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(FILE NO. 1)

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Mr. Allan J. Roth
1752 Cottenwood
Fairbanks, Alaska 99701

Phone 456-7071

Rev. [unclear]

It was very interesting to read that four members of the House Judiciary Committee are attempting to examine the workings of the state parole board and the system.

Having spent approximately 15 years in various prisons, including Marion, Illinois, the most maximum in the U.S., I have since 1969 made a fairly successful adjustment to a free society. This is in spite of, not because of the parole system. As I was once ruled not rehabilitatable this I suppose could be considered

An accomplishment.

I do have very strong feelings about Alaska's present system. I do feel that there is need for a change, and also; feel I could offer you some useful information that may help you in your present review of the parole system.

If your review is still not over by the next time you are in Fairbanks I would be more than happy to talk with you concerning this matter.

Respectfully

Allan J. Holt

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99611
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1980

SUBJECT: Bradley opinion on parole board appointments

TO: Representative Charles H. Parr
Chairman, House Judiciary Committee

FROM: Billy G. Berrier *BGB*
Director
Division of Legal Services

I have read the opinion on this prepared by Richard A. Bradley of this office and agree with the reasoning and conclusions he reached.

EGB:jdn

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 11, 1980

SUBJECT: Executive appointments and the Separation of Powers Doctrine (Work Order No. 8303)

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley 
Legislative Counsel

Margaret Berck by her memorandum of March 6, 1980 has sought our opinion on the following question.

The House Judiciary Committee wishes to propose amendments to the existing laws relating to parole of offenders. Under a proposal in the draft to achieve these amendments, a "panel of individuals" would propose three names for the consideration of the governor for each vacancy on the parole board. The governor would be limited in making his appointment to the individuals nominated by the "panel." While we are advised that the composition of the panel is not firmly determined by the judiciary committee, the committee appears to be considering both ex officio public officers and officers of private organizations for the panel at this time.

Given this statutory framework, we have been asked whether such a concept would violate the separation of powers doctrine.

In our opinion, it would.

We start with the premise that the function of the parole board is unarguably an "executive function," which under Article III, sec. 1 of the Alaska Constitution is allocated to the executive branch. The status of the parole board as a quasi-judicial agency does not alter this premise; such agencies form a part of the executive branch. See Article III, secs. 22 and 26.

We believe that the recent opinions of the Supreme Court of Alaska and of the Supreme Court of the United States force our conclusion on the separation of powers question.

Representative Charles H. Parr
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The recent case of Bradner v. Hammond, 553 P.2d 1 (1976) contains perhaps the most useful view of the Alaska Supreme Court on the separation of powers doctrine. Because it is so significant for your question, we have quoted from it extensively.

"In Alaska State-Operated School System v. Mueller, 536 P.2d 99, 103 (Alaska 1975), we observed that '[t]hose who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative, and the judicial.' Analyzing this tripartite form of government provided for Alaska, this court concluded, in Public Defender Agency v. Superior Court, Third Judicial District, 534 P.2d 947, 950 (Alaska 1975), that . . . it can be fairly implied that this state does recognize the separation of powers doctrine.

* * *

"A problem inherent in applying the doctrine of "separation of powers" stems from the fact that the doctrine is descriptive of only one facet of American government. The complementary doctrine of checks and balances must of necessity be considered in determining the scope of the doctrine of the separation of powers.

* * *

"In the instant appeal, the parties, in recognition of the controlling nature of the issue, dispute the meaning of the doctrine of separation of powers, and its implication for the determination as to whether Chapter 82 is violative of Alaska's constitution. In our view, the doctrine is of importance to the resolution of the merits of this appeal, for if the doctrine clearly precludes legislative intervention (by confirmation) in the appointment of executive officials, or requires 'strict departmentalization,' then Chapter 82, which purports to authorize legislative 'meddling' in the exercise of an executive power, is unconstitutional because it would be violative of separation of powers requirements.

"In determining if Chapter 82 violates the doctrine of separation of powers, which is implicit in Alaska's constitution, it is necessary to answer whether the appointment of executive officers is a legislative or executive function.

* * *

"Appellee [Hammond] contends that the appointment of executive officers is an executive function. We find appellee's contention most persuasive. In addition to vesting the executive power of the state in the governor, Section 16 of Article III provides that '[t]he governor shall be responsible for the faithful execution of the laws.' In view of the responsibilities imposed by Section 16, and the authority granted by Section 1, the governor is necessarily clothed with the power to appoint subordinate executive officers to aid him in carrying out the laws of Alaska. Thus we conclude that the appointment of executive officers is an executive function; for without such a power, the responsibility for executing executive duties would be diffused and the goal of separation of branches of government, avoiding too great a concentration of power in one branch, would be defeated.

* * *

"[I]t is then necessary to determine the nature of the legislature's confirmation powers. Here we are in agreement with appellee's analysis that under Alaska's constitution confirmation is a specific attribute of the appointment power of the executive. Other courts which have been called on to resolve this issue have been unanimous in their holdings that confirmation is not a distinct legislative power, but rather a part of the executive power of appointment which in turn has been delegated in some specific instances by constitution to the legislative branch of government.

