you will appreciate that they are not matters about which great interest and enthusiasm are likely to be generated. Of course, I think they would be useful additions to Alaska law.

Because of your association with the National Conference, and because of your experience with such matters in Oklahoma, I am requesting that, in the course of your visit with us later this month, you discuss these two bills with Senator Ziegler and me, and, possibly the Senate Judiciary Committee. I am enclosing copies of both bills as passed in the House.

Please accept my very personal thanks for your assistance.

Sincerely,

William J. Moran

Enclosures

WJM/dsg

File
HB 444

January 18, 1972

Mr. John N. Asplund, Chairman
Greater Anchorage Area Borough
3500 Tudor Road
Anchorage, Alaska 99507

Re: SB 174 and HB 444 - Repayment of Profit
from Sale of School Bonds

Dear John:

You are certainly familiar with the subject bills for the repayment to the Greater Anchorage Borough of the really unconscionable profits realized by the State on those bonds purchased from the Borough for re-sale. SB 174 was introduced in the Senate by Senators Croft, Josephson, and Thomas; HB 444 was introduced in the House by me with the co-sponsorship of the other members from Anchorage.

I enclose a copy of the form of the Fiscal Note furnished to the Senate Finance Committee, the memorandum attached thereto reflecting that the profit to the state on the sale was \$836,263. It is this sum which we seek to pay to the Borough. I am also happy to note that these proposals are finally receiving some attention in Senate Finance.

I am sending a copy of this letter and its enclosure to Joe Montgomery.

I am also herewith sending my personal greetings to both of you.

Sincerely,

William J. Moran

Enclosure

cc: Mr. Montgomery w/enclosure

The Legislature of the State of Alaska
FISCAL NOTE
Second Session - Seventh State Legislature

I. REQUEST

Bill Identification: Senate Bill No. 174 and House Bill No. 444
 Title: Repayment of profits on bonds purchased by the State.
 Requested by: Legislative Finance Date: 1-10-72
 Return Date Requested: 1-18-72
 Agency: Department of Revenue Program: Fiscal Services

II. FISCAL DETAIL

Budget Request Unit(s) Affected: _____
 A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 72	FY 73	FY 74	FY 75	FY 76	FY 77
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-					

B. FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	0 /	/	/	/	/	/
MAN MONTHS (P./T.)	0 /	/	/	/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attached Memorandum indicating details of sales price received state, sum paid by state and excess in amount of \$836,263.00 that would be paid to the Greater Anchorage Borough as the issuing political subdivision of bonds purchased by the state and sold subsequently at a profit.

IV. ATTACHMENTS

V. DATE: January 17, 1972 PREPARED BY: 

Deputy Commissioner
Department of Revenue

Original: Legislative Finance
 cc: Budget and Management
Prime Sponsor (First Legislator Named)

STATE
OF ALASKA

MEMORANDUM

TO: R. D. Stevenson
Deputy Commissioner of Revenue
Department of Revenue

DATE: January 14, 1972

FROM:

John M. Daugherty
John M. Daugherty
Director, Treasury Division
Department of RevenueSUBJECT: Senate Bill 174 & House Bill 444-
Excess - from sales of the
Greater Anchorage Borough
Bonds, par value \$13,350,000

June 26, 1970

The State purchased \$13,350,000 par value bonds
at a cost of \$12,703,818.00

Total proceeds from Bond sales of October 70 and September 71:

Sold \$13,350,000 at a price of \$13,540,081.00
Less Cost of Bonds to State (12,703,818.00)

Net excess from sale - sale price over original

cost \$ 836,263.00

NFPA NO.
501C

1970

ANSI
A119.2

1970

STANDARD FOR
RECREATIONAL VEHICLES

**Travel Trailers, Camping Trailers, Truck Campers,
Motor Homes**

**Installation of Plumbing, Heating, and
Electrical Systems**

1972

\$2.00

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National Fire Protection Association

60 Batterymarch St., Boston, Mass. 02110

Recreational Vehicle Institute

2720 Des Plaines Ave., Des Plaines, Ill. 60018

Trailer Coach Association

3855 E. La Palma Drive, Anaheim, Calif. 92806

National Fire Protection Association

The National Fire Protection Association (NFPA) is a non-profit technical and educational organization to promote the science and improve the methods of fire protection. Organized in 1896, the Association has a broad-scale standards-making program to aid in its objective to reduce loss of life and destruction of property by fire. The Association publishes the standards developed under its aegis in pamphlet editions (such as this) and in what is known as the National Fire Codes (a ten-volume compilation annually updated, totaling approximately 8,000 pages). For full information about the Association and for a list of its publications, write to the Association's Headquarters.

Recreational Vehicle Institute

The Recreational Vehicle Institute is a national trade association exclusively serving the recreational vehicle industry. Its manufacturing members come from throughout the U.S.A. and produce travel trailers, truck campers, camping trailers and motor homes. The Institute sponsors and directs recreational vehicle trade shows, provides information to the consumer and the trade, issues news releases concerning industry developments and has a Standards Department which assists in the development of such national codes as this Standard. Compliance with this Standard is a mandatory requirement for membership in the RVI for those building recreational vehicles.

Trailer Coach Association

The Trailer Coach Association represents the manufacturers of mobile homes and recreational vehicles, dealers and suppliers in the Western States while drawing its members from all sections of the country. Founded in 1936, the Association sponsors mobile home and recreational vehicle shows in the major western cities and has research programs dedicated to advance the proper use of mobile homes and recreational vehicles. It has a Standards Department which works with the enforcing officials in the various Western States to encourage compliance with the recommendations contained in this standard. The Trailer Coach Association currently has a staff of 18 and a membership of 742.

American National Standards Institute

The American National Standards Institute (ANSI) is the national coordinating institution for voluntary standardization in the U.S.A. through which organizations concerned with standardization may cooperate in recognizing, establishing and improving standards in this country. Approval of a standard by the Institute is based on a consensus of those essentially concerned with its scope and provisions. The Institute has a Member Body Council, a Consumer Council, and a Company Member Council. The Member Body Council is composed of non-profit technical, professional, scientific, trade, or other membership associates, societies, or organizations which are of national scope and recognition. The National Fire Protection Association, the Recreational Vehicle Institute, and the Trailer Coach Association are Member Bodies of the ANSI.

Copyright and Republishing Rights

This publication is copyrighted © by the National Fire Protection Association, the Recreational Vehicle Institute, and the Trailer Coach Association. Permission is granted to republish in full the material herein in laws, ordinances, regulations, administrative orders or similar documents issued by public authorities. All others desiring permission to reproduce this material in whole or in part shall consult the National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts 02110, The Recreational Vehicle Institute, 2729 Des Plaines Ave., Des Plaines, Ill. 60018, and the Trailer Coach Association, 3855 E. La Palma Drive, Anaheim, California 92806.

