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Gordon Evans, Esquire  
February 24, 1982  
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firms refuse to participate in offering a product whose sale they know will harm us, some of the less scrupulous ones take advantage of the opportunity to make some extra, easy profits. In almost all cases, such sales are made surreptitiously either by word-of-mouth, obscure classified ads in Penny-Saver type publications or the like. In the rare case when such sales are advertised overtly, specific mention of our service is avoided. (See samples enclosed.)

Our ability to combat such sales is limited. While during the past two years we have been successful in one civil litigation against a local dealer selling pirate antennas, we have been unable to get similar results from either the District Attorney's or U.S. Attorney's office as far as a criminal action is concerned. While there is federal theft of service legislation on the books, the local U.S. Attorney has, to date, been reluctant to allocate the manpower to pursue this type of offense. While the District Attorney's office has been more sympathetic to our problem, it has grave concerns about the broadness of the existing state statute (A.S. 11.46.482). In its one effort to date at a criminal prosecution, the State's case was dismissed prior to ever reaching trial on the merits. At this stage, the District Attorney is only willing to make another attempt if they can rely on a more adequately worded statute: to wit, the language presently proposed in S.B. 535 (and which was drafted in cooperation with the Attorney General's office).

The bottom line for us is that after more than two years worth of effort in combatting theft of service and the expenditure of a substantial amount of money on attorney fees, lobbying costs, etc., we have very little to show for it. I recognize that simply having a stronger criminal statute will not by itself solve our problem. More to the point, we really don't want to pursue the individual pirate antenna purchaser who, in many cases, may not fully realize he is doing something wrong. But the benefit to us of a criminal conviction against a dealer is the ability to publicize that event and, thereby, educate the public that it is not only immoral but also illegal to receive our service without paying for it. Most citizens will, I believe, once they understand this fact ignore enticements for illegal purchases. And for those who don't, at least we will have a viable means for pursuing our remedies. It should be obvious that in this case there is no substitute for criminal sanction. Civil litigation is not only time consuming and expensive, but if successful, it normally results in nothing more than an injunction against further sales, which injunction may or may not be enforceable.

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Typical arguments against the legislation we are supporting are, in my opinion, totally without merit. One argument suggests that the proper solution to our problem isn't better criminal legislation but rather the "scrambling" of our signal; i.e., making it harder to steal. Putting aside the enormous cost and difficulty for us to scramble (we have 11,500 receiving units already installed in Anchorage, all of which would have to be changed out if we were to "scramble" our signal), it is my feeling that our signal is already "scrambled". As noted above we transmit on a microwave frequency not receivable on a normal television set. Furthermore, I fail to understand why the cost of scrambling should be borne by our legitimate subscribers (as it would, of course, have to be) to defeat the illegal efforts of a few.

\* In addition, what level of sophistication in scrambling does one implement? If pirate manufacturers can duplicate our microwave technology, why might they not also duplicate (and thereby defeat) any scrambling/de-scrambling capability we employ?

Another argument often voiced against legislation is that innocent individuals may be unintentionally harmed. In other words, while our microwave frequency is not intended for unauthorized public use, others are (e.g., ham radio frequencies). Therefore, an individual might inadvertently tune to our frequency and violate the law. While this is in part accurate, it belies reality. There are audio services transmitted on microwave frequencies intended for the use of the general public, but there are no video services intended for such use. (Broadcast television operates on non-microwave frequencies.) Therefore, an innocent user would normally be incapable of receiving our video signal. More significantly, all of the illicit microwave receivers we have ever encountered are capable of receiving only our microwave frequency. (See enclosed technical report on pirate antennas sold in Spokane, Washington.) The reason for this is simple: it costs less to manufacture them this way and the only potential customers are those desiring to get pay-TV for free.

One legitimate concern that has been voiced is the impact S.B. 535 as presently worded would have on private earth station owners. While many satellite signals are not intended for the public, some are and, therefore, use of an earth station which has a multi-purpose function (and is, therefore, different from MDS receiving equipment) should not be labeled as inherently illegal. I believe by now you have, in cooperation with our FCC counsel, drafted alternative language that exempts private earth station usage from any criminal liability.

In closing, let me emphasize what should be obvious. Theft of service threatens the very life blood of our business. Through physical audits that we have conducted in Anchorage, we estimate that we are currently losing \$40,000 per month in revenue from use of illegal antennas. Left

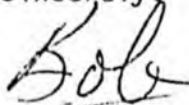
Gordon Evans, Esquire  
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unchecked, it would be only a matter of time before such loss of revenue could put us completely out of business to the detriment of our legal and illegal viewers alike.

More to the point, there is a significant moral issue involved that is sometimes overlooked. We are a legitimate business and good corporate citizen. Our business is no different from any other in that to the extent we incur costs in fighting or lose revenue to sellers and users of pirate equipment, we are harmed and our subscribers are harmed. This is neither fair nor right.

We will continue to mobilize all of our resources against service theft because we have no other choice. Our continued existence depends upon it. All we are seeking in the enactment of S.B. 535 is the opportunity to make use of a very effective weapon in the battle.

Sincerely,



~~Robert J. Gould~~

RJG/kj

Encs.



# MULTICAST

Pirate interview.....p.1  
 Sony/Betamax decision..p.2  
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 Laramie, WY launch.....p.5  
 Recent FCC action.....p.6

Editor: George Eagle (202) 547-4050  
 Associate Editor: Alan Cole-Ford (213) 454-0639  
 NEWSLETTER ON MULTIPOINT DISTRIBUTION SERVICE

No. 225  
 November 13, 1981

PAUL KAGAN ASSOCIATES, INC.  
 13386 CARMEL RANCHO LANE  
 CARMEL, CALIFORNIA 93923  
 (408) 624-1536

TD LC LF  
 JL LW  
 SRD  
 CHV

In an unusual interview with MULTICAST editors, a self-admitted pirate distributor made it easy to see why bootleg manufacturers and middlemen pose such a persistent and elusive threat to MDS operators, and why they take the risks they do.

Identifying himself as a principal in Microtronics, a NY-based distributor of microwave equipment, this man conceded that his tactics are typical. "Come in quickly, make a bundle, and keep moving," he said.

Until several months ago, he reports, he was content with a cash-and-carry business that saw him sell 350-400 units per week to dozens of retailers in New York City.

But, he said, last month seemed like a good time to make a more aggressive attack, "so I started advertising full-bore in newspapers. Retailers love it, since I pay for all the ads, and include their store names, with phone numbers and addresses."

Identifying up to eight stores in each recent *New York Post* display ad, Microtronics reportedly boosted its volume by 200%. Antennas were "sale priced" at \$144.95. The retailers paid approximately \$130/unit.

Now, six weeks later, all but two of the participating stores claim to have ceased all sales of pirate gear, citing legal reprisals from HBO soon after the ads appeared. Each businessman insists he was unaware his actions were illegal, having received repeated assurances from Microtronics that the deal was above-board.

"Of course we tell them it's not illegal," the distributor admits. "We explain that as long as HBO's name isn't used anywhere in the ad, they're not suggesting anything improper. Whatever the customer wants to do with his antenna is his business."

And the pirate indicated that he wouldn't be around to see what the customer did with his antenna. "Newspaper advertising is often a sign that a pirate is preparing to pull out of a market. The ads draw attention to the retailers, but they also move goods quickly," he said. "Once legal hassles start, the store owner can only complain. I've already made my profit, and I'll move if I have to.

"At some point," the pirate continued, "the retailer simply becomes expendable. It usually occurs when a city is reaching saturation, and selling more units begins to present more risk. New York is a good example. There must be 20,000-25,000 illegal antennas in the city already, but the pace won't continue. It makes more sense to find an easier city.

(continued on next page)

## PIRATE' INTERVIEW (continued from P. 1)

"Any pirate must operate with a simple strategy," he added. "We keep our profile low and our liquidity high.

"Each market requires a different approach, and it's best to operate simultaneously in several cities, so inventory can be moved quickly and easily. I don't like to keep more than 150-200 units on hand at a time."

When asked about his motives, the pirate points to profit. "The margins are just too good to pass up," he said. "I can buy equipment at \$75-\$80 per unit, and sell it... at nearly double, without any tax worries."

"I didn't create the market, I just give it what it wants," the pirate argues. "As long as customers think they're being clever instead of criminal by buying illegal hardware, I'll have a business."

## ANTI-PIRACY LEGISLATION MOVES FORWARD

In Washington, efforts to stop operations such as Microtronics looked as though they might run off the track toward early consideration last week.

Now, the anti-piracy bill is apparently back on the rails.

The bill, of vital importance to the pirate-beleaguered pay TV users of MDS, would set civil and criminal penalties for violating Section 605 of the Communications Act, which forbids unauthorized signal interception.

Things were chugging along toward a hearing scheduled for 11/12 when the Sony Betamax decision came down from San Francisco in late October.

That ruling by the U.S. Court of Appeals for the Ninth Circuit held makers—and technically even users—of home videorecorders liable for copyright payments when recording movies and other shows off TV.

The decision, a victory for program producers, will be appealed, but it stirred concern at the Motion Picture Assn. of America about a possible "Betamax amendment" to allow a home-use exemption to the anti-piracy bill.

The hearing was postponed, but the National Assn. of MDS Service Cos., fearing the bill could become hostage to a final outcome of the Betamax case, mounted a rescue mission to Capitol Hill.

NAMSCO operatives met with bill cosponsors Rep. Timothy Wirth (D-CO) and Rep. Henry Waxman (D-CA), pointing out that while NAMSCO didn't downplay MPAA's concern, it didn't seem to belong with pay TV legislation.

A key staffer later said Betamax was a separate matter that probably should go before the House Judiciary Committee, and that there was "no way" it would be included in the anti-piracy bill (H.R. 4727).

After that the Communications Subcommittee, chaired by Wirth, re-scheduled the hearing for 11/17.

A session to mark up (put in final recommended form) the bill and send it to the Full Commerce Committee is expected to follow soon afterward.

The bill provides for criminal penalties up to \$25,000 and a year in prison for the first offense, plus damages from civil suit up to \$50,000.

The Communications Subcommittee's majority staff also submitted its report last week on competition in the telecommunications industry.

The report found that although new technologies, including MDS, had emerged and made some mark, "there is still unequivocal dominance by broadcast television over other video technologies."

(continued on next page)

Cable television has a dirty little secret. Why pay for what you can see for free?

## Video pirates

By Jonathan Greenberg

**E**VEN THE WELL-OFF LIKE getting something for nothing, and well-to-do dentist Sam Williams is no exception. Williams installed his own microwave antenna on top of his St. Louis home to pick

up Showtime, a pay television service that costs subscribers \$19 a month in his area, free of charge. Williams, whose name has been changed to protect his small act of piracy, made his antenna by soldering a coffee can filled with some simple circuitry into a sawed-off funnel.

Sam's rooftop, however, is a drop in the bucket. Experts estimate that some 10% of the 26 million U.S. homes currently receiving cable or pay television are freeloading (*see box*). Pirates hijack signals with homemade antennas that can be jerry-built with everything from aluminum snow sleds to barbecue grills. They buy bootlegged converters and bypass in-home decoder boxes, and they climb telephone poles to knock out security "traps."

Most signal thieves are probably otherwise law-abiding viewers who don't like to pay up to \$30 a month for their home entertainment. Some are also electronics buffs. For the latter, getting cable television for free is as much fun as picking up Timbuktu on a ham radio. In January *Radio Electronics* published a story about wiring up a cable decoder, and its newsstand sales jumped by 40%, to 93,000.

Like most crime, cable piracy is more widespread in urban areas. Industry insiders say that unauthorized taps account for as much as 25% of all viewing in New York City neighbor-

### Beating the system

Video addicts willing to invest \$5,000 in a satellite-receiving station get access to virtually unlimited programming. Low-budget thievery is possible too. The simplest piracy technique involves buying an antenna in areas where pay television is distributed through multipoint distribution systems. Franchisees in these MDS areas install antennas in subscribers' homes, transmit the signal and collect monthly service fees. Local electronics stores, however, often sell the same antenna for \$150 or so—less than the cost of an installation and six months' service.

In Phoenix, for example, now-famous Pirate Electronics sold over \$1 million worth of illegal cable antennas before local MDS operators forced it to close. Now, an industry executive estimates that one out of six viewers there owns his own antenna. But that might be conservative. "Half the homes in my neighborhood are getting cable, and I'm the only fool who's paying for it," says one local resident.

Not surprisingly, MDS systems aren't attracting large-scale investor attention. Cable franchise operators, as opposed to MDS operators, now have two basic approaches to security: They filter out services such as HBO and Showtime with "traps," or they scramble signals, providing descrambler boxes for a monthly fee.

Trapping is the more popular control method—but not always the most effective. Franchise operators send all signals over the same cable and then place 4-inch cylindrical traps on telephone poles out-

side subscribers' homes to filter out premium service. Such so-called negative security costs roughly \$15 per household per tap for parts and labor. Each premium service requires its own trap, and systems offering three or four add-ons typically color-code their traps. That means utility poles can look like Christmas trees.