"In light of the nature of the legislature's power of confirmation, the question whether Sections 25 and 26 of Article III describe the outer limits of the legislature's confirmation authority, or whether the legislature may by statute require confirmation of other high-level, policy making officials within the executive branch, admits of but one resolution. As to this

issue, we think the provisions of Sections 25 and 26 of Article III are clear and unambiguous. Thus we conclude that Sections 25 and 26 mark the full reach of the delegated, or shared, appointive function to Alaska's legislative branch of government.

"The lack of ambiguity in Sections 25 and 26 of Article III of the Alaska Constitution mandate that this court interpret these express provisions as embodying not only the maximum parameters of the delegation of the executive appointive authority through the legislative confirmation function but, further, that they delineate the full extent of the constitution's express grant to the legislative branch of checks on the governor's power to appoint subordinate executive officers. In our view, the separation of powers doctrine requires that the blending of governmental powers will not be inferred in the absence of an express constitutional provision." (Emphasis and bracketed material added, footnotes omitted).

While the Bradner case did not address the question whether the executive power of appointment could be limited to nominations by a panel, it did address the question whether the legislature retained any inherent power to participate in the executive power of appointment. In our view, its statement that the "express provisions" of Article III state the "maximum parameters" of the legislature's "checks" on the governor's power to appoint subordinate executive officers constitutes a clear statement on the power of the legislature to narrow the executive power to appoint by the use of a nominating panel or the use of any other device not contained in the executive or the legislative articles.

An opinion of the U. S. Supreme Court issued about the same time is consistent. See, Buckley v. Valeo, 424 U.S. 1 (1976).

The Buckley case, as you know, concerned the regulations and the constitutional status of the Federal Election Campaign Act's regulation of Federal election campaigns. At the time the Supreme Court decision was issued, it was said to be the longest opinion in U. S. Supreme Court history: it covered a lot of points.

Among these was the constitutionality of the appointment of the members of the Federal Election Commission. It was composed of six members, four of whom were appointed by

Congress. The appointments were challenged under the separation of powers doctrine: "Congress is precluded under [that] principle . . . from vesting in itself the authority to appoint those who will exercise such . . . wide-ranging rule-making and enforcement powers with respect to the substantive provisions of the Act. . . ."

The Appointments Clause of the U. S. Constitution [Article II, sec. 2, cl. 2] grants the President the power to make appointments of the "Officers of the United States." It was argued that this provision is the exclusive method by which those charged with executing the laws of the United States may be chosen.

"If the legislature [Congress] wishes the Commission to exercise all of the conferred powers, then its members are in fact 'Officers of the United States' and must be appointed under the Appointments Clause. But if Congress insists upon retaining the power to appoint, then the members of the Commission may not discharge those many functions of the Commission which may be performed only by 'Officers of the United States,' as that term must be construed within the doctrine of the separation of powers."

The Supreme Court also addressed the argument that because the Congress has been given the explicit authority to legislate in a particular area, it must have the power to appoint those who will administer the regulatory statute. The Court rejected the argument as "both novel and contrary to the language of the Appointments Clause."

"Unless their selection is elsewhere provided for, all officers of the United States are to be appointed in accordance with the Clause. Principal officers are selected by the President with the advice and consent of the Senate. Inferior officers Congress may allow to be appointed by the President alone, by the heads of departments, or by the judiciary. No class or type of officer is excluded because of its special functions. The President appoints judicial as well as executive officers. Neither has it been disputed -- and is apparently not now disputed -- that the Clause controls the appointment of the members of a typical administrative agency even though its functions, as this Court recognized in Humphrey's Executor v. United States, 295 U.S. 602, 624 (1935), may be 'predominantly quasi-judicial and quasi-legislative' rather than executive. The Court in

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that case carefully emphasized that although the members of such agencies were to be independent of the executive in their day-to-day operations, the executive was not excluded from selecting them."

Finally, the Court quoted from Myers v. United States, 272 U.S. 52 (1926). In that case the Court upheld the authority of the President to remove an officer he was initially authorized to appoint. The Court said:

"The vesting of the executive power in the President was essentially a grant of power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them under a system of subordinates. . . . As he is charged specifically to take care that they be faithfully executed, the reasonable implication, even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of laws.

The logic of the Myers case and, of course, the Buckley case is directly applicable to your question regarding the parole board. While the Alaska Constitution has no explicit "Appointments Clause," the U. S. Supreme Court considers that provision merely an expression of the concept of the separation of powers doctrine and the Alaska Supreme Court has found that doctrine to be a significant part of the Alaska constitutional framework in the Bradner v. Hammond case.

Accordingly, we must conclude that the power of appointment of an executive officer resides exclusively in the Governor in the Alaska state government. The legislative power over an appointment extends no further than the power to confirm and therefore to reject the appointment of such an officer. Necessarily, therefore, we believe that the draft proposal that you forwarded to us would not be viewed as constitutional by the Alaska Supreme Court if the Governor declined to make appointments consistently with it, as he did in the Bradner case.

On the other hand, we consider that there is precedent in Alaska for the legislative establishment of qualifications of executive officers. See, for example, AS 42.05.040, regarding the qualifications of members of the Public Utilities Commission.