Standard for Recreational Vehicles
(Travel Trailers, Camping Trailers, Truck Campers, Motor Homes)
Installation of Plumbing, Heating and
Electrical Systems

Proposed American National Standard A119.2 — 1970

NFPA No. 501C — 1970

This Edition of Standard for Recreational Vehicles

This Standard has been developed by the American National Standards Committee on Mobile Homes and Recreational Vehicles, sponsored jointly by the Mobile Homes Manufacturing Association, the National Fire Protection Association, the Recreational Vehicle Institute and the Trailer Coach Association. Personnel of the Committee are listed on pages 2 through 5.

This edition of the Standard was adopted as an NFPA Standard at the 74th Annual Meeting of the National Fire Protection Association on May 20, 1970, in Toronto, Canada. It has been approved by the Recreational Vehicle Institute and by the Trailer Coach Association. The Standard, in its present form, is being submitted to the American National Standards Institute for their approval. At such time as the Institute has opportunity to act upon this submittal, this Standard will be reissued, assuming such approval, as an American National Standard. Its present designation, as Proposed ANSI A119.2-1970, is to clearly indicate that the intent of this Standard is to replace the existing American Standard for Installations of Plumbing, Heating and Electrical Systems in Travel Trailers (A119.2-1963).

This edition of the Standard for Recreational Vehicles also replaces the coverage of travel trailers previously appearing in the 1964 Edition of the NFPA Standard for Fire Prevention and Fire Protection in Mobile Homes and Travel Trailers (NFPA No. 501B-1964). Attention is invited to the Standard for Mobile Homes (ANSI A119.1-1969; NFPA No. 501B-1968) for those concerned with this type of equipment.

Committee on Mobile Homes and Recreational Vehicles
An American National Standards Institute Committee (A119)

Corrected to May 20, 1970

L. E. Henry, Chairman,
 Southern California Gas Company, Box 3249, Terminal Annex, Los Angeles, Calif. 90084
 (rep. American Gas Association)

George H. Tryon (SFPE)†, Administrative Secretary
 National Fire Protection Association, 60 Batterymarch Street, Boston, Mass. 02110

Francis E. Greenleaf,† Assistant Secretary,
 Standards Dir., Trailer Coach Assn., 3855 E. La Palma Ave., Anaheim, Calif. 92806

Philip N. Shrake,‡ Assistant Secretary,
 Standards Dir., Recreational Vehicle Institute, Inc.
 2720 Des Plaines Ave., Des Plaines, Ill. 60018

Henry Omson,† Assistant Secretary,
 Standards Dir., Mobile Homes Manufacturers Association
 6650 North Northwest Highway, Chicago, Ill. 60631.

- | | |
|---|--|
| Leroy V. Abbott, Insurance Co. of North America | R. E. Klingler, Recreational Vehicle Institute, Inc. |
| Delevan J. Arnold, Recreational Vehicle Institute, Inc. | Arthur Kretschman, Gas Appliance Manufacturers Association |
| T. R. Arnold, The Craftsmen's Guild | Norman Latter, International Assn. of Plumbing & Mechanical Officials |
| Russell R. Bahr, State of California, Division of Building & Housing Standards | Gordon B. Lemke, American Mutual Insurance Alliance |
| Louis C. Bell, Trailer Coach Association | W. P. Marshall, Recreational Vehicle Institute, Inc. |
| Roy J. Boston, Conference of State Sanitary Engineers | John Martin, Mobile Homes Manufacturers Association |
| Keith D. Clutz, National Association of Plumbing-Heating-Cooling Contractors | Samuel J. Morano, American Society of Sanitary Engineering |
| David Curley, American Insurance Association | Thomas M. Murphy, New York State Division of Housing |
| Fred J. Davis, Building Officials Conference of America, Inc. | Frank W. Osborn, Air Conditioning and Refrigeration Institute |
| William Earthman, Edison Electric Institute. | J. A. Reade, American Gas Association |
| John Fleming, National Safety Council | W. J. Smith, Underwriters' Laboratories, Inc. |
| Tom S. Gable, National Sanitation Foundation Laboratory. | M. W. Smithman, National Association of Home Builders |
| John R. Gore, Jr., Fire Marshals Association of North America | Kent P. Stiner, National Electrical Code Committee |
| Hans R. Grigo, National Safety Council | Harry A. Stuart, Trailer Coach Association |
| John H. Hast, U. S. Department of the Interior, National Park Service | Earl W. Swett, Mobile Homes Manufacturers Association |
| Jordan Helman, American Society of Heating, Refrigerating and Air-Conditioning Engineers | Robert A. Tanner, Fire Marshals Association of North America |
| John D. Hoesy, Foremost Insurance Co. | G. J. Van Zandt, Trailer Coach Association |
| Walter H. Johnson, National I.P.-Gas Association (Chairman, Subcommittee on Recreational Vehicles) | R. E. Ward, International Association of Electrical Inspectors |
| Arthur Jungdahl, Gas Vent Institute | John Wilford, New Jersey Dept. of Health |
| J. Calvin Jurselt, American Society of Civil Engineers (Chairman, Subcommittee on Mobile Homes) | Paul H. Winter, National Electrical Manufacturers Association |
| Aron Killewer, Mobile Homes Manufacturers Association | Robert S. Wyly, National Bureau of Standards |

Alternates.

- J. Antonio Aragon**, Alternate to Aron Kliewer, Mobile Homes Manufacturers Association
- C. E. Blome**, Alternate to Arthur Jungdahl, Gas Vent Institute
- W. E. Brenner**, Alternate to Earl W. Swett, Mobile Homes Manufacturers Assn.
- Willard E. Bryant**, Alternate to M. W. Smithman, National Association of Home Builders
- Philip Dykstra**, Alternate to Hans R. Grigo, National Safety Council
- Robert J. Evans**, Alternate to F. W. Osborn, Air Conditioning and Refrigeration Institute
- Lloyd W. Garner**, Alternate to John R. Gore Jr., Fire Marshals Association of North America
- Paul K. Hellstedt**, Alternate to Fred J. Davis, Building Officials Conference of America
- P. E. Hodgdon**, Alternate to L. E. Henry and J. A. Reade, American Gas Association
- Eugene L. Kilbourn**, Alternate to D. J. Arnold, Recreational Vehicle Institute
- Nicholas A. Lacourte**, Alternate to Jordan Heiman, American Society of Heating, Refrigerating & Air-Conditioning Engineers, Inc.
- H. Forrest Lovett**, Alternate to Harry A. Stuart, Trailer Coach Association
- Herbert Luoma**, Alternate to Arthur Kretschman, Gas Appliance Manufacturers Assn., Inc.
- Nell MacLean**, Alternate to Norman Letter, International Assn. of Plumbers & Mechanical Officials
- J. P. Markey**, Alternate to William Earthman, Edison Electric Institute
- W. G. Martin III**, Alternate to Paul H. Winter, National Electrical Manufacturers Association
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- Jiyun Nakaji**, Alternate to C. J. Van Zandt, Trailer Coach Association
- Marvin Nerem**, Alternate to W. P. Marshall, Recreational Vehicle Institute, Inc.
- L. E. Palmer**, Alternate to Paul H. Winter, National Electrical Manufacturers Association
- C. W. Phillips**, Alternate to Robert S. Wyly, National Bureau of Standards
- F. M. Radigan**, Alternate to R. E. Klingler, Recreational Vehicle Institute, Inc.
- Kenneth D. Rhoton**, Alternate to T. R. Arnold, The Craftsmen's Guild
- Paul Solomon**, Alternate to Russell R. Bahr, California State Dept. of Housing and Community Development
- W. Thomas**, Alternate to David Curley, American Insurance Association
- John H. Watt**, Alternate to George H. Tryon, National Fire Protection Assn.
- Harold Weaver**, Alternate to John Martin, Mobile Homes Manufacturers Assn.
- Rene H. Yerke**, Alternate to W. J. Smith, Underwriters' Laboratories, Inc.