For subscribers who aren't scared of heights, it can also mean a free gift is easy to reach. Just climb the pole, remove the trap and presto: HBO is on your screen, but not on your bill. System managers say that aggravated homeowners who have had trouble removing the traps have attacked them with drills, hammers and even blowtorches. In some areas there are organized thieves to do the pole-climbing. The pros often provide replacement "dummy" traps that fool audit teams who do spot checks for piracy.

Then there are descramblers. These in-home boxes,

roughly the size of a cigar box, are prevalent in urban areas where there are no telephone poles. Such suppliers as Oak Industries and Scientific-Atlanta provide this equipment at a cost of about \$70 per unit. Even with tight distribution, however, there are leaks, and bootleg black boxes trade for as much as \$100. Not a bad price, considering that HBO now costs \$15 a month in some markets. Cable executives report other problems, too: Subscribers with a flair for electronics can override the scrambling by fine-tuning spare television sets or rewiring basic cable units to get extra service for free.



Microwave antenna on sale in New York. Prestol Free HBO.

**"This thing is like an information war, with lots of room to escalate. How can the cable industry constantly keep ahead of people's ability to steal, especially as the value of the services increase?"**

hoods where building superintendents "sell" cable hookups. High mobility brings added difficulties. If new occupants move into a home with a live cable tap and don't notify the company, they can often receive service without charge. Then there's the problem of cable gear left in vacant homes or apartments: It often disappears quickly.

Cable operators are ambivalent about small-time living room larceny. "We pursue organized thieves aggressively, but if it's just an individual customer stealing, we slap him on the wrist," says Dave MacDonald, group director for cable at the New York Times Co., which runs cable services in southern New Jersey serving 80,000 customers. "What we really want is not to prosecute, but to get them to pay for service," explains John Lockton, president of Warner Amex Cable.

However, certain abuses have the industry worried. In some areas, pole-climbing specialists such as telephone repairmen and former cable system employees travel door-to-door selling "lifetime free service," for between \$50 and \$150. Such offenders can be prosecuted under section 605 of the Communications Act, which prohibits the theft of a cable signal. "It's kind of like dope—they want to get the supplier," says one communications attorney. The penalty is usually a fine, and court cases are being filed at the rate of one every two weeks. In addition, HBO won an important battle last month against a manufacturer of private antennas in New York, a decision that could have broad anti-theft implications.

Many cable executives believe that

new technology, through the use of two-way addressable converters, will lessen the problem of piracy. Such units, similar to those Warner now uses at its Quabe installation in Columbus, allow the operator periodically to monitor system use. Instead of sending linemen to find freeloaders, a control center detects them directly.

The problem is that such addressable converters don't come cheap. They cost roughly twice as much as the \$60 or \$70 that conventional descramblers sell for. And, like every electronic security system ever invented, they still can be beaten by a smart thief. System operators, meanwhile, are slow to lay out money for today's antipiracy systems. "Everyone is anxiously waiting for better addressable technology," says Jim Cottingham, vice president in charge of the 1.2 million Time Inc. cable subscribers. "This thing is like an information war, with lots of room to escalate," adds Cliff Roth, a writer for *Video* magazine. "How can the cable industry constantly keep ahead of people's ability to steal its information, especially as the value of the services increases?"

By and large, cable operators prefer not to talk about the problem. Why publicize the possibilities? In an industry growing by about 20% a year, who cares if a little cash slips between the cracks? And the day may be coming when cable carries lots of advertising. When that day comes, even the non-paying cableviewer becomes attractive to advertisers and thus a source of income. Still, the future is full of unknowns for this lusty young industry, and piracy is one of those.



**Cable operator Dave MacDonald with neutralized cable "traps"  
Homeowners attacked the devices with drills, hammers and blowtorches.**

January 11, 1982

REPORT TO:STERLING RECREATION ORGANIZATION  
ON PURCHASED 2 GHZ RECEIVING EQUIPMENT TESTING AND CONCLUSIONSGENERAL

A 2 GHz microwave receiving equipment was tested by HARTECH, INC. for reception of Multipoint Distribution Service (MDS) common carrier (2150-2156 MHz) and 2300-2450 MHz Amateur Radio band signals.

CONCLUSIONS

Tests performed with input signals at the MDS and Amateur Radio frequencies indicated:

- (1) The receiving system tuned the MDS signal in on a standard television set from Channel 2 to Channel 6 by using the tuning control on the unit. This was proven in laboratory tests and by watching "off-the-air" MDS.
- (2) In laboratory tests, HARTECH was able to tune in signals between 2300 and 2334 MHz for output frequencies between Channels 2 and 6. No reception was possible from 2334 MHz to 2450 MHz for output on a standard TV set. Therefore only 34 MHz of the total 150 MHz Amateur Band could be tuned in.
- (3) The receiving equipment [local oscillator] tuning range was measured to be 40 MHz (from 2206-2246 MHz) so that the total 150 MHz wide amateur radio band could not be tuned in on any single TV channel, a reasonable design requirement of an amateur radio receiver for reception in this band.

HARTECH concludes that the 2 GHz (2000 MHz) microwave receiving equipment was designed for reception of the MDS band for output on a standard television set on channels 2 through 6.

UNIT IDENTIFICATION

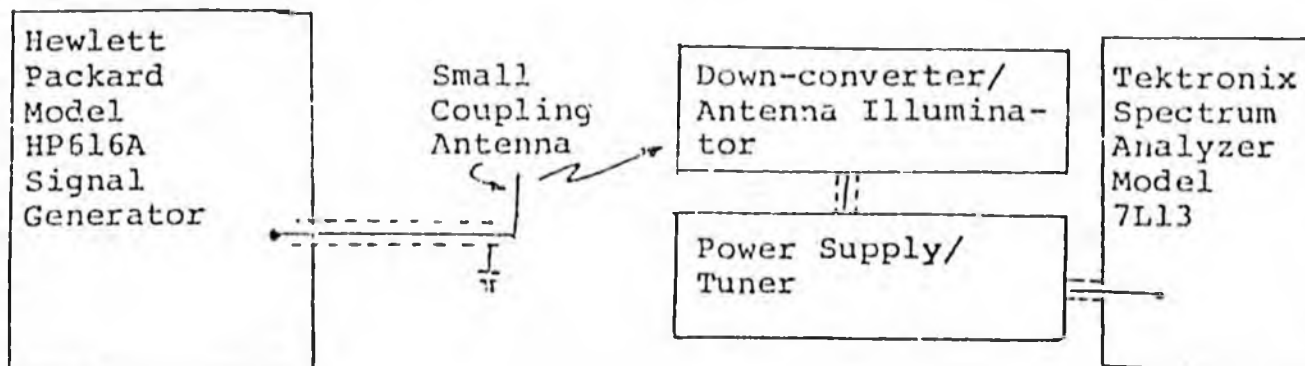
The unit tested had the following components and markings:

| Components                         | Markings   |
|------------------------------------|--|
| Power Supply/Tuner                 | Jan. 6, 1982<br>Case #81-130<br>Western Techtronics<br>Colo. Spgs.<br>D.M.W. |
| Down-converter/Antenna-Illuminator |  |
| Parabolic Antenna                  |  |

HARTECH added the initials J.W.H. In addition to the above components, there were two cables supplied, one which connected the down-converter/antenna-illuminator to the power supply/tuner, and the other to connect the power supply/tuner to a television set. It should be noted that the cable to the TV set was terminated in a transformer from 75 ohms to a standard 300 ohm "twinlead" to connect to the antenna input.

TESTING SETUP

Because the down-converter and the antenna-illuminator (primary feed to receive the focused signal from the parabolic reflector) were fabricated into a sealed fiberglass tube, no direct connection could be made between a laboratory signal generator and the receiver input. Coupling from the signal generator was accomplished by using a small antenna at the signal generator. The test setup is shown below.



The spectrum analyzer frequency counter was calibrated in November, 1981. Quantitative amplitude data could not be taken because direct connection could not be made to the down-converter. A strong signal could be obtained on the HP signal generator, up to zero dBm. A received signal from a typical MDS station is -50 dBm. The amplitude was varied to extremes in all testing.

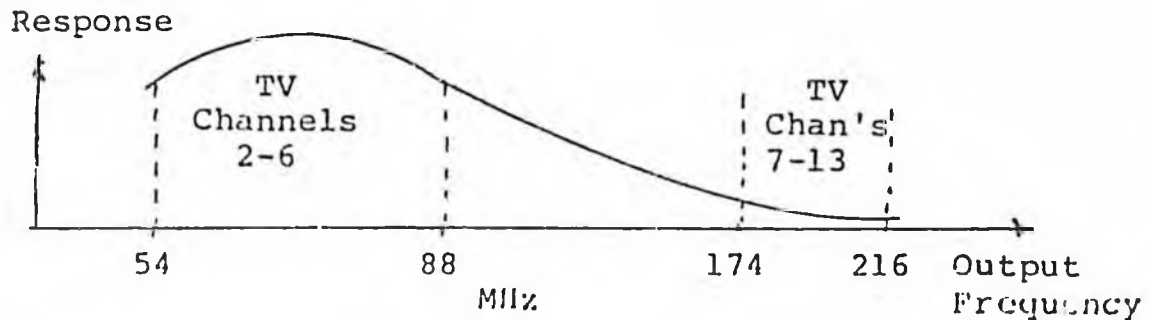
Before making conversion tests, the local oscillator frequency range was checked by using the calibrated frequency meter in the spectrum analyzer. This was done by checking the radiation from the down-converter detected at the fiberglass tube enclosure. The oscillator tuned from 2206 to 2246 MHz.

With the signal generator tuned to 2150 MHz, the MDS frequency, the output of the down-converter (the resulting frequency from the mixing of the input frequency and the local oscillator) could be tuned from 56 to 96 MHz. These frequencies cover Channels 2 to 6 (see Appendix) on a standard television set.

With the signal generator tuned to 2300 MHz, the bottom of the amateur radio band, the output could be seen from 54 to 94 MHz as the tuning control was varied. The down-converter could convert a 2300 MHz signal to any channel between 2 and 6. As the signal generator frequency was raised to 2334 MHz, the converter output was at the top of Channel 6, 88 MHz. As the frequency of the signal generator was raised toward 2450 MHz, the top of the band, no output was detected.

Theoretically, amateur radio signals between 2380 and 2450 MHz could be tuned in on Channels 7 to 13, 174 to 214 MHz; however,

the output could not be detected. This was probably caused by tuned circuits at the output of the down-converter (usually tuned to channels 3 through 5). The response "roll-off" is usually quite great at the Channel 7 frequency of 174 MHz. The figure below shows a typical response curve at the output of a down-converter.



The conclusion reached in laboratory testing is that the receiving system will receive MDS signals and the bottom 34 MHz of the 2300 to 2450 MHz Amateur Radio band with output on channels 2 to 6 of a standard television set.

OFF-THE-AIR TESTS

The receiving equipment was connected as specified in the instruction sheet and an excellent MDS signal was picked up which could be tuned in on channels 2 to 6 on a standard television receiver.

TESTING PERFORMED AND REPORT WRITTEN BY:

*James W. Hart*  
JAMES W. HART, P.E.



## SELECTED EXPERIENCE

### MICROWAVE AND TWO-WAY RADIO SYSTEMS

1. 26 hops of multichannel common carrier microwave within one state in the 6 GHz common carrier band. Included completed technical portions and exhibits as required on the FCC Form 401's.
2. Upgraded a problem CATV hop in the 6 GHz band for a client using improved antenna characteristics and a GaAs FET amplifier.
3. The design, FCC forms, and supervision of a 12 GHz commercial microwave system used by the banking industry.
4. The design, FCC documentation preparation, and installation supervision of a video television security system in a large company.
5. Designed and documented (FCC Forms 401 and 402) numerous common carrier and commercial microwave systems in the 2, 6, & 12 GHz bands.
6. Feasibility study and design of a 12 hop 960 MHz system for security purposes, voice and data channels for a state department of corrections including economic/breakeven analysis utilizing LEAA matching funds.
7. Feasibility study and design of a 12 GHz microwave system for a hospital to communicate with outreach clinics including B/W and color TV, voice channels, and EMS data communications. The job included feasibility, design, and detailed specifications for procurement.
8. 150 MHz two-way radio interference study for a county which had five repeaters colocated. The study showed calculations and recommended equipments required to minimize the interference being experienced.
9. A Translator feasibility study for a resort area to import major TV stations from an urban community 100 miles away. The study included a survey, design generation, and cost estimate.
10. Measurements and a recommendation report at potential microwave radio sites within a half mile of a 1 megawatt radar. This was performed for a major common carrier company.
11. Designed and performed trouble-shooting on a coaxial TV security system at a high level nuclear plant. Studied feasibility and reliability of a microwave radio replacement system.
12. Design and FCC documentation, Form 346's, for a TV multi-translator system for a western state county. This included coverage patterns for some 13 translators.
13. Aided in the analysis of a military data communications system to solve high error rates in the communications link for transmitting remote batch data at 4800 and 9600 baud.
14. Generated requirements and wrote specifications for data relaying radio equipments for a power company used for 300 sensor points.