If we may assist further, please advise.

RAB:ljb



Official Business

Alaska State Legislature

House of Representatives

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

February 28, 1980

MEMORANDUM

TO: Charlie Parr, Chairman and Members of the House
Judiciary Committee

FROM: Margaret W. Berck, Staff

SUBJECT: Recodification of the Alaska Statutes regarding
the Administration of Parole

*Section 1

CHAPTER 15. PAROLE ADMINISTRATION ACT

Sec. 33.15.010. STATE BOARD OF PAROLE. A state board of parole in the Department of Health and Social Services shall administer the state parole system. The board shall consist of five members appointed by the governor and confirmed by a majority of the members of the legislature in joint session. Members of the state board of parole shall be nominated by a panel composed of the chief justice of the Alaska Supreme Court, the chairmen of the Senate and House Judiciary Committees of the Alaska State Legislature, the President of the Alaska Federation of Natives, and the President of the Alaska Chapter of the National Association for the Advancement of Colored People. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairman or as a member, for

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each vacancy. The governor shall designate one of the members as chairman of the board. The member shall remain chairman until the expiration of his term as a board member. The term of each of the five members of the board is five years. Terms of all members shall be staggered to expire at one-year intervals. Successors are appointed in the same manner as provided for board members first appointed. A vacancy shall be filled for the unexpired term.

Sec. 33.15.020. CRITERIA FOR NOMINEES. Members of the board shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed. At least one of the members shall be a person with training in the field of criminal justice, psychology, or human relations. The members may not be officials or employees of the department.

Sec. 33.15.030. REMOVAL OF MEMBERS. The governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before such removal he shall give the member a written copy of the charges against him and shall fix the time when he can be heard in his defense, which shall not be less than ten days thereafter. Upon removal the governor shall file

in the office of the lieutenant governor a complete statement of all charges made against the membe. and the findings thereupon, with a record of the proceedings.

Sec. AS 33.15.040. EXECUTIVE DIRECTOR. The board shall hire an executive director who has training and experience in the field of probation and parole. The executive director shall serve as the executive officer for the board in the accomplishment of its functions. He shall serve [THE BOARD] at the pleasure of the [GOVERNOR] board.

Sec. 33.15.050. COMPENSATION AND EXPENSES. The members of the board, [OTHER THAN THE CHAIRMAN, SHALL NOT RECEIVE SALARIES BUT] are entitled to compensation per day at an amount [TO BE SET BY THE GOVERNOR FOR EVERY DAY THEY ARE IN SESSION,] commensurate with the salary of the executive director on an hourly basis during the time they are actually conducting board business, and a per diem and travel allowance as provided by law. [THE CHAIRMAN IS NOT ENTITLED TO A SALARY OR COMPENSATION FOR DAYS HE ATTENDS A SESSION OF THE BOARD, BUT IS ENTITLED TO A PER DIEM ALLOWANCE AND TRAVEL COSTS AS PROVIDED BY LAW.]

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Sec. 33.15.060 RESPONSIBILITIES AND DUTIES OF THE BOARD. (e) In addition to any other responsibility or duty prescribed by law for the state board of parole, the state board of parole shall:

- (1) Serve as the central paroling authority for the state;
- (2) Consider all prisoners serving sentences who may be eligible for parole, unless the prisoner waives consideration for parole;
- (3) Discharge an individual from parole when supervision is no longer needed;
- (4) Keep and maintain a record of all meetings and proceedings;
- (5) Adopt regulations pursuant to the Administrative Procedure Act, AS 44.62, which it considers necessary or proper with respect to the suitability of prisoners for parole; the conduct of parole hearings; the conditions of parole; and the supervision and recommitment of parolees;
- (6) Provide the persons in charge of state correctional facilities or correctional facilities made available to the state under contract with a copy of the board's regulations and any amendments thereto;
- (7) Notify the commissioner of its decisions relating to prisoners considered for parole. At the close of each ^{calendar} fiscal year the board shall submit to the governor, the Chairmen of the Senate and House Judiciary Committees, the commissioner, the attorney general and publish publically a report containing statistical and other data of its work, including research studies which it may make of probation, sentencing, parole or related functions;
- (8) Interpret the parole system to the public in order to develop a broad base of public understanding and support; and
- (9) Recommend to the legislature sound parole legislation and recommend to the governor sound parole administration.

Sec. 33.15.070. PAYMENT OF BOARD EXPENSES. The expenses of the board shall be paid by an appropriation made to the department.

Sec. 33.15.080. DATA TO BE CONSIDERED IN DETERMINING SUITABILITY FOR PAROLE.

The board shall not deny parole on the basis that the prisoner did not obtain desirable or necessary treatment while confined if such treatment was not available to the prisoner at the correctional facility to which he was designated to be confined by the Division of Corrections.