Liaison Representatives.†

- Robert Buechner**, National Recreation and Park Association
- Weldon C. Fill**, U. S. Dept. of Health, Education & Welfare, Bureau of Community & Environmental Management
- D. M. Manson**, Standards and Development Section, Canadian Standards Association Testing Laboratories
- Robert G. Reichel**, U.S. Dept. of Housing and Urban Development
- Ronald R. Speedy**, U. S. Dept. of Health, Education & Welfare, Bureau of Community & Environmental Management (Alternate to Weldon C. Fill)
- R. D. Watson**, Canadian Standards Association Testing Laboratories (Alternate to D. M. Manson)

†Nonvoting.

This Committee functions under the auspices of the American National Standards Institute under the joint sponsorship of the Mobile Homes Manufacturers Association, the NFPA, the Recreational Vehicle Institute, Inc. and the Trailer Coach Association.

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60 Batterymarch St., Boston, Mass. 02110

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Russell R. Bahr, California Division of Building & Housing Standards

Louis C. Bell, Trailer Coach Association

Roy Boston, Georgia Dept. of Public Health (Conf. of State Sanitary Engineers)

Keith D. Cletz, National Assn. of Plumbing-Heating-Cooling Contractors

David P. Curley, Aetna Life and Casualty (American Insurance Association)

William E. Earthman, Duke Power Co. (Edison Electric Institute)

John Fleming, National Safety Council

Tom S. Gable, National Sanitation Foundation Laboratory, Inc.

John H. Haast, National Park Service, U. S. Dept. of the Interior

J. D. Hoesy, Foremost Insurance Co.

Jordan Holzman, Intertherm Inc. (American Society of Heating, Refrigerating & Air-Conditioning Engineers)

Arthur Jungdahl, Gas Vent Institute

R. E. Klingler, Holiday Rambler Corp. (Recreational Vehicle Institute)

Arthur Kretschman, Duo-Therm Division, Motor Wheel Corp. (Gas Appliance Manufacturers Association, Inc.)

Norman Latta, International Assn. of Plumbing & Mechanical Officials

Gordon B. Lemke, Employers Insurance of Wausau (American Mutual Insurance Alliance)

W. P. Marshall, Leisure Time Products, Inc. (Recreational Vehicle Institute)

Samuel J. Morano, American Society of Sanitary Engineers

Frank W. Osborn, The Coleman Co., Inc. (Air Conditioning and Refrigeration Institute)

W. J. Smith, Underwriters' Laboratories, Inc. Kent P. Stiner, National Electrical Code Committee

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R. A. Tanner, Utah State Fire Marshal (Fire Marshals Assn. of North America)

C. J. Van Zandt, Sierra Craft (Trailer Coach Association)

R. E. Ward, Tennessee Dept. of Insurance and Banking (International Association of Electrical Inspectors)

Paul H. Winter, Pass and Seymour Inc. (National Electrical Manufacturers Association)

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W. G. Martin III, Emerson Electric Co. (Alternate to Paul H. Winter)

L. W. Moses, Trailer Coach Assn. (Alternate to Louis C. Bell.)

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- L. E. Palmer, Union Insulating Co. (Alternate to P. H. Winter) John H. Watt, National Fire Protection Association (Alternate to G. H. Tryon)
F. M. Radigan, Recreational Vehicle Institute (Alternate to R. E. Klingler) Rene H. Yerke, Underwriters' Laboratories, Inc. (Alternate to W. J. Smith)
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D. M. Manson, Standards and Development Section, Canadian Standards Association Testing Laboratories
Robert G. Reichel, U.S. Dept. of Housing and Urban Development
Ronald R. Speedy, U. S. Dept. of Health, Education & Welfare, Bureau of Community & Environmental Management (Alternate to Weldon C. Fill)
R. D. Watson, Canadian Standards Association Testing Laboratories (Alternate to D. M. Manson)

†Nonvoting.

Task Groups

Work on this Standard for Recreational Vehicles was greatly aided by Task Groups, which developed the basic material for the detailed consideration of a Subcommittee on Recreational Vehicles and the parent Committee on Mobile Homes and Recreational Vehicles. There follows a listing of the three Task Groups.

Electrical Task Group

Eugene L. Kilbourn, *Chairman*
Progressive Dynamics, Inc.

P.O. Box 168, 507 Industrial Road, Marshall, Michigan 49068

Don Agnew, Trallite Mfg. Co.

John C. Hewitt, Washington (State) Dept.
of Labor and Industries

John C. Hufft, Coachmen Industries, Inc.

Wayne Korn, TRAVCO Corporation

Marvin E. Nerem, Winnebago Industries,
Inc.

R. E. Ward, Tennessee Dept. of Insurance
and Banking

Paul H. Winter, Pass and Seymour, Inc.

Heating Task Group

Bob Cooper, *Chairman*
The Coleman Company, Inc.

250 N. St. Francis, Wichita, Kansas 67201

Robert Boles, Nimrod Division, Ward
Manufacturing Co.

Albert Chamberlain, Royal-DeSoto Divi-
sion of DeSoto, Inc.

John Haat, National Park Service, U. S.
Dept. of the Interior

Jordan Helman, Intertherm Inc.

H. Forrest Lovett, Streamline Trailer
Company

Gary O'Dell, Coachmen Industries, Inc.

Darrel Reifschneider, Manchester Tank
and Equipment Co.

Eldon Winkley, Oregon Chief Deputy
State Fire Marshal

Plumbing Task Group

Harry S. Stuart, *Chairman*
Sure Stop Manufacturing, Inc.
16287 Minnesota Ave., Paramount, Calif. 90723

Delevan J. Arnold, TRAVCO Corp.

Weldon C. Fill, U. S. Dept. of Health,
Education & Welfare

Tom S. Gable, National Sanitation Founda-
tion Laboratory, Inc.

Ed Gerlach, TRAVCO Corporation

Norman Latta, International Assn. of
Plumbing & Mechanical Officials

Marvin E. Nerem, Winnebago Industries,
Inc.