APPENDIX

TELEVISION CHANNELS

| TELEVISION CHANNEL NUMBER | CHANNEL FREQUENCY (MHZ) | VIDEO CARRIER FREQUENCY |
|---------------------------|-------------------------|-------------------------|
| 2                         | 54-60                   | 55.25 MHZ               |
| 3                         | 60-66                   | 61.25 MHZ               |
| 4                         | 66-72                   | 67.25 MHZ               |
| 5                         | 76-82                   | 77.25 MHZ               |
| 6                         | 82-88                   | 83.25 MHZ               |
| 7                         | 174-180                 | 175.25 MHZ              |
| 8                         | 180-186                 | 181.25 MHZ              |
| 9                         | 186-192                 | 187.25 MHZ              |
| 10                        | 192-198                 | 193.25 MHZ              |
| 11                        | 198-204                 | 199.25 MHZ              |
| 12                        | 204-210                 | 205.25 MHZ              |
| 13                        | 210-216                 | 211.25 MHZ              |
| 14                        | 470-476                 | 471.25 MHZ              |
| 15                        | 476-482                 | 477.25 MHZ              |

[NOTE: (1) FREQUENCY BREAK BETWEEN CHANNELS 6 AND 7 WHERE THE BROADCAST FM BAND, AND TWO-WAY FREQUENCIES FOR MANY SERVICES ARE LOCATED: AND (2) FREQUENCY BREAK BETWEEN CHANNELS 13 AND 14 WHERE MANY TWO-WAY RADIO & GOVERNMENT RADIO FREQUENCIES ARE LOCATED.]

JAMES W. HART, P.E.

- education      MBA, University of Chicago, 1963  
                  BSEE, M.I.T., Cambridge, MA, 1951
- licenses, societies, patents & teaching      Registered Professional Engineer. Member of the American Consulting Engineers Council. First Class FCC Radio Telephony and Amateur Radio Licenses. Senior Member of IEEE; Member, Denver Section Executive Committee; IEEE representative to and Director of the Colorado Engineering Council ('79&'80); Past Chairperson Denver APS Section. Chairman of the Judging Committee of the Colorado State Science Fair ('79&'80) and State Representative to the International Science and Engineering Fair ('79). Holder of two U.S. Patents. Taught accounting at local community college (State Credential '74).
- business experience 11-71 to present      HARTECH, INC., Littleton, CO. President. Consulting Engineering Company. In charge of: Feasibility Studies - Engineering/Economics Options, Microwave and Two-Way Radio System Planning, Antenna and Waveguide Design and Prototypes, and Government Policy Studies. Clients are the Federal Government, Local and County Governments, Universities, CATV Companies, Hospitals, a Radio/TV Network, Manufacturing Companies, and Other Consulting Companies. From 2-74 to 2-76, Hart was on leave of absence from HARTECH working on OTP policy research within the U.S. Government. His technical and business analyses impacted U.S. policy in the areas of CATV, Translators, VANS, Common Carriers, Data Transmission, and Satellite Carriers.
- 12-69 to 10-71      MSC, Golden, CO. Vice President. Successfully performed microwave system planning for Specialized Common Carrier and CATV clients.
- 10-66 to 12-69      ANDREW CORPORATION, Orland Park, IL. Director of Projects and Administration. Directed a \$1.2 million budget for the development of profitable antenna and cable products. Was also responsible for Corporate Q.C., Product Service, Proposal Preparation, and Technical Publications. Served as Secretary of the New Products Committee.
- 7-61 to 10-66      DYNASCAN CORPORATION, Chicago, IL. General Manager of the MARK PRODUCTS DIVISION ('65&'66). Successfully directed all design, production, and marketing activities of a highly profitable line of antenna and communications products. Generated SOP's for new product selection, development, pre-production processes while Director of Engineering of the B&K DIVISION ('64). Manager of MARK microwave products ('63).
- 7-51 to 6-61      MOTOROLA, INC., Chicago, IL. In charge of design and administration of many military communications, radar and ECM equipment programs. On leave of absence from Motorola from 1954-6 to serve as a radar and ECM instructor in the Army.

## LIST OF TELECOMMUNICATIONS POLICY WORK PERFORMED BY J.W. HART, P.E.

### 1.0 Studies Performed at HARTECH, INC:

- a. "Marketing Studies - An Economic Analysis of MDS Transmission; and State of the Art of Millimeter Microwave Transmission", for a major national broadcasting network, July, 1980.
- b. "Report - Direct Broadcast Satellites, Service, Economic, and Marketing Factors" prepared with Browne, Bortz, and Coddington, for the National Association of Broadcasters, January, 1981.
- c. "Broadband Communications in Rural Areas", Denver Research Institute (DRI), 11-73, under OTP Contract HARTECH performed all microwave technical and economic analyses.
- d. "Microwave Transmission Handbook", 12-77. Made primary input contributions on DoC Contract.
- e. "Utilization of Electronic Message Systems (EMS) Outside and Within the U.S. Postal System", 5-76, OT/DoC Contract.
- f. "Wrote Technology Section of "Design Issues for Demonstration of Rural Special Delivery Projects Incorporating Telecommunications Technologies" under subcontract to DRI, 6-78. NSF Grant.
- g. Made Technical Contributions to "Satellite Based Delivery of Continuing Education and Training Programs in Five User Communities", 3-78, DRI. Performed under NIE Contract.
- h. Continuation of U.S.P.S. study program on EMS in paragraph (e) above expanding the competition in the public domain, 8-78. NTIA/DoC Contract.

### 2.0 Studies performed while employed by OT/PRD (DoC) Boulder, CO (2-74 to 2-76) [PRE = Policy Research Estimate]:

- a. "An Initial Look at VANS Breakeven Data", PRE, 6-74.
- b. "A Survey of Non-Tariff Trade Barriers for Microwave and Two-Way Radio Equipment", PRE, 1-75.
- c. "Value Added Network Services, Marketing Characteristics", PRE, 5-7.
- d. "Comparison of Long Haul Microwave and Cable Facility Costs of A.T.&T. Long Lines", PRE, 8-75.
- e. "Urban CATV Distribution Plant - Part I: Current Cost and Technology, PRE (Coauthored by Hart, Gray, Miller, & Ax), 4-76. Later Published as an OT Report.
- f. "A.T.&T. Microwave and Cable Designations, PRE (Coauthored by Hart and Bolter), 6-74.

## SELECTED EXPERIENCE

### 1. MICROWAVE ANTENNAS

- 1.1 10 foot Cassagrain dish design for 4 GHz Earth Station.
- 1.2 Scalar Feed Design and Prototype for illuminating a 4/6 GHz Earth Station with equal E&H plane patterns over the frequency range. Design of specially shaped subreflector for improved antenna efficiency of Cassagrain type antenna.
- 1.3 Dual polarized, wide bandwidth feedhorn designs and prototypes including testing per the table below:

| <u>Frequency (GHz)</u> | <u>Maximum VSWR at Each Port</u> | <u>Minimum Iso-lation - Ports</u> | <u>Waveguide or Input Flange</u> |
|------------------------|----------------------------------|-----------------------------------|----------------------------------|
| 1.700-2.100            | 1.07                             | 33 Db                             | 7/8" EIA                         |
| 1.900-2.300            | 1.07                             | 33 Db                             | 7/8" EIA                         |
| 5.925-6.425            | 1.05                             | 35 Db                             | WR-137                           |
| 7.125-7.750            | 1.05                             | 35 Db                             | WR-137                           |
| 12.20-13.20            | 1.07                             | 35 Db                             | WR-75                            |

- 1.4 Single polarized 5.925-6.425 GHz feed horn design and prototype for parabolic dishes with maximum VSWR of 1.02.
- 1.5 12/14 GHz Earth Station feed horn design and prototype used as mobile ground station for CTS satellite. Transmit was 14.0 - 14.5 GHz, 500 watts, and maximum VSWR of 1.20; receive port was 11.7-12.2 GHz with a maximum VSWR of 1.10.

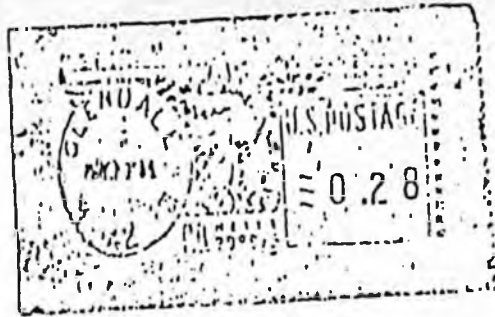
### 2. WAVEGUIDE COMPONENTS

- 2.1 Circular waveguide designs including waveguide, single and dual polarized launcher sections, brackets, connectors/flanges, etc. for WC166 and WC109.
- 2.2  $TM_{01}$  mode filter for use in oversized guide: used in  $TE_{11}$  mode.  $TM_{01}$  filter was minimum of 25 db with an insertion loss of 0.5 db maximum in  $TE_{11}$  mode. Prototypes were constructed and tested.
- 2.3 12.2-13.2 GHz high mode rejection  $TE_{11}$  taper design from 1.09" to 0.75" circular waveguide. Design was for 65 Db RML (reconverted mode level).

HARTECH HAS HP AND ALFRED SWEEP EQUIPMENT FOR THE DESIGN AND TESTING OF MICROWAVE COMPONENTS AND PARTIAL ANECHOIC CHAMBERS FOR TESTING TO 1700 MHZ WITH A MAXIMUM REFLECTION OF -40 DB.



PIRATE ELECTRONICS INC  
P.O. Box 811, Glendale, Arizona 85311



Harold Whills  
c/o The Toker's Den  
417 "D" Street  
Anchorage, Alaska 99501

Ace  
EX. BB

May

Harold;

Here's information regarding our phone conversation. To begin, as you can see by the enclosed card, I'm now President of Pirate Electronics. We manufacture an antenna which receives all the microwaves transmitted between 1.8 and 2.4 GigaHertz. You may know that Visions broadcasts at about 2.15 (or thereabouts) so this antenna, pointed toward the Visions broadcast antenna, will scoop the signal out of the air.

Included in the antenna body is a "down converter" which reduces the microwave to a frequency which your television can "see." There is also a fine tuning box, which will allow the user to get maximum clarity on his screen.

These are made with the idea that the customer can install the antenna, by climbing up on his roof, pointing it toward the broadcast antenna, and tightening the U bolt, running the enclosed coaxial cable to the fine tuning box, attaching the fine tuning box to the television set, and everything is go. This is the theory. In reality, we've found that if they have the antenna installed, they give us much less problems, because the great unwashed public is generally too stupid to do it, even with instructions. But, remember this, I'll refer to it later on (the part about installing, not how stupid the public is.

The legal end of this is: We make the Visions people crazy, because we can sell the antenna, and get their signal, but our subscribers (customers) don't have to pay the monthly charge (obviously).

Now, the cost of this antenna is explained in the enclosed price sheet, going from \$275. for buying 2-6, down to \$150. for buying in lots of 100 and up. The suggested retail here is \$550. but there, I expect you could get them out for \$400. or more.

If you were to install them, you could add another \$50. - \$100. to your profit structure, with some deduction for the labor involved. I don't expect that you are going to do the install yourself. Somehow, I can't quite picture your little, fat body on somebody's roof.

As you can see by the price structure, the more you buy, the higher your profit structure goes.

We're looking for someone to buy and install in both Anchorage and in Fairbanks. We've had some success with mail order there, but if your purchases were strong enough, you could have both cities, and really turn some cash while the weather is good.

My suggestion is that you get a couple of them, try them out on your own set (I'll send them C.O.D.), and if you can see the benefits, go for a little larger order.

Back to the legal: we are now being sued civilly by the local Visions group (here it's called Home Box Office, or HBO), but I don't think you will have to suffer that injustice, especially if we win. As I said earlier, they take a dim view of what we're doing, but there is no CRIMINAL wrongdoing, and we've got the word of an Arizona Superior Court Judge (which will carry lotsa weight in Alaska) to guarantee that we're doing nothing wrong.

There seems to be a question about the "wrong" in installing the antenna, though. According to a United States Code (USC 47 605) the installer may be aiding and abetting. That means that you should hire an electronically oriented kid to actually do the installing, who can vanish if there is a problem, but pay him well enough so that it's worth his while to split, or to lay low.

Now, you've got an overview of everything, and based on this and our conversation, you are at least better informed. Disregard the bullshit in the enclosed letter, it's just a cover for this. Also, this letter is very damaging for us, in our civil suit, so after you've digested the contents, get rid of it.

You can call me (collect) at (602) 247-9700 anytime during my working day (from 7:45 A.M. to about 4:30 P.M. if I can do anything to help you make a decision.

We expect that there is a market for 3 to 5 thousand of these in Anchorage, and probably 1 to 3 thousand in Fairbanks. I'd like to work with you, and if you decided that you wanted to move, I'd come there and help you get off the ground. If you elect not to go, I expect I'll have to come there anyway, to find someone.

Keep Susan under control as much as possible. I'll be in touch.

John

Private Electronics  
Thunderbird bank

5704 W. Glen  
Glen Dale, Ill.

01-144/4-5

our bank office

Call their bank

602-242-1111

Ace

EX. CC

Bill Norton of  
General

**PIRATE ELECTRONICS .**  
MANUFACTURERS & DISTRIBUTORS  
MICROWAVE ANTENNAS

Dear Store Owner:

Now Available for Your Customers!  
No Competition!