In considering whether a prisoner is suitable for parole, the board shall consider:

- (1) the presentence report made to the sentencing court;
- (2) the recommendations by the sentencing court, prosecuting attorney and defense attorney;
- (3) a report ^{of the prisoner's institutional history} prepared by a proper officer of the institution where the prisoner is incarcerated, relating to his personality, social history and adjustment to authority, and including any recommendations which the institutional officer may make;
- (4) all official reports of his prior criminal record, including reports and records of earlier probation and parole experiences;
- (5) the reports of any physical, mental and psychiatric examinations of the prisoner;
- (6) any relevant information which may be submitted by the prisoner, his attorney, the victim of his crime, or other persons;
- (7) the prisoner's parole plan; and
- (8) such other relevant information concerning the prisoner as may be reasonably available.

Sec. 33.15.090 ORDER FOR PAROLE. An order for parole shall be furnished by the board to each person released under its supervision. An order for parole shall contain the conditions imposed and the parole expiration date. The order does not take effect until signed by the parolee. The conditions of parole may be changed in the discretion of the board after the parolee is afforded an opportunity for a hearing.

Sec. 33.15.100 GRANTING OF PAROLE.

Granting of parole [Effective January 1, 1980]. If it appears to the board from a review that a prisoner eligible for parole will, in reasonable probability, live and remain at liberty without

violating the laws, or without violating the conditions imposed by the board, and if the board determines that his release on parole is not incompatible with the welfare of society, the board may authorize the release of the prisoner on parole. However, no prisoner may be released on parole who has not served at least one-third of the period of confinement to which he has been sentenced. (§ 3 ch 81 SLA 1960; am § 1 ch 110 SLA 1974; am § 14 ch 166 SLA 1978)

Sec. 33.15.110. HEARING ON APPLICATION FOR PAROLE OR CHANGE IN PAROLE CONDITIONS; WAIVER. (a) A hearing shall be held for the purpose of reviewing a prisoner's parole suitability, or for the setting, posting, or ^{re}reinding of parole dates. Reasonable notice of the hearing shall be provided to the prisoner. At least 30 days prior to the hearing by the board, the prisoner shall be permitted to review all data which will be examined by the board and shall have an opportunity to enter prior to the hearing written responses to any material contained in the data. At the hearing the prisoner has the right to be present, to present evidence on his behalf, to cross-examine witnesses who testify against him, and to remain silent. All decisions made by the board shall be issued in writing and provide the reasons therefor. A copy of such decisions shall be sent to the prisoner.

(b) A parolee subject to a change in a parole condition or to an imposition of an additional parole condition is entitled to hearing. The parolee is entitled to reasonable notice of the proposed modification and the reasons therefor. Prior to the hearing, the parolee is entitled to view and copy all documents, reports, and names of witnesses that will be considered by the board. At the hearing the parolee is entitled to the same rights as a prisoner in subsection (a). Decisions shall be issued in writing and provide the reasons therefor. A copy of the decision shall be sent to the parolee.

(c) A prisoner or a parolee may waive his right to a hearing as provided in (a) or (b) by submitting to the board a written waiver of such hearing.

Sec. 33.15.120 HOLDING OF MEETINGS; ORDERS. (a) The board shall meet as often as it finds necessary, but shall meet at least four times each year. Three members of the board constitute a quorum for the conduct of business.

(b) All orders or decisions of the board shall be made by a majority of those members present.

Sec. 33.15.130 AUTHORITY OF THE BOARD TO ISSUE PROCESS.

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Authority of board to issue process. The board may issue subpoenas and subpoenas duces tecum, and may issue warrants to retake a parole violator. (§ 3 ch S1 SLA 1960)

Sec. 33.15.140 BOARD MAY RELEASE PRISONERS TO ANSWER PROCESS.

Board may release prisoners to answer process. If a court of this state, another state, or the United States, or other authority issues a warrant charging a prisoner with a crime, the board may release the prisoner on parole to answer the warrant. (§ 3 ch S1 SLA 1960)

Sec. 33.15.150 CONFIDENTIALITY OF RECORDS. The pre-parole reports submitted to the board are privileged and shall not be disclosed to anyone other than the board, the sentencing judge, the prosecuting and defense attorneys, the prisoner, the prisoner's attorney, or others entitled under this chapter to receive the information.

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Sec. 33.15.160 DUTIES OF THE COMMISSIONER.

Duties of the commissioner. The commissioner is charged with the administrative duties and responsibilities necessary to

- (1) conduct investigations of prisoners eligible for parole as the board requests;
- (2) supervise the conduct of parolees and institute programs for reform and rehabilitation of parolees as the board requests;
- (3) appoint and assign parole officers and personnel to the judicial districts in the state and to train and supervise parole officers and personnel;
- (4) keep records, files and accounts as the board requests. (§ 6 ch 81

(5) maintain a ^{current} copy of statutes and regulations regarding the state board of parole at all state correctional facilities and at correctional facilities made available to the state under contract so that all prisoners have access to such law and regulations.

Sec. 33.15.170. DELEGATION OF DUTIES TO EXECUTIVE DIRECTOR.

Delegation of duties to executive director. The commissioner may delegate all or part of the administrative duties and responsibilities specified in ~~§ 150~~ of this chapter to the executive director of the board. (§ 6 ch 81 SLA 1960; am § 2 ch 30 SLA 1972)

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Sec. 33.15.180. COMMISSIONER MAY ASSIGN DUTIES OF PROBATION OFFICERS TO PAROLE OFFICERS.