Ronald J. Sargent, Thetford Corporation

Standard for Recreational Vehicles
(Travel Trailers, Camping Trailers, Truck Campers, Motor Homes)
Installation of Plumbing, Heating and
Electrical Systems

Proposed American National Standard A119.2 — 1970

NFPA No. 501C — 1970

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Standard for Recreational Vehicles
(Travel Trailers, Camping Trailers, Truck Campers, Motor Homes)
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Recreational Vehicles are defined as vehicular type units primarily designed as temporary living quarters for recreational, camping, or travel use which either have their own motive power or are mounted on or drawn by another vehicle. The basic types of recreational vehicles are travel trailers, camping trailers, truck campers, and motor homes. Each of these is defined further herein.

In conformance with the policies of the American National Standards Institute and the four sponsors of this project, the Committee on Mobile Homes and Recreational Vehicles is constituted as a standing Committee with continuing responsibility to maintain and improve this Standard so that it might at all times be a useful and effective document to guide manufacturers and their suppliers concerning the installation of plumbing, heating and electrical systems in recreational vehicles with the basic objective of protecting the safety and health of the owners and occupants of the vehicles. The Standard in its present form does not cover the construction of recreational vehicles or features related to the safety and performance of the vehicles when in use as a vehicle. Federal and state motor vehicle regulations are applicable to these vehicles and should be referred to in connection therewith. The Standards of the Society of Automotive Engineers are cited where appropriate.

The participation of the National Fire Protection Association as a sponsor of this project is administrative and undertaken in the sole interest of safety to life and property from fire and allied hazards. Some portions of this Standard cover areas outside the scope of NFPA's normal sphere of activity but are of interest and concern to the other sponsors and to users of recreational vehicles. The NFPA Board of Directors has authorized the Association's participation with the understanding that its responsibility extends only to those areas within its scope.

In order to aid users of this Standard, an Official Interpretations Procedure has been developed and is detailed herein.

Official Interpretations Procedure
Committee on Mobile Homes and Recreational Vehicles

1. General. There is hereby established an Official Interpretations Procedure for the Committee on Mobile Homes and Recreational Vehicles for the purpose of providing official explanations of the meaning or intent of any specific provision or provisions of any standard developed under the jurisdiction of the Committee.

NOTE: This Official Interpretations Procedure does not prevent any Committee Chairman or Member from commenting on the meaning or intent of any provision of any such document, provided that the comment is clearly identified as not being an Official Interpretation of the Committee.

2. Nature of Official Interpretations. Two General forms of Official Interpretations shall be recognized:

- (a) Those making an Interpretation of the literal text.
- (b) Those making an Interpretation of the intent of the Committee when the particular text was adopted.

No judgments will be rendered by the Interpretations Committee regarding compliance with any of the Committee's standards of engineering drawings.

3. Procedures for Requesting Official Interpretations. Those desiring an Interpretation shall direct their requests to the Chairman or Secretary of the Committee, c/o National Fire Protection Association, 60 Batterymarch Street, Boston, Massachusetts 02110, supplying five identical copies of a statement in which shall appear specific references to a single problem, identifying article, section or paragraph of the document with which they are concerned. Such a request shall be on the business stationery of the inquirer and shall be duly signed. When applications involve actual field situations they shall so state, and all parties involved shall be named.

4. Committee Handling of Requests for Official Interpretations. The Committee shall not be under any obligation to process requests for Official Interpretations in any specified time period nor to issue an Official Interpretation except at its own convenience. The Committee officers may process the request for an Official Interpretation exactly the way it has been submitted, or they may rephrase the question, if desired, to clarify the intent, or they may refuse to consider the request if they find it not to be in proper form or consistent with Paragraph 2. If acceptable for consideration, the request for an Official Interpretation shall be submitted to an Interpretations Subcommittee made up of five or more individuals selected by the Chairman or by the Secretary (with the approval of the Chairman). In selecting those to serve the Chairman or the Secretary will select Members of the appropriate Subcommittee having jurisdiction over the question posed and may also include up to two members of the appropriate Task Group who are not Subcommittee members, but no Member, Alternate, or Task Group representative shall be eligible for such appointment if he is directly involved in the particular case prompting the request for the Interpretation. The Personnel of each Interpretations Subcommittee may be varied with each request.

5. Voting on Interpretations. In any case where there is not unanimous agreement in the Interpretations Subcommittee, the request for Interpretation shall be referred to the Subcommittee having primary jurisdiction for a decision. Under these conditions, adoption of an Official Interpretation requires approval by a three-quarters majority vote of that Subcommittee. Where a three-quarters majority vote is not received, the item shall be placed on the docket

for regular processing by the Subcommittee for subsequent possible action. If the Interpretations Subcommittee unanimously agree or a three-quarters affirmative vote is secured from the Subcommittee having primary jurisdiction, the Executive Committee of the Committee on Mobile Homes and Recreational Vehicles shall be informed of the decision reached and shall be requested to ballot on said decision. If unanimous agreement is reached, the applicant shall be informed promptly and as soon as possible the Interpretation shall be published by the sponsors in the publications each distributes to its members and announced in a suitable news release by the Secretary which shall be sent to the American National Standards Institute for their information and guidance. If the Executive Committee does not concur unanimously, the question shall be placed before the full membership of the Committee on Mobile Homes and Recreational Vehicles, where a three-quarters majority vote must be secured to complete the processing of the Interpretation as indicated in the previous sentence.

6. Action Following Issuance of Official Interpretations. Following the issuance of an Official Interpretation, the Subcommittee shall be obliged to review the item on which the Interpretation has been issued with a view to determining whether any change may be desired in the standard to clarify or correct the condition which brought about the request for the Official Interpretation. If such a change is indicated, the Subcommittee shall process such a change in conformance with the usual procedures established under the rules of procedure of the Committee as a whole.

7. Time Limit on Interpretations. Any Official Interpretation issued shall apply only to the edition of the document for which the Interpretation is made.

**Standard for Recreational Vehicles
Installation of Plumbing, Heating, and
Electrical Systems**

Proposed American National Standard A119.2 — 1970

NFPA No. 501C — 1970

Definitions Common to Parts I, II, and III

Authority Having Jurisdiction: The organization, office or individual responsible for "approving" equipment, an installation, or a procedure.

Camping Trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use. (See "Recreational Vehicle")

Motor Home: A vehicular unit built on a self-propelled motor vehicle chassis, primarily designed to provide temporary living quarters for recreational, camping, or travel use. (See "Recreational Vehicle")

Recreational Vehicle: A vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper and motor home.

Shall: Mandatory rules are characterized by the use of the word "shall."

Should: Advisory rules are characterized by the use of the word "should."

Travel Trailer: A vehicular portable unit, mounted on wheels, of such a size or weight as not to require special highway movement permits when drawn by a motorized vehicle; primarily designed and constructed to provide temporary living quarters for recreational, camping, or travel use; and of a body width of no more than eight feet (8') and a body length of no more than thirty-two feet (32') when factory equipped for the road. (See "Recreational Vehicle")

Truck Camper: A portable unit, designed to be loaded onto, or affixed to, the bed or chassis of a truck, constructed to provide temporary living quarters for recreational, camping, or travel use. Truck campers are of two basic types as defined below:

a. **SLIDE-IN CAMPER:** A portable unit designed to be loaded onto and unloaded from the bed of a pickup truck, constructed to provide temporary living quarters for recreational, travel or camping use.

b. **CHASSIS-MOUNT CAMPER:** A portable unit designed to be affixed to a truck chassis, and constructed to provide temporary living quarters for recreational, travel or camping use.