We are Mid-South Distributors for Pirate TV, manufacturers of micro-wave receiving equipment for personal home use (ruled legal). Perhaps you have seen us on NBC's Today Show (mid-may 1980) or heard of us in one of many other periodicals such as Newsweek, etc.

Our system for local use includes antenna and down converter, 75' coax and 1.8 to 2.4 GHz tuner complete with instructions and needed accessories for simple self-installation (need line of sight to broadcast tower 20-40 miles depending on strength of signal). Retail \$350.00 - 6 months guarantee.

Our Earth Station picks up from 11 satellites above the earth and gives the customer a fantastic crystal-clear world of entertainment no matter where they may live (need line of sight to Southern California).

Fantastic for rural or remote locations where little or no reception or cable is available. Base price \$9,995.00 plus travel and custom installation.

To get you acquainted with this lucrative market, we'll ship you one local system immediately to play with and give you a \$75.00 Dealer price break. Then you may purchase quantities of 10 at \$225.00 and a \$50.00 rebate credit making your initial antenna \$225.00 also. (We'll pay freight on first antenna.)

Order immediately to become a Dealer in your area. You will be briefed completely on how to market this product (word of mouth is sufficient for substantial sales).

Include your name and both work and home phone numbers please.

Note: Enclosed sample ad and all advertising describes product and its capabilities only.  
More details upon order.

Send Cashier's Check or Money Order for \$275 to:

Sincerely,  
PIRATE TV  
Fontana Center  
7955 East 50th Street, 1085  
Tulsa, Oklahoma 74145  
(918) 665-3325

EXH  
C

im. Blake  
n o.

EVIDIT O PAGE 1



T.V. ANTENNA



**HENRI SALES COMPANY**  
WHOLESALE DISTRIBUTOR

P O Box 35293  
Phoenix, AZ 85069



MICROWAVE ANTENNAS • EARTH STATIONS • ACCESSORIES

PHONE : [ 602 ] 866-9243

GENTLEMEN:

WE ARE MANUFACTURER'S DISTRIBUTORS OF THE FINEST MICROWAVE ANTENNA AVAILABLE IN THE MARKET TODAY. IT IS CAPABLE OF RECEIVING MICROBAND TRANSMITTED SIGNALS WITH A CLARITY AND RANGE FAR SUPERIOR TO MOST OTHER ANTENNAS .

OUR PRODUCT IS COMPLETE WITH ALL HARDWARE AND ACCESSORIES NEEDED TO INSTALL IT.

THE ANTENNA IS PACKAGED AND CONTAINS AN INSTALLATION INSTRUCTION SHEET.

WE WILL SHIP YOU A SAMPLE UNIT UPON REQUEST [PRE-PAID BY U.P.S.].

ENCLOSED WITH THIS LETTER YOU WILL FIND A PRICE SHEET OF OUR PRODUCTS.

THIS A NEW AND VERY LUCRATIVE MARKET WITH A LOT OF MONEY TO BE MADE !!

GET IN ON THE GROUND FLOOR OPPERTUNITY BY ORDERING YOUR SAMPLE ANTENNA TODAY.

A LIST OF STATES THIS ANTENNA WORKS IN IS INCLUDED. IF YOU ARE INTERESTED IN

OUR PRODUCT, PLEASE CONTACT US AS SOON AS POSSIBLE.

SINCERELY,

HENRI SALES CO.  
WHOLESALE DIST.

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EXHIBIT F PAGE

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DRW. 940

AP612940-2x42

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Proofs to Advertiser

5330 Captains PL

Agoura

MONIQUE

Wednesday, May 7, 1980

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Two different systems whereby you can enjoy HOME ENTERTAINMENT without those monthly service charges or an initial deposit and installation fee. We now have movies for the movie buff and sports for the sports fan. Enjoy the PRIDE OF OWNERSHIP of a fully guaranteed system. All of this for as little as \$350 plus tax. Isn't it about time YOU got your television ON to this better way to have HOME ENTERTAINMENT!

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offer; 248-2020, 248-3051



# Pirate

## Microwave Antenna, Inc.

Susan Randall 276-5148  
Myron Ace 243-3722  
Harold Wills 276-5148

611 RASPBERRY ROAD  
ANCHORAGE, ALASKA 99502

### YANKEE INGENUITY DOES IT AGAIN!

If you own a Television Set or TV Monitor you will want to know more about this product.

We have a new product for use in the American Home that is so advanced and ingenious that we have been stopped from advertising the capabilities of this unbelievable device.

Big Corporations have tried to prevent us from bringing this product to you THE AMERICAN PUBLIC.

HOWEVER... in the tradition of the "FREE ENTERPRISE SYSTEM," it has been ruled in court that this product is Legal to Manufacture and sell.

PIRATE MICROWAVE ANTENNA, INC.

Ph. 276-9224

# You Can Watch Those Secret TV Channels

—a complete MDS receiving system

Good-bye, commercials!

Jim Barber K6JB  
Rt. 1, 22518-97th Ave. North  
Rogers MN 55374

Jevon Lieberg K8FQA  
Rt. 1, 12285 Generous Place  
Rogers MN 55374

Did you know that there are two secret TV channels? Nobody advertises them, and you can't even buy a TV set that has these channels.

How long have you been complaining about all the commercials while watching your favorite program

or a late night movie? Well, here is the answer to your prayers—these channels don't even have commercials!

The programming on these channels consists of movies (P-, PG-, and R-rated), nightclub acts, and sporting events. They

are allocated to Multipoint Distribution Service (MDS). The existence of these channels was written up in 73 last November.

If you have heard of MDS via other amateurs, friends, or magazine articles, your curiosity has probably urged you to be on the lookout for a receive system you could build yourself. If this is true, read on!

## The MDS Receive System

In this article we will give complete construction details on how to build a cheap and simple MDS receive system. This system will include the antenna, mixer, local oscillator, i-f amplifier, power supply, and complete mechanical layout.

The frequencies of the two microwave MDS video channels are 2154.75 MHz for channel 1 and 2160 MHz for channel 2. The audio is 4.5 MHz below the video. For more detailed information about microwave TV, read *A Vidiot's Guide to Microwave TV* by Paul Shuch.

Locating the MDS Transmitter

If you have seen a

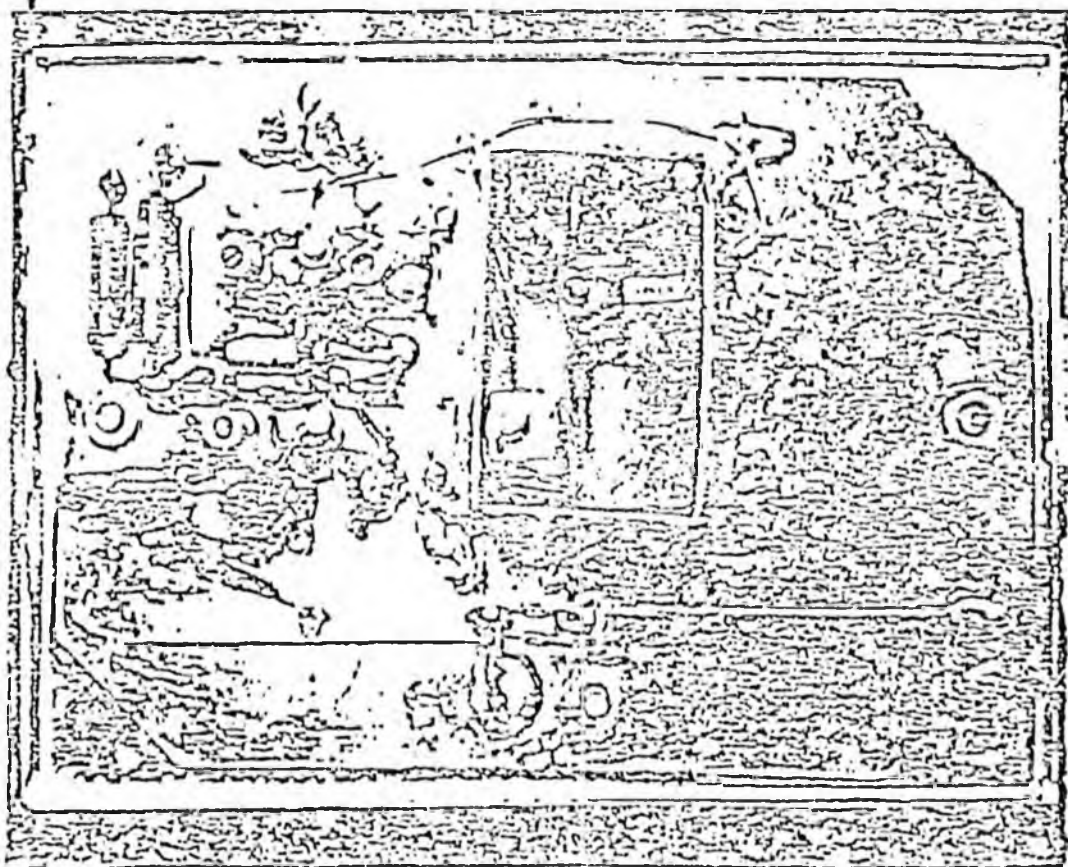


Photo A. This is a close-up of the downconverter showing i-f amplifier, mixer, and the local oscillator in its brass box with the cover removed. The piece of angle aluminum used to mount the box to the mast can also be seen.

# Sells Devices to Catch Pay-TV Airwave Signals

By RICHARD WEST  
Times Staff Writer

MacKenzie Davis and John Sampson are entrepreneurs as bold and swashbuckling as the names of their respective companies—Pirate TV and Pirate Electronics.

They make no bones about their businesses: Davis' company sells in Southern California devices that Sampson's concern manufactures in Phoenix for the pirating of pay-TV airwave signals.

There are many of this kind of buccaneer doing business in the Southland these days, but all except Davis operate covertly. Davis is the first to advertise the product that pay-TV companies say is illegal.

In last Sunday's Times, Davis ran an ad that included the name of his company, a picture of a bearded freebooter with eyepatch and telephone numbers in Los Angeles and Orange counties for ordering the devices.

"They come with six-month warranties," Davis said Wednesday. "That's probably 90 days longer than the warranties on most TV sets."

Sampson, a UCLA-educated historian and former teacher at Santa Monica City College, boasted in a telephone interview that his 10-month-old company is the largest in its field, selling the pirating devices all over the nation.

"We operate 48 hours a day and eight days a week," the 44-year-old manufacturer said, using the exaggeration to emphasize the demand for his product.

According to the latest Federal Communications Commission figures, Sampson said, there are 86 licensed

pay-TV signal broadcast stations in as many cities, most of them in the Midwest and the East, and permits have been issued for the construction of an additional 131 stations.

So the market for his product has barely been tapped, he indicated.

Davis, who has a "mutual agreement" with Sampson to sell the devices in California, Oregon, Washington, Alaska and Hawaii, said he has not had time to expand his operations out of the Southland yet because of the great demand for the devices here.

But he added that he hopes to open a Northern California outlet in Sacramento soon.

Davis said the box-device to bring

## *Suits have been filed to halt sale and manufacture of the boxes.*

in the ON-TV system signal sells for \$450 and the microwave antenna to pull in the Theta Cable's Z Channel signal sells for \$350. The ON-TV device is more complicated, he explained.

Regular customers of ON-TV and Z Channel pay installation charges and monthly fees of about \$20.

ON-TV is suing 16 firms and individuals in Los Angeles—not Pirate TV, though—for selling pirating devices. And Tele-features, another subscription TV company in Phoenix, is suing Pirate Electronics there in an attempt to halt its operations.

Arthur Greenberg, one of the lawyers representing ON-TV in its Los Angeles suit, has described the legal action as one to "stamp out" pirate procedures."

Sampson and Davis scoff at the suits, noting that FCC officials have said that the law is so ambiguous on this type of pirating operation that there is no way now to halt the use of such devices.

"These microwaves are being broadcast into my building, into my office . . . everywhere," Sampson said. "There is no way to shut them off. They penetrate into our very eyes 24 hours a day."

Sampson said these signals are part of the public domain and that there is no law to prevent people from using devices to pick them up.

The section of the Communications Act of 1934, which attorneys for the pay-TV companies contend is being violated by the pirates, was actually written to prevent wiretapping, Sampson said and has nothing to do with airwave signals.

Cable television, where the signal is carried by a line directly to the TV set, is something else, Sampson said.

"We feel that cable is sacred," Sampson said. "People who steal cable signals are stealing a signal that is the result of heavy investment, a lot of physical labor and long-term planning. Cable TV makes a contribution of income to the city where it operates."

But the "signal people," Sampson went on, "don't have that kind of commitment. No big capital investment is required. A station costs

Please Turn to Page 27, Col. 4

## PIRATE OF PAY TV

Continued from Third Page  
maybe \$30,000, more or less."

The "signal people" simply buy their movies, sporting events and other shows from a company like Home Box Office in New York, have them beamed to their areas by satellite and then pay a television station \$90 an hour to broadcast the signal to a multi-distribution station so that it "rains down on all of us."