Commissioner may assign duties of probation officers to parole officers. The commissioner may assign the duties of probation officers as provided in the Probation Administration Act to personnel appointed under ~~§ 150~~ (3) of this chapter. (§ 6 ch 81 SLA 1960)

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Sec. AS 33.15.190. PERSONS ELIGIBLE FOR PAROLE.

Persons eligible for parole [Effective January 1, 1980]. (a) A state prisoner other than a juvenile delinquent, wherever confined and serving a definite term of over 180 days or a term the minimum of which is at least 181 days, and who is not imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2), whose record shows that he has observed the rules of the institution in which he is confined, may, in the discretion of the board, be released on parole, subject to the limitation prescribed in §§ ~~80~~ and ~~230(a)(1)~~ of this chapter.

(b) A state prisoner who has been imprisoned in accordance with AS 12.55.125(a) or (b) may not be released on parole until he has served at least the prescribed minimum term of imprisonment.

(c) A state prisoner imprisoned in accordance with AS 12.55.125(c)(1), (c)(2), (c)(3), (d)(1), (d)(2), (e)(1), or (e)(2) who is released under AS 33.20.030 shall be placed on parole for the period specified in the certificate of deduction, subject to written rules and conditions imposed by the board or his parole officer. (§ 7 ch 81 SLA 1960; am § 34 ch 43 SLA 1964; am § 9 ch 68 SLA 1965; am § 2 ch 110 SLA 1974; am §§ 15, 16 ch 166 SLA 1978)

Sec. AS 33.15.200. CONDITIONS OF PAROLE. When a prisoner is released on parole, the Board shall require as a condition of parole that he refrain from engaging in criminal conduct. Depending upon the nature of the crime for which the prisoner was convicted, the board may also require at the time of release on parole or at any time and from time to time while he remains on parole, that he conform to any of the following conditions of parole:

- (a) meet his family obligations;
- (b) apply himself to employment, education, training, or subsistence;
- (c) remain within the geographic limits fixed in his order of parole, unless granted written permission to leave such limits;
- (d) report, as directed, in person and within 48 hours of his release to his parole officer;
- (e) report, as directed, to his parole officer at least once a month or at such regular intervals as may be required by the parole officer;

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(f) reside at the place fixed in his order of parole and notify his parole officer of any change in his address;

(g) have in his possession no dangerous firearm or other dangerous weapon unless granted written permission;

(h) submit himself to necessary available medical, psychiatric, alcohol, or other treatment;

(i) refrain from consuming alcoholic beverages;

(j) refrain from consuming illegal drugs;

(k) submit to reasonably conducted searches and seizures by correctional authorities or peace officers acting under their direction ; and

(l) refrain from entering into any agreement or other arrangement with any law enforcement agency which will place him in the position of violating any state or federal law or any conditions of his parole.

Sec.33.15.210. RELEASE AND FINAL DISCHARGE. (a) A parolee remains in legal custody of the board until the expiration of the maximum term or terms to which he was sentenced, less good time allowances provided by law. While in the custody of the board, a parolee is subject to the disabilities imposed by AS 11.05.080, but this section shall not deny a parolee access to the civil courts.

(b) However the board in its discretion may discharge a parolee from supervision and from further liability under his sentence after he has completed at least two years on parole. Any parolee who has been on parole for at least five years shall be brought before the board for purposes of consideration for final discharge. In the event that the parolee is not granted final discharge, the parolee shall be brought before the board for the aforementioned purposes annually thereafter.

Sec. 33.15.220 REVOCATION OF PAROLE.

Revocation of parole. The board may revoke the parole granted to a prisoner for violation of a ~~law~~ ^{state or federal law} or condition imposed by the board. (§ 3 ch 81 SLA 1960)

Sec. 33.15.230. ARREST OF A PAROLE VIOLATOR. A warrant for the arrest of a parolee who violates his parole may be issued only by the board or a member of the board based upon a written complaint showing that there is probable cause to believe that a violation of law or ordinance or a violation of a parole condition has occurred. A parole violator may be arrested without a warrant for a violation of law or ordinance or for a violation of a parole condition only under exigent circumstances which require immediate arrest.

Sec. 33.15.240. EXECUTION OF WARRANT TO ARREST A PAROLE VIOLATOR. A parole officer or an officer of a state correctional facility or a correctional facility made available to the state under contract, shall execute the warrant by arresting the parolee and confining him in a correctional facility designated by the commissioner. A peace officer acting under the direction of a parole officer, or an officer of a state correctional facility or a correctional facility made available to the state under contract, may execute the warrant by arresting the parolee and confining him in a correctional facility designated by the commissioner.

Sec. 33.15.250. REVOCATION UPON ARREST OF PAROLE VIOLATOR; HEARING; CONFINEMENT.

(a) Upon the arrest of a parolee, a peace officer making the arrest shall notify the parole officer. The parole officer making the arrest, or being notified by a peace officer of an arrest, shall immediately notify the board, or a member of the board. If the arrest is without a warrant, the parole officer shall submit to the board, or a member of the board, a report in writing indicating in what manner the parolee violated the state or federal law or a condition of his parole.