Part I — Plumbing Systems

1. Introduction

1.1 Those members of the engineering profession and others associated with the design, manufacturing, installation, and inspection of recreational vehicle plumbing systems have been aware of the need for uniform technical standards leading to the safe and sanitary use of this special type of equipment. They have also recognized that because of conditions of transport and use, existing plumbing standards for permanent buildings are not completely applicable to recreational vehicles. It is with these factors in mind that Part I of this Standard has been developed.

1.2 Much of the material in Part I has been taken from, or is based on, nationally recognized standards for plumbing materials, fixtures, fittings, and equipment.

2. Scope

2.1 Part I of this Standard covers the plumbing materials, fixtures, fittings, and equipment installed within or on recreational vehicles.

2.2 This Standard is not intended as a design specification or an instruction manual for untrained persons.

2.3 Wherever other nationally recognized standards for plumbing materials, fixtures, fittings and equipment and this Part differ, the requirements of the latter shall apply.

2.4 The provisions of this Standard are not intended to prevent the use of any material, appliance, installation, device, arrangement, or method of construction not specifically prescribed herein, provided any such alternative has been approved or listed. The enforcement authority shall approve such alternate if the material, appliance, installation, device, arrangement, or method of construction is at least the equivalent of that prescribed by this Part, and may require tests or proof of compliance to substantiate any claims that may be made regarding the use of any such alternate.

3. Definitions

Air Gap: The unobstructed vertical distance through the free atmosphere between the opening from any pipe or faucet supplying

potable water to a tank, plumbing fixture, or other device and the flood-level rim of the receptacle.

Approved: Means acceptable to the authority having jurisdiction.

Backflow: The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

Backflow Connection: Any arrangement whereby backflow can occur.

Backflow Preventer: A device or means to prevent backflow.

Body Waste: The discharge from any fixture, appliance or appurtenance containing fecal matter or urine.

Branch: Any part of the piping system other than a riser, main or vent stack.

Branch Vent: A vent connecting one or more individual vents with a vent stack.

Center: The midpoint between the right and left side of a recreational vehicle.

Certified: Means "listed" as defined herein.

Combination Compartment: A shower stall or recess that provides for or includes the installation of a toilet and is of such size and proportions that it may not be occupied by more than one person.

Common Vent. A vent connecting at the junction of fixture drains and serving as a vent for more than one fixture.

Continuous Vent: A vertical vent that is a continuation of the drain to which it connects.

Continuous Waste: A drain from two or more fixtures connected to a single trap.

Critical Level: The critical level, C-L or $\frac{C}{T}$ marking, on a backflow prevention device or vacuum breaker is a point established by the testing laboratory (usually stamped on the device by the manufacturer) which determines the minimum elevation above the flood level rim of the fixture or receptacle served on which the device may be installed. When a backflow prevention device does not bear a critical level marking, the bottom of the vacuum breaker, combination valve, or of any such approved or listed device shall constitute the critical level.

Cross Connection: Any physical connection or arrangement between two otherwise separate systems or sources, one of which con-

tains potable water and the other either water, steam, gas or chemical of unknown or questionable safety whereby there may be a flow from one system or source to the other, the direction of flow depending on the pressure differential between the two systems.

Developed Length: That length of pipe measured along the center line of the pipe and fittings.

Diameter: The nominal inside diameter designated commercially.

Drain: A pipe that carries waste, water, or water-borne wastes in a drainage system.

Drain Hose: The hose used for connecting the liquid and/or body waste drain outlet to a sewer inlet connection.

Drain Outlet: The lowest end of a main or secondary drain to which a sewer connection is made.

Drainage System: All piping within or attached to the structure that conveys body waste and/or liquid waste to the drain outlet or outlets.

Fixture Drain: The drain from the trap of a fixture to the junction of that drain with any other drain pipe.

Fixture Supply: The water supply pipe connecting a fixture to a branch water supply pipe or directly to a main water supply pipe.

Flood Level: The level in the receptacle over which water would overflow to the outside of the receptacle.

Flooded: The condition which results when the liquid in a container or receptacle rises to the flood-level.

Flush Tank: That portion of a toilet that is designed to contain sufficient water to adequately flush the fixture.

Flush Valve: A device located at the bottom of a flush tank for flushing a toilet.

Grade: See "Pitch."

Horizontal Branch: A drain pipe extending laterally, which receives the discharge from one or more fixture drains and connects to the main drain.

Horizontal Pipe: Any pipe or fitting that makes an angle of more than 45 degrees with the vertical.

Individual Vent: A pipe installed to vent a fixture drain.

Labeled: Equipment and materials bearing an inspection label, symbol, or other identifying mark of a recognized testing agency.

Length: The overall length of the recreational vehicle.

Liquid Waste: The discharge from any fixture, appliance, area or appurtenance which does not contain body waste.

Listed: Refers to plumbing materials, devices, fixtures, fittings, equipment, appliances, and accessories that are shown in a list published by a recognized agency, maintaining an adequate periodic inspection of current production of listed models, and whose listing states either that the material, device, fixture, fitting, equipment, appliance, or accessory complies with nationally recognized health and safety requirements or has been tested and found safe for use in a specified manner.

Main: The principal artery of the system to which branches may be connected.

Main Drain(s): The lowest piping of a drainage system which receives the liquid and/or body waste discharge from all the fixtures within the recreational vehicle and conducts these wastes to the drain outlet(s).

Pitch (or Grade): The fall (slope) of a pipe in reference to a horizontal plane expressed in inches per foot length.

Plumbing Fixtures: Receptacles, devices or appliances which are supplied with water or which receive liquid or liquid-borne wastes for discharge into the drainage system.

Toilet — Mechanical Seal: A toilet fitted with a water-flushing device and mechanically sealed trap.

Toilet — Recirculating Chemical: A self-contained, recirculating toilet in which the waste is chemically treated.

Toilet — Water Flush: A toilet fitted with a water flushing device and integral non-mechanical trap.

Trap: A fitting or device designed and constructed to provide a liquid seal that will prevent the back passage of air without materially affecting the flow of liquid waste through it.

Trap Arm: That portion of a fixture drain between a trap and its vent.

Trap Seal: The vertical depth of liquid that a trap will retain.

Vacuum Breaker: See "Backflow Preventer."

Vent Stack: A vertical vent pipe installed to provide circulation of air to and from the drainage system.

Vertical Pipe: Any pipe or fitting which makes an angle of 45 degrees or less with the vertical.

Waste Holding Tank: A liquid-tight tank for the temporary retention of body and/or liquid waste.

Water Distribution System: The potable water piping within or permanently attached to the recreational vehicle.

Water Service Connection: The fitting or point of connection of the vehicle water distribution system designed for connection to a potable water supply.