Companies like his and Davis', Sampson said, are actually "performing a public service" as they are "putting a lid on what the pay-TV stations can charge."

Davis added to this argument: "Guys like us have kept (subscription TV) prices from going higher. They

want a monopoly on the market. We offer them a little competition."

Both Sampson and Davis emphasized that they are going after a particular market for their devices—affluent people who can afford to come up with \$350 to \$450 to buy the apparatus.

"There will probably always be a bigger market for the people who can only afford to dole out \$20 or so a month to the subscription TV companies for their services, they said.

Sampson said that the quality of the devices his company makes is so high—it had only a 3% to 5% failure rate—that other electronic pirates are beginning to pirate his pirate project.

He may have to bring suit, too, to halt this pirating of his equipment.

IT I PAGE 10 of 12

By STAN CROCK

Staff Reporter of THE WALL STREET JOURNAL

NESMITH, S.C.—Most television viewers here have slim pickings. Four of the five "local" stations are about 100 miles away, reception is lousy and the population is too sparse to attract cable television.

But John Wellman and his wife, Chotsie, can tune their seven TV sets to two dozen channels. They can watch everything from cable-TV movies and ice-skating specials to the offerings of commercial stations in Atlanta and San Francisco.

The difference is a big, round, white "dish" nestled on the lawn of the Wellmans' 19th Century plantation home. It is a receiver that plucks TV signals off a satellite orbiting 22,360 miles above the earth.

"We get a real clear picture," says Mr. Wellman, a textile manufacturer and hog raiser. "There's so much to choose from at any time, and on most channels there are no commercials." What's more, it's free.

The Wellmans are one of only a few hundred families in the U.S. who own such private earth stations, which generally are 10 feet to 16 feet in diameter. Their ranks could grow substantially, however, spurred in part by a Federal Communications Commission ruling last year that owners of the dishes don't need federal licenses. "It's a very embryonic industry that's just taking off," asserts John Bacon of Scientific-Atlanta Inc., a leading producer of satellite dishes.

#### Bouncing Around

Dialing with dishes works like this: TV signals from cable networks, religious networks and some commercial TV stations are beamed up to satellites, then bounced down to cable-TV companies that send them through cables to subscribers. But the satellite beams can be picked up anywhere in the country by a receiver aimed at the satellite.

Dishes, like cable TV, offer a wide variety of programs and improved reception. A Lake Parkley, Ky., man says he bought one so he can videotape movies and "complete my Humphrey Bogart series," which currently includes 31 of the actor's 75 films. A Elberton, Wyo., dish owner says he watches "just about all the sports." Laura Dabney of Ft. Mill, S.C., has a friend who is buying a dish, and she says she's eager to view cable-TV coverage of the U.S. House of Representatives. "At times," she says, "that ought to be exciting."

But TV addicts soon learn that a satellite fix is expensive. Just the basic dish runs \$10,000 or more. Neiman-Marcus Inc.'s most recent Christmas catalog offered shoppers one they could aim by remote control to bring in 100 channels—all for just \$36,500.

The buyer of a dish also risks running

afoul of a local landscaping committee or a zoning ordinance when he tries to mount the thing in his backyard. One owner in California found he had to file an environmental-impact statement before he could proceed. It was decided that he could put up the dish if he painted it green to blend with the lawn.

#### Equine Interference

A dish owner near Bozeman, Mont., didn't need government approval, but he had his own quibbles about the aesthetics of his receiver. So he put it in a corral he had behind his house. But that created another problem: His horse ate a cable connected to the dish.

Birds also like to nest in the dishes. And some owners are annoyed by sightseers who stop to gawk.

The biggest hurdle for dish owners, though, may turn out to be legal. While it is perfectly legal to own a dish, it may be illegal to use it to snare cable-TV signals without paying for them.

Right now the legal picture is blurry. "I think it is illegal," declares Wallace Briscoe, executive vice president of Houston-based Gardiner Communications Inc., a Burnup & Sims Inc. subsidiary that makes and sells dishes. "Unauthorized use of the programming is just like you tapping my telephone line," says Mr. Briscoe, who alerts customers to the potential problem.

#### Who Will Know?

Fredric Hopengarten, another dish seller in Lincoln, Mass., disagrees. He likens someone who picks up cable-TV signals to a listener who legally picks up shortwave radio signals. Mr. Hopengarten, who runs Channel One Inc. out of his home, also questions how anyone could prove what programs dish owners are watching.

"Detection is the problem," concedes Linda Davis, a spokeswoman for Time Inc.'s Home Box Office Inc., a pay-cable operation. (Pay cable provides commercial-free programs, such as recent movies, for an extra charge above the monthly cable-TV fee.) Such companies say they can do little about satellite viewers at the moment. The courts haven't ruled on the issues yet, and the FCC is still studying them.

Meantime, most dish owners couldn't pay for the programming even if they wanted to. Although cable-TV companies that distribute some dishes are collecting fees from individuals, pay-cable companies say they are prevented by contract from leasing movies directly to individuals or accepting money from them.

If the problems can be worked out, the outlook for dish sales is bright. "People want entertainment," says Whiston Hunsworth, a telecommunications analyst for Salomon Brothers. In addition, he says, to some people a dish is "viewed as a rather visible status symbol."

Expansion will depend to a large extent on the development of cheaper and smaller dishes. Japan is experimenting with a satellite system using dishes only two or three feet in diameter. Officials say the receivers, which currently are used primarily on a community-wide basis in remote areas, could be mass-produced to sell for as little as \$500. Such small dishes, however, generally can't receive signals from existing sat-

ellites, which aren't powerful enough. The Japanese launched their own satellite to transmit programs especially produced for the experiment.

#### Comsat Proposal

Future growth of satellite reception similarly is expected to depend heavily on the development of direct satellite-to-dish programming that offers dish owners attractive alternatives to their current TV fare.

Communications Satellite Corp. has proposed a satellite-to-home network in the U.S. It would launch a special, more powerful satellite, and subscribers would buy a three-foot-diameter dish, pay monthly fees and get a decoder to unscramble coded satellite signals. The network would carry first-run movies, sports, children's shows and other programs. A plan to market the system with Sears, Roebuck & Co. recently fell through, and Comsat currently is looking for another partner.

Until such systems become a reality, satellite dishes are likely to remain a luxury of the few. Atlanta TV entrepreneur Ted Turner, who has a dish at his home, plans to buy dishes for two Washington, D.C., residents—Daniel Schorr, senior correspondent of Mr. Turner's Cable News Network, and George Watson, who is vice president and managing editor. The newsmen currently can't watch the network at home because there isn't any cable TV in Washington.

Mr. Turner, anxious to have his 24-hour news network seen by political leaders, also has offered to buy dishes for the White House and Congress. The House of Representatives is exploring possible sites to install a receiver. But Peter Vesey, CNN's Washington bureau chief, says Carter administration officials have "a few aesthetic problems" with putting a big round dish on the White House grounds.

EXHIBIT V PAGE 1 OF 11

# Pirate' Films Sell Antenna To Take 'Pay' Out Of Pay TV

FRANCE W. McGARRY (UPI) — The ke no crossbones about "Pirate TV" is the name giving the "pay" out of the game.

Home entertainment those monthly service read the newspaper sements, decorated with it of a grim buccaneer, patch and bandanna ss.

Pirate TV offers is ent to receive pay-TV which usually carry movies and special events, without the aster's knowledge — ss paying the company

TV broadcasters are ing their unhappiness is turn of events by awsuits, but the pirate is booming, say John on and MacKenzie Davis, son's Pirate Electronics ix, Ariz., manufactures ent that is sold in states by Davis' Pirate ra the Los Angeles suburb ra.

see nothing unethical or in their business. subscription TV compa- adcast on a microwave cy "that our antenna pens to receive," noted n, who calls the dispute er of freedom of the s that cuts both ways.

re sending those waves rough all of our bodies nes, right through our ough we can't see them the right equipment. ey're free to broadcast ings right through us, ld be free to do what with them while they're through." argument draws scorn bert Cahill, one of the s of the National

Association of Subscription Television Operators.

"That's like saying it's legal for a burglar to break into my house if I can't protect myself," says Cahill, a vice president of ON-TV of Los Angeles.

"I was administrative assistant to three chairmen of the FCC, I helped write the subscription TV regulation and I know what they're doing is illegal.

"We have over \$40 million invested in this, and these pirates think they can steal our product and get a free ride. What they're doing is illegal and it's immoral and we'll pursue them down every legal avenue, in every community they appear in, until we drive them out of business.

"We believe the federal government will enter the picture and they will be prosecuted, and the people who buy these devices will be the losers."

Meanwhile, Pirate Electronics has grown in two years from a garage workshop to a \$900,000-a-year business with 15 employees and a factory on the east side of Phoenix.

"Business is very, very good," said Davis, who also has offices in New Orleans and Florida and sells equipment elsewhere too. He has a three week backlog of orders for the antennas and converters, "which anyone can install themselves."

The equipments costs about \$400 — a one time cost against the pay TV expense of an installation charge plus a monthly fee of \$15 to \$40.

"There's some 100 cities where this (microwave) system is in use and maybe I'll give it a go in all of them. If I'm going to get sued for selling antennas.



PHOENIX, Arizona — John Sampson's Pirate Electronics manufacture equipment that takes the "pay" out of pay TV by receiving signals without broadcaster's knowledge. Pay TV broadcasters are expressing their unhappiness over this turn of events by filing lawsuits, but business is booming, says Sampson. UPI

I might as well get sued for selling a million of them."

Davis is not being sued. "But there's lots of lawsuits, against about 12 other guys here in L.A. alone, and I think everybody's just waiting to see what the judge's ruling is..."

Sampson's manufacturing company is currently involved in four suits, in California, Oklahoma, Florida and Arizona. He credits a court action with giving the company its buccaneer trademark.

"We were in court in Phoenix a year and a half ago when out of our people remarked that 'Everybody keeps calling us pirates, so we ought to name this company Pirate Electronics.'

They wish those guys would stop pirating the pirate name. adv for July 27 or thereafter

Sampson and Davis maintain that the federal law cited by the pay-TV firms prohibits only wiretapping, not monitoring broadcast signals, and they religiously abstain from aiding those who would tap the line of a cable TV company.

"That cable is sacred," said Sampson. "Those cable companies put a lot of money and work into stringing those lines and it would be wrong to interfere with their use of their own property."

Both argue that by offering

competition to the pay-TV companies, they are "preventing a public service" and "preventing establishment of a monopoly." The broadcast will always have a market among those who rather make low payments than buy the equipment outright for a price, they maintain.

"We've met with the Federal Communications Commission and the Justice Department in Washington and they don't have any interest in us," Davis said. "If we're doing anything wrong, it's not wrong for them to bother with

## Odds And Ends

DETECTIVE: It's not the author who can celebrate the publication of a book with some very characters it portrays, but that's what biographer Linet managed to do in New York. Shelters and Howard DaSilva followed up to help her with her new paperback, "A Hollywood Tragedy." Starring with Alan Ladd as a matinee idol, opposite him in the 1949 film "The Great Gatsby," was screened at the party. Another Linet biography — of Susan Hayward — is due to roll. And who's the Young?


If I can ever solve the mystery." Young apparently murdered his 31-year-old fifth wife, Kim Schmidt, then committed suicide in Oct. 1978 in New York.

AMSTERDAM, Holland (UPI) — Some 1,000 old sailing ships from Holland and around the world are expected to take part in "Sail Amsterdam 1980" from Aug. 16 to Aug. 12. The ceremonies will include races and a val displays and other special events including a mock sea battle between two fleets when, instead of cannon and musket fire, the entire port will be lit by fireworks.

"The name is almost as big an asset now as the good antenna we make. I have a dozen pirate t-shirts in my wardrobe."

Eventually, Davis said, "the FCC or the Supreme Court better sit down and clarify this, but as long as the ambiguity lasts, I'm going to capitalize on it."

A major problem, they complained, is with other dealers who set up shop "as Pirate something or other" and market shoddy equipment, damaging their reputation.



STEAK  
B.U.F.

the eyelid bedskirt and a scattering of  
penny-bright brass  
added twinkling

We  
Lunch  
Lounge  
Dinner

Mount the microwave antenna outside on your existing T.V. antenna pole approx. 18" above or 18" below your regular T.V. antenna. If you do not have an outside antenna, mount a pole on roof with a vent clamp and attach microwave antenna.

2) Attach long coax cable to microwave antenna.

3) Bring microwave coax down and into the house. Attach the microwave coax to the back of the little power supply box that came with the antenna. Attach microwave coax to the top left hole that reads P.V.S. Input.

4) Disconnect regular T.V. antenna wire from the back of T.V. and attach to bottom left hole that reads Ant. Input on the back of the power supply. Do not attach to back of T.V. if you have twin lead coax.

5) Use the 3 ft. coax to attach from the hole on the power supply that reads "To T.V." Put a 75ohm transformer on the end of coax if you have screw terminals on back of T.V. that read V.H.F.

6) Plug the power supply box into 110 volt outlet. Do this last.

7) Make sure you put silicon seal around coax where it goes into antenna on roof. (Clear bathtub sealer can be substituted.)