(b) The parolee shall be entitled without unreasonable delay to a hearing on the violation charged. The parolee is entitled to reasonable notice of the hearing and to view and copy in advance of the hearing all documents, reports, and names of witnesses, which will be considered by the board. At the hearing the parolee has the right to be present, to present evidence on his behalf, to cross-examine witnesses who testify against him, and to remain silent. If a violation is established, the board may revoke and terminate all or any portion of parole, or change the conditions of parole, or impose additional conditions of parole, or eliminate all or any portion of the good time earned on parole. If the board does not terminate all or any portion of parole, the parolee shall be released from confinement and continued on parole under the terms and conditions the board prescribes.

(c) If parole is revoked on the basis of a violation of a state or federal law, the parolee is subject to serve the remainder of the term to which he was sentenced or any portion thereof. In fixing the remainder of the sentence term, consideration shall be given to any good time earned while on parole. If parole is revoked solely on the basis of a violation of a parole condition, confinement shall not exceed 6 months.

(d) All decisions of the board in a revocation proceeding shall be issued by the board in writing and provide the reasons therefor. A copy of the decision shall be sent to the parolee.

Sec. 33.15. 260. APPEALS FROM DECISIONS AND ORDERS OF THE PAROLE BOARD. A prisoner or parolee may appeal, pursuant to Rule 35(b) of the Criminal Rules of Court, any decision or order of the parole board on grounds of arbitrariness or abuse of discretion, to the Superior Court.

Sec. 33.15.270. FIXING ELIGIBILITY FOR PAROLE AT THE TIME OF SENTENCING.

Fixing eligibility for parole at time of sentencing. (a) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when in its opinion the ends of justice and best interests of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may

(1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner is eligible for parole, which term shall be at least one-third of the maximum sentence imposed by the court; or

(2) fix the maximum sentence of imprisonment to be served, in which case the court may specify that the prisoner is eligible for parole at the time the board determines.

Sec. 33.15.280. APPLICABILITY TO PERSONS ON PAROLE OR INCARCERATED.

Applicability to persons on parole or incarcerated. This chapter applies to all persons convicted and sentenced in the superior court and the district courts of this state, and to all persons convicted of a crime punishable under laws enacted by the Alaska Territorial Legislature who were convicted and sentenced before Alaska became a state or before the Alaska state court system was in operation. (§ 12 ch 81 SLA 1960; am § 1 ch 38 SLA 1961; am § 3 ch 24 SLA 1966)

Sec. 33.15.290. DEFINITIONS.

(1) "board" means the Board of Parole;

(2) "commissioner" means the commissioner of the Department of Health and Social Services or his designee;

(3) "parole" means the release of a prisoner to the community by the parole board before the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(4) "department" means the Department of Health and Social Services.

(5) "parolee" means any prisoner released to the community by the board, or any prisoner released to the community by operation of law as if on parole.

Sec. 33.15.300. COMPUTATION OF GOOD TIME WHILE ON PAROLE. A person released from confinement pursuant to AS 33.15.100 or a person released from confinement pursuant to AS 33.20.040 as if on parole is entitled to a deduction from his term of parole of one day for every three days of good conduct served while on parole. Good conduct on parole may be subject to forfeiture by the board if a violation of a state or federal law or a violation of a condition of parole is established.

Sec. 33.15.310 SHORT TITLE. This chapter may be cited as the Parole Administration Act.

*Section 2. This act shall apply retroactively to all persons currently on parole or released as if on parole or currently being considered by the board for parole.

*Section 3. This act has an immediate effective date.

Alaska State Legislature



Ref. Nels Anderson
pm. 2/16

HOME ADDRESS
P.O. BOX 65
GALENA, ALASKA 99741

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 485-3753

To Rep. Malone
FYI
Nels

SENATOR
John C. Sackett
CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
BUDGET & AUDIT COMMITTEE

Senate

MEMORANDUM

TO: Senator John Sackett
FROM: Alephe Morris
SUBJECT: Native Culture Group - Juneau Correctional Center
Saturday, January 26, 1980
Present: Representative Nels Anderson
Alephe Morris

The meeting was called to order by the newly elected president, Byron Charles. The main topics of discussion were indiscriminate transferring of prisoners without due process, good time being held over their heads like a whip, discrimination at disciplinary hearings and horrible food.

TRANSFER:

In October, 1979, Michael Clary and former president of the Native Group, Anakak Buell were transferred to Fairbanks without due process. Recently, Larry Uptagraft, David Meeks and former president Ross Shakley were transferred to Fairbanks without due process. It was inadvertently discovered in their "jackets" a charge of inciting a riot which is a criminal offense. This could go against them in a parole hearing, work-release, and they could be charged with it. There was no hearing at the sending institution.

Please note the DOC classifies Fairbanks Medium Custody even though it is the exact floor plan as the Juneau facility, other than Fairbanks has a gym and Juneau a GUN TOWER. They have men, women and children, both sentenced and unsentenced offenders. One man transferred was starting a 10 year sentence and the other 27 years. It was mentioned the person with 27 was kept behind because of some action on his case.