Water Storage Tank: A tank installed in a recreational vehicle for the purpose of storing potable water.

Wet Vent: A vent which also serves as a drain for one or more fixtures.

4. General Requirements

4.1 Minimum Requirements. Any plumbing system installed in a recreational vehicle shall conform, at least, with the provisions of this Standard. Requirements for any size, weight, or quality of material modified by the terms "minimum," "not less than," "at least," and similar expressions are "minimum standard."

4.1.1. Connections to Drainage System. All plumbing fixtures, drains, appurtenances, and appliances designed or used to receive or discharge liquid waste or body waste shall be connected to the recreational vehicle drainage system in a manner provided by this Standard.

4.1.2. Components. Plumbing materials, devices, fixtures, fittings, equipment, appliances, accessories, and appurtenances intended for use in or attached to a recreational vehicle shall be listed or certified by an approved listing agency, or be specifically approved by the enforcement authority when listing by an approved listing agency is not available.

4.1.3. Component Installations. All design, construction, and workmanship shall be in conformance with accepted engineering practices.

4.1.4. Prohibited Fittings and Practices.

4.1.4.1 Drainage or vent piping shall not be drilled and tapped for the purpose of making connections.

4.1.4.2 Except as specifically provided elsewhere in this Standard, vent pipes shall not be used as waste or drain pipes.

4.1.4.3 Fittings, connections, devices, or methods of installation that obstruct or retard the flow of liquid waste, body waste, or air in the drainage or venting systems in an amount greater than the normal frictional resistance to flow shall not be used unless their use is acceptable in this Standard or their use approved as having a desirable and acceptable function and their use of ultimate benefit to the proper and continued functioning of the plumbing systems.

4.1.4.4 Cracks, holes, or other imperfections in materials shall not be concealed by welding, brazing, or soldering or by paint, wax, tar, or other leak-sealing or repairing agents.

4.1.4.5 Piping, fixtures, or equipment shall be located so as not to interfere with the normal use or with the normal operation and use of windows, doors, or other required facilities.

4.1.4.6 Galvanized pipe shall not be bent or welded.

4.1.5 Alignment of Fittings. All valves, pipes, and fittings shall be installed in correct relationship to the direction of flow.

4.2 Protective Requirements.

4.2.1 Road Damage. Pipes, supports, drains, or outlets, or drain hoses shall not extend or protrude in a manner where they could be unduly subjected to road hazard.

4.2.2 Vermin Proofing. All exterior openings around piping shall be sealed to prevent the entrance of rodents.

5. Materials — Quality and Weight

5.1 Minimum Standards. Materials, fixtures, or devices used or entering into the construction of plumbing systems in any recreational vehicle shall be free from defect and shall conform to approved standards or the applicable standards shown in the Appendix to this Part.

5.2 Specific Usage. Each of the following sections indicates specifically the type of material presently permitted for use in the various parts of the plumbing system.

6. Joints and Connections

6.1 Tightness. Joints and connections in the plumbing system shall be gastight and watertight for the pressures required under testing procedures.

6.1.1 Assembling of Pipe. All joints and connections shall be correctly assembled for tightness. Pipe threads shall be fully engaged with the threads of the fittings. Plastic pipe and copper tubing shall be inserted to the full depth of the solder cup or welding sockets of each fitting. Pipe threads and slip joints shall not be wrapped with string, paper, putty or similar fillers.

6.1.2 Threaded Joints. Threads for screw pipe and fittings shall conform to the approved or applicable standard. All burrs shall be removed. Pipe ends shall be reamed out to size of bore, and all chips and cutting oil shall be removed. Pipe joint cement or thread lubricant shall be of approved type and applied to male threads only.

6.1.3 Solder Joints. Solder joints for tubing shall be made with approved or listed sweat solder type fittings. Surfaces to be soldered shall be cleaned bright. The joints shall be properly fluxed with noncorrosive paste type flux and made with approved or listed 50-50 solder or an approved solder having a higher melting temperature.

6.1.4 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the manufacturer.

7. Traps and Cleanouts

7.1 Traps.

7.1.1 Traps Required. Each plumbing fixture, except listed toilets and fixtures utilizing detachable waste holding tanks with integral traps, shall be separately trapped by approved water seal "P" traps. All traps shall be effectively vented.

7.1.2 Dual Fixtures. A two compartment sink, two single sinks, two lavatories, or a single sink and a single lavatory, with waste outlets not more than thirty inches (30") apart and flood level rims at same level may be connected to one "P" trap and may be considered as a single fixture for the purpose of drainage and vent requirements.

7.1.3 Prohibited Traps.

7.1.3.1 A trap which depends for its seal upon concealed interior partitions shall not be used. Full "S" traps, bell traps, drum traps, crown-vented traps, and running traps are prohibited.

Exception: A trap which is an integral part of a detachable waste holding tank.

7.1.3.2 Fixtures shall not be double-trapped.

7.1.4 Material and Design. Each "P" trap shall be approved or listed.

7.1.5 Trap Seal. Each "P" trap shall have a water seal of not less than two inches (2") and not more than four inches (4") and shall be set true to its seal.

7.1.6 Size. "P" traps shall be not less than one and one-quarter inches (1¼") in diameter when connected to a single fixture having no more than a two inch (2") drain opening. A "P" trap shall not be larger than the waste pipe to which it is connected.

7.1.7 Distance from Trap to Vent. The distance between a "P" trap and its vent or vented waste line shall be in accordance with Table 2.

7.1.8 Length of Tailpiece. The vertical distance from a "P" trap to the fixture outlet shall not exceed twenty-four inches (24").

7.1.9 Installation.

7.1.9.1 Grade of Trap Arm. The piping between a "P" trap and the fixture tee or the vented waste line shall be graded one-quarter inch (¼") per foot and in no event shall have a slope greater than its diameter. The vent opening at fixture tees shall not be below the invert of the "P" trap outlet.

7.1.9.2 Trap Arm Offset. The piping between the "P" trap and vent may change direction or be offset horizontally with the equivalent of no more than 180 degrees.

7.1.9.3 Concealed "P" Traps. "P" traps with slip joint connections shall be accessible for repair and inspection.

7.2 Cleanout Openings.

7.2.1 Location of Cleanout Fittings.

7.2.1.1 Cleanouts shall be installed if the drainage system cannot be cleaned through fixtures or vent openings.

7.2.1.2 A full size cleanout shall be installed at the upper end of any section of drain piping which does not have the required minimum slope of a one-quarter inch ($\frac{1}{4}$ ") per foot grade.

7.2.1.3 A cleaning tool shall not be required to pass through more than 360 degrees of fittings, excluding removable "P" traps, to reach any part of the drainage system.

7.2.2 Access to Cleanouts. Cleanouts shall be accessible through an unobstructed minimum clearance of twelve inches (12") directly in front of the opening. Each cleanout fitting shall open in a direction opposite to the flow or at right angles to the pipe. Concealed cleanouts that are not provided with access covers shall be extended to a point above the floor or outside of the recreational vehicle, with pipe and fittings installed, as required, for drainage piping.