8) Check screen on back of antenna, make sure it is standing up at 90° angle to aluminum rod.

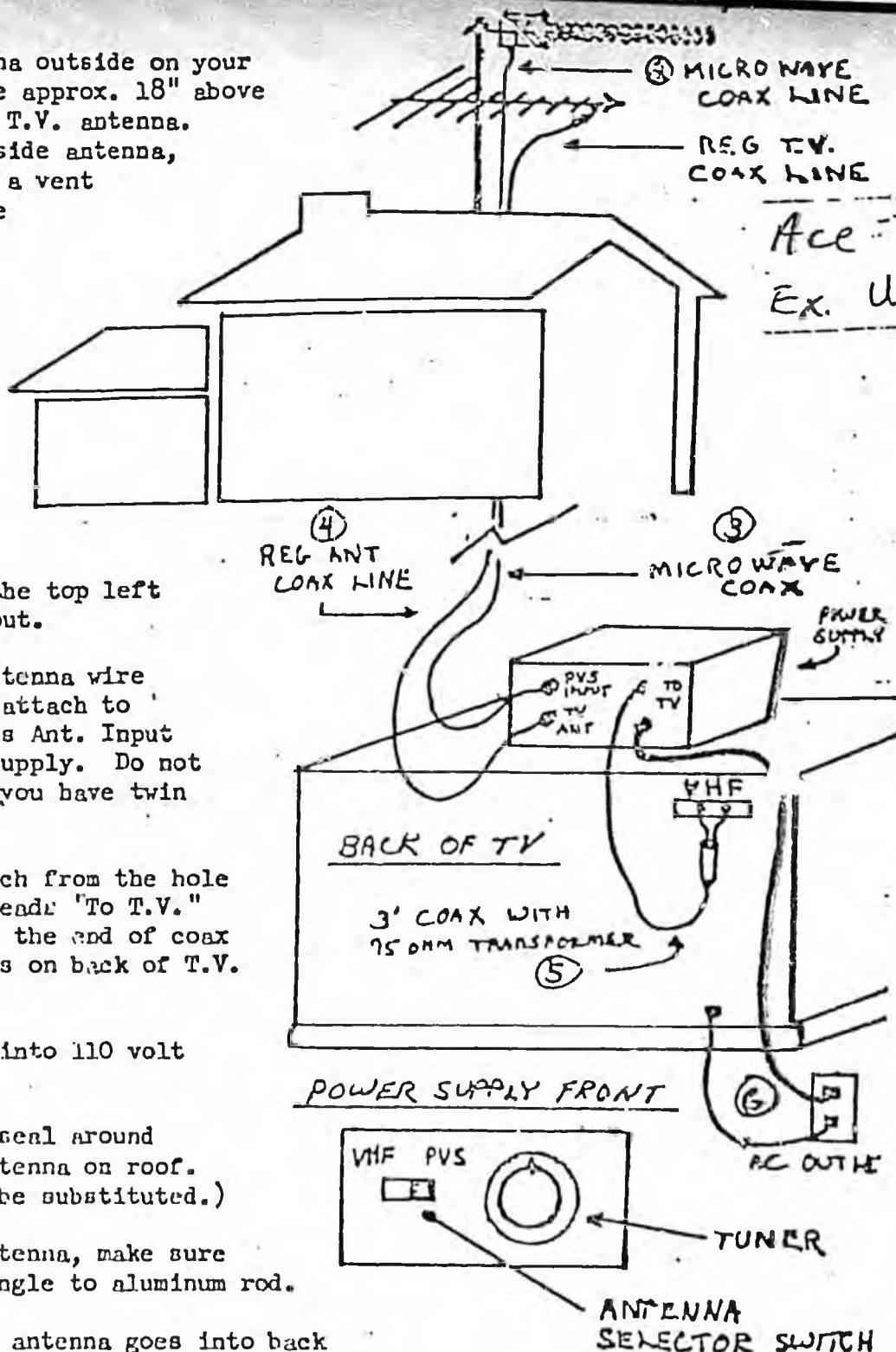
9) Make sure your existing TV antenna goes into back of power supply not onto back of TV. If you have flat lead coax, you will need a PVS-35A to connect it. (Available through your distributor.)

10) Antenna gets pointed like a rifle at the signal you want to receive (if you looked through the screen then all of the rings you receive would transmit theoretically).

11) If the aluminum rings are bent when you get your receiver, just gently bend them back into shape.

12) Some areas are vertical polarization, some are horizontal. 75% are vertical and this is the way the antenna was shipped to you. If it has snow, check by moving the "U" bolt on the mast to the other set of holes or check with your local distributor.

NOTE: FAILURE TO FOLLOW #7 OF THESE INSTRUCTIONS WILL VOID WARRANTY.



Dear Customer;

We believe that this microwave antenna is the best on the market today but to receive your 90 day warranty, please fill out this card and mail it today to the place of purchase.

month day year

Name \_\_\_\_\_

Address \_\_\_\_\_

Purchased on: \_\_\_\_\_

**AUTOMOTIVE**

1977 FORD Granada, 3 Alaskan business otherwise a doll! Auto, PS (newly aligned), PB (newly refined) less book is \$2570 will sell next week only for \$2200 cash; even 277-9156

1968 TOYOTA, 24 mpg, needs paint; Job, \$650; 344-3815, **DOWLING AUTO SALES!**

1974 El Camino SS AT, PB, PS, 350, custom paint, looks and runs good, \$2000; 333-2201 C

1972 DUSTER, 66,000 miles, 6-cyl, 3-spd, 18 mpg, \$1200; 333-1498 days

1970 CHEVY, 1973 Caprice, 1972 240Z, 1971 LTD, \$750, \$500, \$1500, \$250 or best; 338-3166

1968 OLDS Delmont 88, body sound, engine runs, best offer; 349-1363 evenings

PARTING OUT 1972 Pinto Sedan, parts or \$200 takes all; 272-5781

1971 and 1972 Vega, also parts, one runs, one doesn't, make offer 1 or both; 344-2883 after 5pm

1973 CHEVY 4x4, cabover camper, V8, AT, PS, PB, \$2650; 243-8346

1973 CHEVY Wagon, AT, radial tires, snow tires, winterized, nice body, table car, \$1495; 337-2832

1976 OLDSMOBILE Regency 98, 6-cyl, loaded, exc cond, 35,000 miles; \$1500; 344-2040

1972 OLDS Toronado, \$900 or best offer; 279-2201

1975 FORD Granada, white with tanwood, great gas mileage, with 3-spd (jabs), 52,000 miles, 4 radial tires, looks sharp, no body damage, runs good, \$2000 or best offer; 274-4746 after 5:30pm

1970 CHEVELLE, good body, exc interior, good tires; 601-4083 after 5pm

1975 DATSUN 1200, rebuilt engine, \$500; 279-9155

1977 1/4-ton pickup with 390, 4-cyl, 1850; 272-3632

1971 ROADRUNNER; perfect body, 113, 4-cyl, wide tires; needs paint work, \$1200; 243-2291

1976 MUSTANG, 4-cyl, 2300cc, exc gas mileage, all tune-up, 4924 Part 41rd 193 home eyes, daytime

**MISCELLANEOUS**

1973 RIVIERA; 1969 Dodge Van, fair cond; antique phonograph; RCA color console, not working, make offer; after 5pm, Carl, 272-9662

GAS BURNING boiler, used for residential heating by means of baseboard heat, make offer; Jon 272-8062, 277-0988 C

RECORD PLAYER with 8-track, \$50; 40-gal elec hot water heater, \$50; 6'8" x 2'4" door, \$20; 2 closet doors with rollers, \$10; four 1500 watt elec wall heaters, \$10 each; pair ice skates, \$15; pair roller skates, \$10; 344-9386 C

D.M.S.O. SOLVENT \$18 for 8-oz, prompt shipment! Send check or money order to: AK Outlet, P.O. Box 6628, Anchorage, AK 99502 C

DAN'S SECOND HAND, 3447 Mountain View Drive, 277-5442, furniture, appliances, televisions and more, open Tuesday through Saturday 9am-6pm D

BUYING A new camera? I'll buy your old one! Alaska Camera Exchange, 283 Muldoon; 338-2722 B

EXCESS FIXTURE Liquidation, apparel store clearing excess items including: clothing racks, various sizes in chrome and wood; metal and wood shelving; sturdy wood tables with drawers and formica covering; various size chrome bars; trace steamer with steam boiler and motor, much more; 270-6522 for appointment

WE BUY CAMERAS! Dan's Camera Repair: Headquarters for your photographic needs, has used cameras and equipment for sale. We buy cameras and equipment for resale and parts. 735 West Fourth Avenue, Anchorage, AK ZD

NORTH MT. VIEW, Cooks have you ever tried Watkins products? If not, you should! Come or call, 609 N. Price St, 277-3014 C

TOPSOIL Shredded, screened, mixed, exc garden lawn soil. Clean fill sand and gravel. U-haul or delivered, reasonable rates! See our ad this issue.

AAA SERVICES 272-8711 277-3279 LEARN TO PAINT! Oils or acrylics, small class, individual at-

**FURNITURE**

THREE PIECE Danish modern furn, with matching glass end table and coffee table, plus traditional end tables and coffee table, dining room table with 2 leaves and 6 chairs, queen size waterbed frame and misc items; 349-7428

ROLL-TOP writing desk, \$125; almost new dining room set, \$195; humidifier, \$15; chest of drawers, \$75; rocking chair, new, in crate, \$95; bed frame and headboards, \$10; kitchen chairs, \$5; color TV, good picture, \$200; AC-DC B&W TV, \$95; refrig-freezer, \$135; refrig, older style, \$60; Goodyear, \$45; elec range, \$95; pet kennel, \$7.50; dog house, large, \$20; box-springs and mattress, \$35; 3941 E. 9th (near Eragaw)

NOW REGISTERING FOR Fall and winter classes, Alaska School of the Arts, 36th and C, Plaza Mall, landscape painting, materials and techniques of the landscape artist in the studio and on location, weather permitting, 15-wk course instructed by 30 yr Alaskan landscape artist, Richard Orr; 274-ARTS, 243-3724 24 hour phone

SELL & BUY used furniture, living and bedroom sets, bunkbeds, other household furniture, TVs, antiques; 2603 Arctic Blvd, 274-5914 ZD

KITCHEN table with four chairs, \$20, 349-5019 after 5pm

DINING ROOM table with 6 upholstered chairs and matching hutch, \$550; executive office swivel chair, \$35; 333-2692

GOLD TWEED loveseat, \$40; 343-5997

ANTIQUES, smoke stand, \$75; cherry-wood gossip bench, 1920-30, \$350; carved wood clock, with porcelain, 1900, \$150; black wainut marble top plant stand, \$120; marble top wash stand, \$250; German high chair, 4-1, \$100; will accept bids; 349-3283 C

WELL MADE, sturdy maple couch, like new, fabric brown and orange, \$200; 333-9731, even 333-7217

WALNUT BUNKBEDS, with mattresses, \$100; twin boxspring mattress, \$45; chest, \$25; Singer sewing machine, in walnut cabinet, like

**SPORTING GOODS**

REMINGTON 870 12-gauge mag, 30" VR, full choke, never used, \$300; 337-2500, leave message

6-WHEEL DRIVE Argo ATV, for hunting and fishing, good shape, \$1600 or trade; 349-5637 B

ATV Amphicat, \$1000; also Atrex ATV, \$1200 or best offer; 349-2307

8-MM MAUSER Model 1893 modified sniper rifle, \$150; 745-4767 B

OLIN Mark 4's 150's and 175 Blizzards and size 8 Nordicas, good cond, best offer; 333-7734

TROPHY ALASKA Taxidermy, Mile 20 Old Glenn; shop for quality first; 688-3534 L

MODEL 97 12-gauge, 2 1/2", \$150; 333-7224 after 5pm

NEW RUGER 22 rifle with Weaver scope, \$100; Winchester single shot shotgun, like new, \$60; also gun rack, \$10; 337-6987 B

SMITH & WESSON pistol, 8"-3/8" barrel, 22 Winchester magnum, complete with 100 rounds of ammo, like new, \$230; Pete, 752-5173, or 5176 C

WEATHERBY Vanguard .300 Winchester mag with Weatherby 3x9 Premier wide angle scope, new in hard carrying case, \$475 or best offer; Ruger Blackhawk .357 mag, new cond, \$175 or best offer; 349-2722 after 6pm

PIZZA HUT HAS PENNYSAVERS!

**AUTO PARTS**

**BRONCO**

1979, parts only, 351 engine, AT, front and rear axles, 18,000 miles; 349-1382, 344-3605

4-SPD TRANS, fits Ford pickup; tire and wheels, slotted mags for Chevy car; 4-spd close ratio trans rebuilt; 279-3658 B

SELLING AUTO PARTS for most cars, motor and body; also two flatbed trailers. Also have cars that run; 344-3008 B

**TRANS. TROUBLE!**

We will rebuild most U.S. transmissions for \$275 and up, exchange. A 3-month or 4000-mile guarantee with each rebuild; 349-1382, 344-3605

NEED PART for 1970 CJ-5 Jeep; Call Pat, 276-6286 C

1967 AUTO Plymouth transmission, \$70; 688-3216 C

1973 PLYMOUTH Fury, engine and transmission good, best offer; 333-8461

TWO 5-hole Jeep rims, bolt circle 5 1/2", center hole 4"; 337-4319 even, and wheels.