EDUCATION:

The group voiced their concern about CETA funding that is going to be discontinued, as the educational classes at the institution are funded fully by CETA. They are asking legislation insure their funding. Please note enclosed letter from the Native Group requesting classroom furniture. There are 48 students involved in education and the equipment earmarked for various institutions didn't get there. I had the same complaint at Ridgeview when I visited there in December.

PROGRAMS:

There are no programs, including an alcohol program. One of the men stated he was answering a questionnaire in preparation for parole. One question asked was when he last drank alcohol. In stating 4 years, he was asked why he wanted to come to the program. This is not uncommon. I am personally aware of a man that had to go through detoxification and remain there several weeks in order to go through the program. He had not had alcohol for several months. The group commented they heard the facility was called "Hammond's Warehouse", and "Huston's Hell Hole".

FOOD:

The complaint on the food was it was not fit for human consumption. The eggs were watery and the food rotten. It seems the main interest of the cook, and incidently when guards don't make it as guards they say they return as cooks, is to cut down the budget and this makes Huston happy. The cab driver that drove me out there Saturday night, unsolicited, mentioned the food out there was food the stores couldn't sell. I said that was usually donated food, and he said he knew that. That would cut the budget.

DISCIPLINARY HEARINGS:

The group stated the "write-ups" were prejudicial. They are being busted for minor infractions, thrown in the "hole" and their "good time" taken from them. When another is involved, they are busted and the other goes free. We were shown some of the write-up sheets with the charges and the outcome for verification. Their "good time" is held over their heads, and for this they are seeking legislative relief. They would like something in the administrative code to insure their good time earned would not be tampered with indiscriminately, *OR AT ALL.*

PAROLE:

Representative Anderson asked, "What do you think about a paid parole board"? They thought something should definitely be done. The consensus of opinion was that natives never get paroled. Enclosed is a copy of an article, Corrections Unfair to Natives, by John Deacon, for your *persual*.

CIVIL DEATH:

Another form of arbitrary decisions being made; theoretically, an inmate cannot enter into contract, yet they are allowed to enter into contract for commissary, educational payments from B.I.A. to pay for tuition. When the inmates ask for various other types of contracts they are denied. This discussion did come up in the latter part of the meeting, and perhaps the topic could be pursued. They feel it is important.

It is my impression the discussion with this group barely skims the surface of the underlying problems within the institution as well as others. Senator Ferguson received a letter from the 6th avenue jail in which a person stated a man handcuffed in the next cell was whipped. It is also my feeling that there may be near-riot circumstances in Juneau. I do not believe its paranoia, it comes from experience.

cc: Representative Nels Anderson

AM/lh

JAN 15 1980

Native Culture Group
Box, 309



Juneau, Ak, 99802



Senator John C. Sackett
Pouch "V"
Juneau, Alaska 99811

January 13, 1980

Handwritten notes:
10/14
15
15
15

Dear Senator Sackett:

I write you this letter at the request of the Native Culture Group. At a meeting of the group, the discussion was the needs of the institution and how the group could help to better our situation. The decision was that the institution needs to have chairs and reading tables for the library, and also for the classroom. The library is in need of two reading tables, and about six chairs. The classroom now has six tables that go in a circle but need replacing. Chairs for the classroom are now carried from the dining room to the classroom and back. Twelve chairs for the classroom would be very effective for the time being. Also needed are two electric typewriters for the law library. The two electric typewriters now in the law library are just about useless; they have been around this institution for about four years. They came to this institution as secondhand typewriters.

Rather than appropriate money to the budget for this equipment, it would be appreciated if you could find a way to get this equipment to us for this school semester. There are 48 students participating in classes; 41 in college, and 7 students in Adult Basic Education classes. Should this information arouse your interest and you believe you should have more information, you would be greeted warmly by our group: The Native Culture Group. We are patiently waiting to hear what your reply will be.

Thank You

Handwritten signature: Ross T. Sheakley

Native Culture President

Handwritten note: copy received 1/29/80



The Alaska Parole Board system is unfair to Native Alaskans. That is the assertion of all Native inmates. You, the reader may ask, "Why is the Alaska Parole Board unfair to the natives?"

The parole board is comprized of five members. There are three Whites, one Native, and one Black. The Governor personally appoints the members to the board, it is entirely at his discretion.

It is the opinion of the Native inmates here at the Juneau correctional facility that two or more Natives or of Native lineage be appointed to the parole board, for the following reasons. 50% or more of the inmate population are Native. Statistics reveal that the Alaska Native receives longer sentences than Whites, furthermore the Native has the lowest percentage of being released on parole. Therefore it should be of top priority of business for the Bush Caucus to resolve this problem. Without some form of revision, the parole board will continue to be bias to the Native inmates.

The Parole Board has certain stipulations an inmate must meet even to be considered as a possible parolee. The stipulation of having a job is the Native's greatest drawback. It is common knowledge to everyone in the bush areas, that jobs are virtually nonexistent. Statistics will also verify this statement.

The majority of the Native inmates are from small bush communities. They do not have college degrees or any tectnical training. All they know is fishing, hunting, and trapping. So why not parole them back to their respective villages, as subsistence lifestylers.