7.2.3 Material. Plugs and caps shall be brass or approved or listed plastic, with screw pipe threads.

7.2.4 Design. Cleanout plugs shall have raised heads except that plugs at floor level shall have counter-sunk slots.

8. Plumbing Fixtures

8.1 General Requirements.

8.1.1 Quality of Fixtures. Plumbing fixtures shall have smooth impervious finishes, be free from defects and concealed fouling surfaces, be capable of resisting road shock and vibration, and shall conform in quality and design to approved or listed standards.

8.1.2 Strainers. The waste outlet of all plumbing fixtures, other than toilets, shall be equipped with a drain fitting that will provide an adequate unobstructed waterway.

8.1.3 Fixture Connections. Fixture tailpieces and continuous wastes in exposed or accessible locations shall be not less than No. 20 Brown and Sharpe gage seamless drawn-brass tubing or other approved pipe or tubing. Inaccessible fixture connections shall be constructed according to the requirements for drainage piping. Each fixture tailpiece, continuous waste, or waste and overflow shall be not less than one and one-quarter inches (1¼") for a single fixture having a two inch (2") maximum drain opening.

8.1.4 Concealed Connections. Concealed slip joint connections shall be provided with adequately sized unobstructed access panels and shall be accessible for inspection and repair.

8.2 Fixtures.

8.2.1 Toilets.

8.2.1.1 Each toilet shall be designed and manufactured according to approved or listed standards and shall be equipped with a water flushing device capable of adequately flushing and cleaning the bowl at each operation of the flushing mechanism.

8.2.1.2 Recirculating or mechanical seal toilets may provide for storage of liquid waste and body waste as an integral part of the unit. When a mechanical seal toilet does not contain storage for the retention of liquid waste and body waste, it shall be connected to an approved waste holding tank.

8.2.1.3 Floor or Tank Connections. Toilets, when directly connected to a waste holding tank or drainage system, shall be securely bolted to either the tank or the floor by means of an approved closet flange or other approved fitting. Bolts and screws when used shall be of brass or other noncorrosive material and shall be not less than one-quarter inch (¼") in diameter. A watertight seal shall be made between the toilet and flange or other approved fittings by the use of a gasket or sealing compound.

8.2.2 Shower Stalls, Receptors and Enclosures.

8.2.2.1 Each shower stall shall be provided with an approved watertight receptor with sides and back extending one inch (1") above the finished dam or threshold. In no case shall the depth of a shower receptor be less than two inches (2") or more than nine inches (9"), measured from the top of the finished dam or threshold to the top of the drain.

8.2.2.2 The joint around the drain connection and around the toilet outlet in combination compartments shall be made watertight by a flange, clamping ring, or other approved or listed means.

8.2.2.3 Shower doors and tub and shower enclosures shall be constructed so as to be waterproof and, if glazed, be glazed with materials such as wired-glass, laminated safety glass, plastics, reinforced plastics, or other approved materials. Hinged swinging shower doors shall open outward. Glass used for glazing and classified as safety glass shall conform to ANSI Z97.1 — 1966.

8.2.2.4 Prefabricated shower stalls and receptors shall be approved or listed and shall comply with the requirements relating to plumbing fixtures, shower stalls and receptors for recreational vehicles.

8.3 Installation

8.3.1 Access. Each plumbing fixture shall be located and installed in a manner to provide access for cleaning and repair.

8.3.2 Alignment. Fixtures shall be set level. Where practical, piping from fixtures shall extend to nearest wall.

8.3.3 Brackets. Wall-hung fixtures shall be rigidly attached to walls by brackets or supports without any strain being transmitted to the piping connections. Flush tanks shall be securely fastened to toilets or to the wall with noncorrosive material.

9. Hangers and Supports

9.1 Strains and Stresses. Piping in a plumbing system shall be installed without undue strains and stresses, and provision shall be made for expansion and contraction.

9.2 Drain Piping Supports. Drain piping shall be secured at not more than 4 foot intervals, unless different spacing is recommended by the piping manufacturer, to keep the pipe in alignment and carry the weight of the pipe and contents.

9.3 Hangers and Anchors.

9.3.1 Hangers and anchors shall be of sufficient strength to support their proportional share of the pipe alignments and prevent rattling.

9.3.2 Piping shall be securely attached to the structure by proper hangers, clamps, or brackets which provide protection against damage from motion, vibration, road shock, torque in the chassis, or other unusual conditions.

10. Water Distribution Systems

10.1 Water Supply.

10.1.1 Supply Piping. Piping systems shall be sized to provide an adequate quantity of water to each plumbing fixture at a flow rate sufficient to keep the fixture in a clean and sanitary condition without any danger of backflow or siphonage.

10.1.2 Potable Water Storage Tanks. Potable water storage tanks shall be listed. If tank is installed in such a manner that it is subject to road damage, it shall be protected. Each non-pressure or gravity tank shall be equipped with a vent at the top of the tank to assist in filling and drainage.

10.1.3 The water distribution system shall be installed with a valve, drain plug or cap, located at the lowest point or points to provide for complete drainage of the system and water storage tank.

10.2 Water Outlets and Supply Connections.

10.2.1 Water Service Connection. Each recreational vehicle with a water distribution system sized as required in Table 1, which may be connected to an outside source, shall be equipped with a three-quarter inch ($\frac{3}{4}$ ") swivel female hose water service connection. A matching cap or plug shall be provided to close the water inlet when it is not in use and shall be attached in a substantial manner.

10.2.2 Prohibited Connections.

10.2.2.1 The installation of potable water supply piping or fixture or appliance connections shall be made in a manner to preclude the possibility of backflow.

10.2.2.2 No part of the water system shall be connected to any drainage or vent piping.

10.2.3 Rim Outlets. The outlets of faucets, spouts, and similar devices shall be spaced at least one inch (1") above the flood level of the fixture.

10.2.4 Flushometer Valves or Manually Operated Flush Valves. An approved or listed vacuum breaker shall be installed and maintained in the water supply line on the discharge side of a toilet flushometer valve or manually operated flush valve. Vacuum breakers shall have a minimum clearance of six inches (6") above the flood level of the fixture to the critical level mark, unless otherwise specified and approved.

10.2.5 Flush Tanks. Toilet flush tanks shall be equipped with an approved anti-siphon ball cock which shall be installed and maintained with its outlet or critical level mark not less than one inch (1") above the the full opening of the overflow pipe.

10.2.6 Backflow Preventer. When pressure water storage tanks or reservoirs (except water heaters or flush tanks) for storing potable water are connected to the water distribution system of recreational vehicles, which have a water service connection for an outside source of supply, they shall have an approved or listed check valve or other approved or listed type backflow prevention device installed in the water-supply piping adjacent to the water service connection. An approved or listed pressure relief valve shall be required on the outlet side of the check valve.

Exception: Systems utilizing gravity-type tanks or systems not providing means for heating water or creating pressures shall not require a pressure relief valve.