SUBARU WHEELS, tires and parts; Toyota wheels and parts; 349-1382, 344-3605.

**PARTING OUT**

1965 Dodge van, side and rear window doors, 6-cyl, must sell this week, see at 3824 Jewel Lake Road after 5:30 or weekend, \$75 or best offer, you too.

**MOTORCYCLES**

1970 TRIUMPH Trophy 650, good cond, low mileage, \$800; 349-1610 B

1973 H-D Super Glide, completely rebuilt, many extras, \$3700 e. best offer; 277-8038

1978 YAMAHA XS-400, 1700 miles, like new, \$800 or best offer; 248-0980 B

HAVING A BILLING PROBLEM? Call us and let us help. Pennysaver, 276-5555.

**SNOWMOBILES**

SCORPION 340, \$275; Yr 438, \$125; 344-2883 after 5p

WANTED: Two snowmobiles trailer for my equity in 2-plus located north of Willow, good cess; 333-0535

LEAVING STATE: Pol snowmachine, 1978 440 Cobra trailer, exc cond, \$1500 or best offer; 279-5205

POLARIS Gemini snowmob; 344-0808

**R & S SERVICES**  
**GENERAL CONTRACTOR**  
 PLOWING, SANDING & REMOVAL  
 CONTRACT DISCOUNTS  
 LICENSED - BONDED - INSURED



CALL 274-8901 or 276-6276

205 East Fourth Ave. Suite 70  
 Anchorage, Alaska 99501

**YANKEE INGENUITY DOES IT AGAIN!**

If you own a television set or TV monitor you will want to know more about this product!

We have a new product for use in the American Home that is so advanced and ingenious that we have been stopped from advertising the capabilities of this unbelievable device.

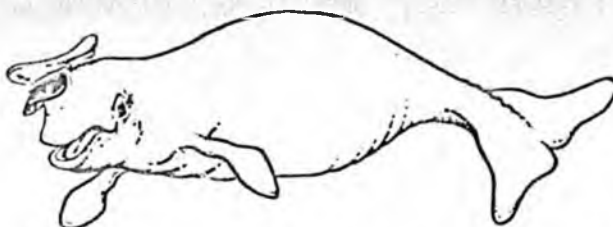
Big Corporations have tried to prevent us from bringing this product to you THE AMERICAN PUBLIC.

HOWEVER... in the tradition of the "FREE ENTERPRISE SYSTEM," it has been ruled in court that this product is Legal to Manufacture and sell.

**PIRATE MICROWAVE ANTENNA, INC.**  
 276-9224 or 243-3722

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED  
AS A UNIT IN THE ORIGINAL DOCUMENT.

F.ita Ihly  
Arts and Crafts



Nick Ihly  
Sporting Goods  
F.F.L. 92-04233

## BELUGA ENTERPRISES

P.O. Box 417, Homer, AK 99603  
(907) 235-8411

May 15, 1982

Ramona Barnes  
House Judiciary Committee  
Pouch V  
Juneau, Alaska 99811.

Dear Ms. Barnes,

I am a moderator in Homer for the Teleconference net, and often hear the testimony on current issues. I am often tempted to make comments, but very often, there is a good deal of testimony from "professionals" and people well versed on the subject, and I feel I am talking only as an interested citizen, not one completely well informed. However, I was encouraged by the testimony of Ms. Marshall because her views paralleled mine exactly, and I wish I could express my appreciation to her for all the time spent on research even if she was not in the medical or legal field. Her voice, her comments, all the passion she projected, was what I wished I could pour out myself. She said it well. Dr. Keihl is to be applauded in putting the role of the psychiatrist and psychologist in the right perspective. His eight points were rational, reasonable, and should be noted with care in all this consideration. I am not without compassion for the "rights" of an individual, but this has all gone too far. In protecting (or trying to protect) everyone the way is strewn with innocent victims with no voice to speak for them. All they have is the sympathy of the community, and that does not bring back the life of a loved one.

People who are criminally insane should be separated from society. If we have to build the special facilities, then lets do it! Why can we find so much money for cultural centers and the like, and not find the funding for fundamental safety? As a citizen of this state, I feel that responsibility is the missing link in the majority of these tragedies. The criminal is not responsible, (he is insane), the courts are not responsible, the institutions are not responsible, but the victim is dead. Somewhere somebody has got to be responsible, or the aggregate of the system has got to be responsible, but when responsibility can be kicked around like a ping pong ball, how can you get the respect or the confidence



## BELUGA ENTERPRISES

P.O. Box 417, Fairer, AK 99603  
(907) 235-8411

*of the people served? I think everyone of the people considering tighter legislation should be made painfully aware, that the next victim could be himself, or a close member of his family.....just sit and think deeply of that victim being your child, or your husband and ask yourself how you would feel about your obligation then. We are all victims in a sense, because it is just a matter of chance which one of us will be next.*

*I agree that psychiatrists and psychologists have no place in the courtroom. There is no way that one individual no matter how well trained can look into the mind of another. The field is too vague, too unpredictable, and the sad part to their testimony is that when they utter the words, they carry a great deal of weight because the layman is totally unfamiliar with the field, and degreed people have an authority about them that commands acceptance of knowledge. There is no doubt that they have been wrong many times, but when they make a wrong judgement, there is no penalty, only a victim. If they were to serve a sentence every time the patient went out and killed, or caused carnage, how many do you suppose would be declared competent?*

*I also agree, one cannot say that just because a law failed to pass the test of constitutionality that it should forever be shelved. It is worth another try. So make insanity pleas inlawful. Provide institutions for those deemed criminally insane as opposed to jail for other criminals. In summary, I agree with the testimony of the last three people who spoke on the teleconference, and would urge the committe to listen well to these comments.*

*Thank you for the opportunity to speak out.*

*Yours truly,*

*Rita Ihly*  
Rita Ihly

FROM: R.J. Gould  
TO: EVERYONE  
RE: BOOTLEGGING/THEFT OF SERVICE  
A SUMMARY OF THE LAW

FEDERAL LAW

- visions current cel*  
*vs.*  
*visions*
- new file*
- I. Signals are freely receivable only if properly authorized. Section 605 of Communications Act of 1934 ( as amended ) (47 U.S.C. section 605) exempts from control only "broadcast (broadcasts) .... for the use of the general public." VISIONS is not for the use of the general public but only for its subscribers who pay to receive it. ("No person not being authorized by the sender shall intercept any radio communication...").
  - II. FCC Rules and Regulations, sec. 21-903 (b) (3) & (4) required the licensee (Hendershot) to maintain "control" of all receivers using it's service, although they may be owned by the licensee's customer (VISIONS).
  - III. FCC Rules and Regulations, sec. 21-903 (c) requires licensee to "provide for complete security of transmission".
  - IV. Federal penal sanctions for violation of the Communications Act and/or Commission's Rules and Regulations include:
    - a) \$10,000 fine and/or up to (1) year in jail for a willful violation (Communications Act, Section 501)
    - b) Issuance of a cease and desist order (Communications Act, Sections 4 (i) & 312 (b)).
    - c) Direction to a, appropriate U.S. Attorney to prosecute violators of the Act (Communications Act, Section 401).
  - V. Section 2511 of the U.S. Code (18 U.S.C. section 2511) prohibits interception and/or disclosure of any "wire communication" (as defined by 18 U.S.C. section 2510) without authority and provides for a fine up to \$10,000 and/or up to five (5) years imprisonment as a sanction. (Section 2510 defines "wire communication" broadly enough to include MDS reception.)

STATE LAW

- VI. Alaska Statutes section 42.20.030 makes it a misdemeanor for someone who "with intent to defraud or to aid and abet another to defraud a person of the lawful charge, in whole or in part, for a telecommunication service, including cable television, obtains or attempts to obtain, or aide and abets another to obtain or to attempt to obtain a telecommunication service..... (4) by any trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device or means; or (5) by the unauthorized connection of wires or cable to cable television service lines." and provides for a penalty of a fine up to \$1,000 and/or imprisonment up to one (1) year.

# PUBLIC NOTICE

Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554



For recorded listing of releases and texts call 632-0002

For general information  
call 632-7260

11850

January 24, 1979 - CC

## UNAUTHORIZED INTERCEPTION AND USE OF MULTIPOINT DISTRIBUTION SERVICE (MDS) TRANSMISSIONS

In response to a few informal inquiries and complaints, this Notice is a reminder that the unauthorized reception and beneficial use of addressed communications in the Multipoint Distribution Service (MDS) is a violation of Section 605 of the Communications Act of 1934 (47 U.S.C. §605).

MDS is a common carrier service which utilizes an omnidirectional radio transmission to distribute addressed broadband communications (usually forms of television information) for simultaneous reception at multiple fixed receive points by the members of commercial, or other institutional, subscribers in accordance with their specific transmission, reception and informational requirements.

MDS stations are not television broadcasting stations. They operate on microwave radio frequencies (2150 - 2162 MHz) which are allocated for common carrier service between fixed points, and which, because of their high frequency, are not receivable by conventional television or other receivers. Additional equipment is required to down convert or to demodulate the microwave signal before it can be utilized by those television receivers, facsimile terminals, or computer data display terminals authorized to receive the communication by its sender.

Nor are MDS stations disseminating radio communications intended to be received by the general public. MDS station transmissions generally consist of various forms of private television, high speed computer data, facsimile, control information, or other forms of addressed broadband communications. This programming is provided to the station by its institutional subscriber and is intended to be received only by members of the subscriber organization located at the multiple receive points. The MDS station transmits this programming pursuant to a federally regulated tariff and is responsible

(OVER)

for both its transmission and reception under Section 21.903 of the Commission's Rules and Regulations (47 C.F.R. § 21.903). Although this rule permits the station's institutional subscriber the option of owning the microwave receiving equipment, such equipment must be installed, maintained, and operated pursuant to the carrier's instruction and control.

Section 605 of the Communications Act makes it unlawful:

- for a person not authorized by the sender to intercept radio communications and divulge or publish the existence, contents, substance, purport, effect or meaning thereof to any person; or,
- for a person not entitled thereto to receive radio communications and use such communication or any part thereof for his own benefit or for the benefit of another who is not entitled thereto (Emphasis added).

Because material transmitted over stations is not intended to be "broadcast" material within the meaning of Section 605, authority for its reception and use must be given by the sender. Therefore, persons will be in violation of the law if they divulge, publish, or use for their own benefit any MDS communications which they were not authorized to receive.

Violations of Section 605 can result in either criminal prosecution, or civil lawsuit, or both. See KMLH Broadcasting Corp. v. Twentieth Century Cigarette Vending Corp., 264 F. Supp. 35 (C.D. Calif. 1967).

# STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

CONSUMER ALERT

JAY S. HAMMOND, GOVERNOR

604 Barnette, Rm. 228

~~604 BARNETTE~~ - FAIRBANKS 99701

## PAY-TV INTERCEPTORS WARNED

The Alaska Attorney General's Office, has issued a warning to the public concerning sales of devices intended to allow users to receive "pay T.V." programs without subscribing to the program service. The Office's Consumer Protection Section has learned that persons selling antenna and decoding equipment may not be informing customers that they are also legally required to pay the televising company for reception of its programs. Intercepting pay Television signals without paying the authorized subscriber's fee is a violation of both state and federal law.

The Attorney General's Office urges anyone who has knowledge of persons selling such equipment to report the information to the Consumer Protection Section, Office of the Attorney General, 604 Barnette Street, Fairbanks (456-8588).

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL  
CONSUMER PROTECTION SECTION

420 'L' STREET, SUITE 100  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 279-0428

August 8, 1980

PRESS RELEASE

RECEIVED  
AUG 12 1980

Consumer Alert

Baily & Mason

The Consumer Protection Section of the Alaska Attorney General's Office has issued a warning to consumers and potential distributors or dealers about "Microwave Vacuum Cleaners" or other pirate microwave television antenna devices. These devices are advertised as being "legal to advertise and sell." However, the consuming public is not informed that it is not legal for the consumer to intercept and convert the local multi-directional radio transmission (microwave).

A January 24, 1979, Federal Communications Commission public notice reminds consumers that unauthorized reception and use of microwave communications is a violation of federal law. "Microwave" television is a form of private television provided to its institutional subscribers for payment, like cable T.V. These broadcasts are intended to be received only by members of the subscriber organization located at the multiple receiver points. The licensed microwave distributor in each community transmits pursuant to a federally regulated tariff, and is legally responsible for both its transmission and reception. Visions, the local microwave distributor, has filed a lawsuit to enjoin the selling of these so-called "pirate" antennas. The state cautions consumers that while ads may claim these devices are legal to sell and manufacture, they are not legal to use without permission from the local sender of the broadcast.

Another similar device, but which works in a different way and costs up to \$2,000, are the so-called backyard satellite earth stations. These intercept microwave transmissions and are also not legal for the above reasons.