There is a considerable amount of controversy on the definition of the subsistence way of life. In my opinion, subsistence is living in a small bush community, without a regular job; hunting, fishing, and trapping for a livelihood. Carving and making artifacts could also fit this category. There should be a wide generalization in the categorization of the subsistence way of lifedue to the wide geographical differences.

An example is comparing Kaltag with Point Hope. Both communities are predominantly Native and can be categorized as maint ining a subsistence lifestyle. However, there the similarity ends. The Point Hope area is situated on the northwest coast of Alaska. The surrounding area is completely devoid of trees. The people's main source of livelihood is derived from marine mammals, such as seals, wulrus, and whales. Whereas, the inhabitants of Kaltag depend cheifly on moose, bear, and beaver to supply their major food supplements. Kaltag is also situated in a wooded region.

My purpose is not to discuss the pros and cons of living in either community. It is merely a hypothetical illustation to show the wide differences in the subsistence lifestyles due to geographical locations.

There are communities where fishing is the major source of income. Can inhabitants of such communities be classified on a subsistence basis. It is possible for these people to catch \$10,000, \$20,000, or even \$30,000 with fish in a season. At some point there must be a distiction between being a component of the fishing industry and the subsistence person. However a fisherman's income is highly inconsistant, depending on the fish spawn.

Can an ivory carver claim to be a subsistence person when he is carving up to five or six thousand dollars of artifacts, yearly. This figure may be a bit high or low, depending on the quantity and quality of the individual's work. At what dollar amount dose the carver cease being a subsistence individual and become a sole proprietor of a small business enterprize.

This breif backgroud on life in the bush may seem immaterial to the parole of Native inmates. Nothing could be further from the truth, based on the following reasons. (1) Jobs are virtually nonexistent in the bush areas; (2) many Native inmates have very little or no formal education or tectnical skills to secure jobs in the metropolitan areas like Anchorage or Fairbanks.

For these reasons among others, once again, I argue that the Native inmate should be granted parole to his respective village.

While the law will argue against this issue for the following reason; that one law or stipulation imposed on one citizen should pertain to all. For all practical purpose I would be inclined to agree, however here lies a very unique situation.

The Federal Government has always introduced special legislation in the past to deal with Indian problems. They recognized the various differences and dealt with them accordingly. For this very purpose the Bureau of Indian Affairs was established. I believe the State Government can follow similar guide lines in setting down policies to insure the Native inmate an equal opportunity on the issue of parole.

I will state again, it is my firm conviction that the Department of Corrections should lift the stipulation of having a job, a requisite to the Native seeking parole. Simply for the reason there are no jobs in the bush communities.

It should be no great problem for the state government to establish a network of acting parole officers within the villages. The village councils could be given implied or expressed powers in determining if they would be willing to accept the parolee. They would also have the power to revoke should the occasion arise. Without a doubt, the Department of Corrections and its component the Alaska Parole Board in conjunction with the village councils can implement a feasible program that is long overdue.

In conclusion, I will say, it is the task of the Native leaders to fight for these reforms. It is now time for the Bush Caugis to stand in unison and shout, we demand equal treatment for our people.

(THE UNDERSIGNED ARE IN FULL ACCORD WITH THIS ARTICLE)

- (1) Timothy Adams Sr.
- (2) Philip C. Cooper
- (3) Thomas Wood
- (4) Fred Sukanaw
- (5) George J. Sutherland
- (6) Vernon Bush
- (7) Robert Mark
- (8) Edward Anderson
- (9) Harold H. Gae
- (10) Don Steinhilber
- (11) Solomon Roberts
- (12) Ray Walter
- (13) Peter Christian
- (14) Lourence V. Gregory
- (15) ...

- (16) ...
- (17) ...
- (18) ...
- (19) ...
- (20) ...
- (21) Benon E. Charles
- (22) Peter M. Church Jr.
- (23) Edward H. Starbuck
- (24) ...
- (25) ...
- (26) Raymond J. Jacobs
- (27) Larry O. Larson
- (28) Conrad Kruloff
- (29) Emil Kraavikoff
- (30) ...

31. Cheston Ferrer
32. Robert O. Penn

Native Culture Group
Box, 309



Juneau, Ak, 99802

January 30, 1980

To : Rep. Nels Anderson
Pouch "v"
Juneau, Alaska 99802

From : Byron E. Charles
Native Culture President
Juneau, Alaska 99802

Subject; Invitations

Dear Mr. Anderson;

I received the list of names of the Senators, Representatives. I would like to make you aware that instead of sending an invitation to each Senator, Representative; I thought it would be easier if I just sent you this letter stating that you and the following names below are cordially invited to attend our scheduled February 9th, 1980 meeting at 7:00 pm.

Senators

Sen. John Sackett
Sen. George Hohman
Sen. Frank Ferguson
Aide; Alphi Morris

Representatives

Rep. Phillip Guy
Rep. Jack Fuller
Rep. Sharoff
Rep. Vern Herlbert
Rep. Leo Schafer

Thank you for your time and attention to the above invitations.

Sincerely;

Byron E. Charles

Byron E. Charles
Native Culture President



rec'd 2/1/80