10.3 Safety Devices.

10.3.1 Relief Valves.

10.3.1.1 When a check valve (see 10.2.6) or pressure regulating device is installed between the water service connection and a water heater or closed hot water tank, a listed pressure relief valve or a listed temperature-pressure relief valve, sized equivalent to the Btuh rating of the water heater or larger, shall be installed.

10.3.1.2 Pressure relief valves, when installed, shall be installed in the cold water supply pipe between the pressure regulator or the check valve and any heater or tank, and shall be so located as to be accessible.

10.3.1.3 The relief valve if located inside the recreational vehicle shall be equipped with a full size drain able to withstand 225° Fahrenheit which shall extend outside, with the end directed downward, except that no drain shall be required if the relief valve discharges into an area sealed off from the inside of the vehicle and drained and ventilated to the outside. The discharge end of the drain shall not be equipped with a thread or other means of capping or plugging.

10.3.1.4 Water storage tanks which may be pressurized by air shall be equipped with a listed air pressure relief valve set to open at not more than 125 psig or the tank manufacturer's recommended working pressure, whichever is lower. The pressure relief valve shall be located above the maximum water level of the tank.

10.4 Materials.

10.4.1 **Piping Material.** Water pipe shall be of standard weight brass, galvanized wrought iron, galvanized steel, Type K or L copper tubing, listed plastic, or other approved or listed material.

10.4.2 **Fittings.** Appropriate fittings shall be used for all changes in size and where pipes are joined. The material and design of fittings shall conform to the type of piping used.

10.4.2.1 Fittings for screw piping shall be standard weight galvanized iron for galvanized iron and steel pipe, and of brass for brass piping. They shall be installed where required for change in direction, reduction of size, or where pipes are joined together.

10.4.2.2 Fittings for copper tubing shall be cast brass or drawn copper sweat solder pattern or flare type.

10.4.2.3 Fittings for plastic water piping shall be of approved or listed brass or plastic, compatible in design for the type of plastic used.

10.4.3 Prohibited Material.

10.4.3.1 Used piping materials shall not be permitted.

10.4.3.2 Thermoplastic pipe and fittings shall not be used in water systems containing water heating devices unless such pipe and fittings are listed for use in hot water systems.

10.5 Installation of Piping.

10.5.1 Minimum Requirement. All piping equipment, appurtenances, and devices shall be installed in a workmanlike manner and shall conform with the provisions and intent of this Standard.

10.5.2 Screw Pipe. Iron pipe-size brass or galvanized iron or steel pipe and fittings shall be joined with approved or listed standard pipe threads fully engaged in the fittings. Pipe ends shall be reamed to the full bore of the pipe. Pipe-joint compound shall be insoluble in water, shall be nontoxic, and shall be applied to male threads only.

10.5.3 Solder Fittings. Copper tubing shall be joined to sweat solder fittings by means of hot solder and a noncorrosive flux. The surfaces to be soldered shall be thoroughly cleaned. The use of self-cleaning fluxes shall not be permitted.

10.5.4 Flared Fittings. A flaring tool shall be used to shape the ends of flared tubing to match the flare of fittings.

10.5.5 Plastic Pipe and Fittings. Plastic pipe and fittings shall be joined by installation methods recommended by the piping manufacturer.

10.6 Minimum Size of Water Supply Piping. The size of water supply piping and branch lines shall not be less than sizes shown in Table 1.

10.7 Line Valves. Valves, when installed in the water supply distribution system shall, when fully opened, have a cross-sectional area at least equal to the nominal size of the pipe in which the valve is installed.

Exception: This requirement shall not apply to a valve controlling only one fixture supply.

Table 1
Minimum Size Tubing and Pipe for
Water Distribution Systems*

Number of Fixtures	Tubing		Pipe
	Inner Dia. (Inches)	Outer Dia. (Inches)	Iron Pipe Size (Inches)
1	1/4**	3/8**	3/8
2	1/4**	3/8**	3/8
3	3/8	1/2	1/2
4	3/8	1/2	1/2
5	1/2	5/8	1/2

*Minimum size for toilet water supply line shall not be less than the size recommended by the manufacturer.

**6-foot maximum length.

10.8 Labeling. Each inlet to a potable water tank shall have an affixed label which shall read:

WARNING: POTABLE WATER ONLY. SANITIZE, FLUSH AND DRAIN BEFORE USING. SEE INSTRUCTION MANUAL.

Instructions for proper sanitizing of water distribution systems shall be furnished with each vehicle.

11. Drainage Systems

11.1 Materials.

11.1.1 Pipe. Drainage piping shall be standard weight, galvanized steel, galvanized wrought iron, brass, copper tube DWV, listed plastic, or other approved or listed material.

11.1.2 Fittings. Drainage fittings shall be recessed drainage pattern with smooth interior waterways of the same diameter as the piping and shall be of a material conforming to the type of piping used. Drainage fittings shall be designed to provide for one-quarter inch (1/4") per foot grade in horizontal piping.

11.1.2.1 Fittings for screw pipe shall be cast iron, malleable iron, brass, or approved or listed plastic, with standard pipe threads.

11.1.2.2 Fittings for copper tubing shall be cast brass or wrought copper.

11.1.2.3 Fittings for plastic piping shall be made to approved or applicable standards.

11.1.2.4 Brass adapter or wrought copper fittings shall be used to join copper tubing to threaded pipe.

11.2 Drain Outlets.

11.2.1 **Main Drain Outlet.** Each recreational vehicle shall have a drain outlet which shall terminate horizontally at any point within twenty-two feet (22') of the rear, on the left (road) side or at the rear, left of the longitudinal center of the vehicle within eighteen inches (18") of the outside wall, and shall direct its discharge toward that side or toward the rear within an angle of 90° formed between that side and the rear end of such vehicle. The drain outlet may terminate vertically when it is equipped with a quick disconnect type coupler and a companion elbow hose adapter. If more than eighteen inches (18") above the ground it may terminate either vertically or horizontally.

Exceptions:

1. A camping trailer not more than seventeen feet (17') in length, a motor home or a truck camper may have the drain outlet located on either side, provided the electrical and gas connections are located on the same side.

2. A recreational vehicle having a mechanical seal toilet with waste holding tank or a recirculating chemical toilet may have a separate drain which may be located at any location on the perimeter of the vehicle within eighteen inches (18") of the outside wall and shall be provided with a fullway valve. The drain for the remainder of the plumbing system shall be considered the main drain. A fullway valve shall be provided with a standard three inch (3") male thread and female threaded cap which is securely fastened to the vehicle and shall not be equipped with extensions or other actuating devices, or be installed in such a manner that discharge may be accomplished while the vehicle is in motion.

11.2.2 Cap.

11.2.2.1 An approved water-tight cap on the drain outlet shall be permanently attached to the vehicle.

11.2.2.2 There shall be permanently affixed near the cap in a visible, exterior location, a weatherproof label with letters of three-sixteenth inch ($\frac{3}{16}$ ") minimum height, reading: "CAP MUST BE SECURELY IN PLACE WHILE THE VEHICLE IS IN MOTION."