If you have already invested in one of these devices, please contact the Consumer Protection Office. In Anchorage the telephone number is 279-0428.

BAILY AND MASON

LAWYERS

A PROFESSIONAL CORPORATION  
510 L STREET, SUITE 312  
ANCHORAGE, ALASKA 99501

DOUGLAS B. BAILY  
JULIAN L. MASON III  
CABOT CHRISTIANSON  
MICHAEL J. FRANK

TELEPHONE  
AREA CODE 907  
276-4331

August 1, 1980

RECEIVED  
8-5-80

Gentlemen:

Enclosed is a copy of the Stipulation signed by the parties and Ordered by Judge Ripley this week. Basically, the defendants caved in, giving us all the relief demanded in our Motion, and more. Their counsel now seeks settlement, and promises cooperation in our pursuit of the manufacturer, Pirate Electronics of Phoenix.

The Attorney General's Consumer Protection Division promised me yesterday to investigate the problem, and may issue a warning, comparable to the one issued in Fairbanks, against sale and use of pirate devices.

Should you have questions about the Stipulation, please call.

Sincerely yours,

BAILY & MASON

*Mike*

Michael J. Frank

MJF/nw

cc: Robert Uchitel  
Robert Gould  
James R. Hendershot  
Jack Bradshaw  
John D. Pellegrin, Esq.  
Jeff Laird Jr., Esq.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT

RECEIVED

JUL 31 1980

JAMES R. HENDERSHOT d/b/a )  
MDS SYSTEMS, and VISIONS, )  
LTD., an Alaska Corporation, )

Clerk of the Trial Courts  
3rd Judicial District

Plaintiffs, )

vs. )

VIDEO CONCEPTS, INC., )  
an Alaska Corporation, )  
RONALD OPALINSKI, DANIEL )  
APTED, and JOHN DOES 1 thru )  
75, )

Defendants. )

No. 80-5095

STIPULATION IN LIEU OF HEARING  
ON PRELIMINARY INJUNCTION

COME NOW the parties, through counsel, and stipulate,  
in lieu of the August 1, 1980 hearing on plaintiffs' Motion  
For Preliminary Injunction, as follows:

1. The defendants Video Concepts, Inc., Ronald  
Opalinski, and Daniel Apered agree not to, pending the final  
resolution of this action:

- a. Advertise for public or private sale  
in Alaska any devices capable of intercepting  
plaintiffs' multipoint distribution service  
microwave signal, including but not limited  
to such devices as are called "Pirate TV  
Microwave Antennas" and/or "Microwave Vacuum  
Cleaners", or
- b. Sell at any public or private sale any devices  
capable of intercepting plaintiffs' multi-  
point distribution service microwave signal,  
including but not limited to such devices as  
are called "Pirate TV Microwave Antennas"  
and/or "Microwave Vacuum Cleaners",

and further agree to release to plaintiffs' counsel the  
names and addresses of all Video Concepts, Inc.'s customers  
who have purchased such intercept devices from said defendants  
and release to plaintiffs' counsel the exact address of the  
location of all such devices as such customers' names and  
addresses and locations of such devices become known to said  
defendants.

2. The names and addresses of the aforementioned


customers of defendant Video Concepts, Inc. shall not be published in the Court file, absent the Court's permission, in order to preserve such customers' right to privacy, if any; however, the foregoing sentence shall not be construed so as to forbid plaintiffs from contacting said customers either informally or through formal discovery in this action, nor shall it prevent plaintiffs from naming said customers as defendants in this action without leave of Court.

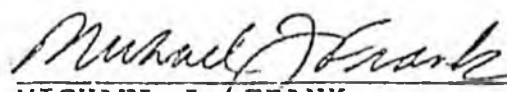
3. The named defendants shall be made available for purposes of plaintiffs' discovery pursuant to Alaska Civil Rules 26 through 37, including depositions within 30 days of the date of plaintiffs' Complaint, without regard to the time limits or prohibitions of said rules.

4. No bond shall be required to secure performance by any party in this action under this Stipulation, and defendants agree to permit plaintiffs to get return of the \$1,000 bond currently posted with the Clerk of the Court.

5. The named defendants agree to seek release from any of the provisions of this Stipulation only by Motion, with adequate and appropriate time for response under Alaska Civil Rule 77 by plaintiffs, filed with the Court.

DATED THIS 31st day of July, 1980.

  
\_\_\_\_\_  
FREDERICK LEDBETTER  
Attorney for the named Defendants

  
\_\_\_\_\_  
MICHAEL J. FRANK  
Attorney for Plaintiffs

ORDER

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1980. The Clerk of the Court shall refund the \$1,000 bond currently posted with the Court by plaintiffs to plaintiffs' counsel of record forthwith.

\_\_\_\_\_  
SUPERIOR COURT JUDGE

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APPROVED SEVENTH WORK DRAFT FOR  
INSANITY DEFENSE AMENDMENTS TO  
HCS CS SB 535 (Judiciary)

5-26-82  
1:15 p.m.

\*Section 1, AS 12.45 is amended by adding a new section to read:

Sec. 12.45.080, 'INSANITY EXCLUDING RESPONSIBILITY,

(a) In a prosecution for a crime it is an affirmative defense that when the defendant engaged in the criminal conduct he was unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct. The affirmative defense defined in this subsection cannot be raised unless the defendant files a written notice of his intent to rely on the defense within 10 days of entering his plea, or at such later time as the court may for good cause permit. The defendant has the burden of establishing the defense by a preponderance of the evidence.

(b) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish an affirmative defense under (a) of this section,

(c) A defendant found unable as a result of a mental disease or defect to appreciate the nature and quality of his conduct shall be considered insane.

(d) The affirmative defense established in subsection (a) shall be known as "insanity."

(e) In this section, "mental disease or defect" means a disorder of thought or mood which substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. "Mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning which impairs a person's ability to adapt to or cope with the ordinary demands of life.

\*Section 2, AS 12.45. is amended by adding a new section to read as follows:

Sec. 12.45.081, GUILTY BUT MENTALLY ILL,

(a) In all cases in which the defendant raises the affirmative defense of "insanity" under AS 12.45.080, the defendant may be found "guilty but mentally ill" if the mental disease or defect which afflicted him does not rise to the level of "insanity" under AS 12.45.080. A defendant who, at the time of the commission of a criminal offense was not insane but lacked, as a result of a mental disease or defect the substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law shall be considered "mentally ill." A defendant found "mentally ill" shall not be relieved of criminal responsibility for his conduct.

(b) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

\*Section 3, AS 12.45. is amended to add a new section to read as follows:

Sec. 12.45.082, FORM OF VERDICT WHEN AFFIRMATIVE DEFENSE OF INSANITY IS OFFERED

(a) In all cases in which the defendant raises the affirmative defense of insanity under AS 12.45.080 the jury shall find and the verdict shall state whether the defendant is:

- (1) guilty;
- (2) not guilty;
- (3) not guilty by reason of insanity,
- (4) guilty but mentally ill; or

(b) If the case is heard by the court sitting without a jury, the court shall make the finding established in (a) of this section,

\*Section 4, AS 12.45.083 is repealed and reenacted to read:

Section 12.45.083, PROCEDURE UPON VERDICT FINDING OF GUILTY BUT MENTALLY ILL

(a) If a defendant is found "guilty but mentally ill" under AS 12.45.082, the court shall

- (1) enter the finding of "guilty but mentally ill" as part of the judgment; and
- (2) sentence the defendant as provided by law

(b) The Department of Health and Social Services shall provide mental health treatment to a defendant found "guilty but mentally ill." The treatment must continue

until the defendant no longer suffers from a mental disease or defect that causes him to be dangerous to the public peace or safety. Subject to subsections (c) and (d), the department shall determine the course of treatment.

(c) If treatment terminates under subsection (b), the defendant shall be required to serve the remainder of his sentence.

(d) A defendant receiving treatment under subsection (b) shall not be released on furlough, work release, or parole.

(e) The Commissioner of Health and Social Services shall file a petition under AS 47.30.700 for a screening investigatio. to determine the need for further treatment of the defendant under the civil commitment laws upon the completion of his sentence if:

- (1) less than 30 days remain before the end of the defendant's sentence;
- (2) the defendant is still receiving treatment under subsection (b); and
- (3) the Commissioner has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(f) Nothing in this section limits the discretion of the court to order, or of the Department of Health and

Social Services to provide psychiatrically indicated treatment for a defendant who is not adjudged "guilty but mentally ill."

(g) In this section, "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

(h) For the purposes of subsection (e), "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

\*Section 5. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.084 PROCEDURE UPON VERDICT OF NOT GUILTY.

(a) The District Attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation of a defendant to determine the need for treatment of that individual under the civil commitment laws if:

(1) the defendant:

(i) has been found "not guilty" under AS 12.45.082; and

(ii) the verdict has not been based upon a finding that the defendant did not have a culpable mental state under AS 12.45.085;

and;

(2) the District Attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915 (12).

\*Section 6. AS 12.45.085 is repealed and re-enacted to read:

Sec. 12.45.085 POST-CONVICTION DETERMINATION OF MENTAL ILLNESS.

(a) In cases in which the defendant does not raise the affirmative defense of insanity under AS 12.45.080 and is convicted of a crime, the defendant, the prosecuting attorney, or the court on its own motion may raise the issue of whether the defendant is guilty but mentally ill. A hearing must be held on this issue at or before the sentencing hearing. At the hearing the court shall determine whether the defendant has been shown to be guilty but mentally ill by a preponderance of the evidence presented at the hearing and any evidence relevant to the issue that was presented at trial.

(b) If a court finds that a defendant is guilty but mentally ill as part of the judgment. The court shall sentence the defendant as provided by law.

(c) A defendant determined to be guilty but mentally ill under this section is subject to the provisions of AS 12.45.083(b)-(h).

(d) A defendant convicted of a crime is guilty but mentally ill if, when he engaged in the criminal conduct, he lacked, as a result of a mental disease or defect the

substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.

(e) In this section "mental disease or defect" has the meaning ascribed to it in AS 12.45.080.

\*Section 7. AS 12.45 is amended by adding a new section to read:

Sec. 12.45.086 MENTAL ILLNESS NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect which tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of a mental disease or defect, there is a reasonable doubt as to the existence of a culpable mental state which is an element of the crime, it shall enter a verdict so specifying. A defendant acquitted under this subsection, and not found guilty of a lesser included offense, shall automatically be considered as if he had been acquitted under AS 12.45.080. The defendant is then subject to the provisions of AS 12.45.090.

(c) If a verdict of not guilty is reached under (b) of this section, the trier of fact shall also consider whether the defendant is guilty of any lesser included offense. If the defendant is convicted of a lesser included offense, the defendant shall be sentenced for that offense and shall automatically be considered guilty but mentally ill under AS 12.45.081. Upon completion of a sentence for a lesser included offense, a hearing shall be held under AS 12.45.090(c) to determine the necessity of further commitment of the defendant, based on the acquittal for the greater charge under (b) of this section. If the defendant is committed under AS 12.45.090(c), he is subject to the provisions of AS 12.45.090(d)(j).

\*Section 8. AS 12.45.087 is amended to read as follows:

Sec. 12.45.087 PSYCHIATRIC EXAMINATION. (a) If a defendant has filed a notice of intention to rely on the defense of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT EXCLUDING RESPONSIBILITY] or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least [ONE] two qualified psychiatrists or forensic psychologists certified by the american board of forensic psychology, [OR SHALL REQUEST THE SUPERINTENDENT OF THE ALASKA PSYCHIATRIC INSTITUTE TO DESIGNATE AT LEAST ONE QUALIFIED PSYCHIATRIST, WHICH DESIGNATION MAY BE OR INCLUDE

HIMSELF,) to examine and report upon the mental condition of the defendant. The psychiatrists may be assisted by psychologists of their choosing. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a [HOSPITAL OR OTHER SUITABLE] secure facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section, shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;
- (4) if a notice of intention to rely on the defense of insanity [IRRESPONSIBILITY] has been filed, an opinion as to the extent, if any, to which the capacity of the defendant

to appreciate the nature and quality [WRONGFULNESS] of his conduct [OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW] was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant.

\*Section 9, AS 12.45.090 (a) (b) are repealed and reenacted to read:

Sec. 12.45.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a) At the time the defendant files notice to raise the affirmative defense of insanity under AS 12.45.080, he shall also file notice as to whether, if found "not guilty by reason of insanity", he will assert

that he is not presently suffering from any mental illness that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not "guilty by reason of insanity" under AS 12.45.080, and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of Health and Social Services.

\*Section 10, 12.45.090 (c) - (h) are amended as follows:

(c) If the defendant is found not guilty by reason of insanity under AS 12.45.080 [MENTAL DISEASE OR DEFECT AS EXCLUDING REASON FOR COMMITMENT] and he has filed the notice required under (a) of this section, a hearing shall be held immediately after a verdict [IS RETURNED] of "not guilty by reason of insanity", to determine the necessity of further commitment. That hearing shall be held before the court sitting with[OUT] the same jury, unless the criminal trial was without a jury. [THE SAME TRIER OF FACT AS THE UNDERLYING CHARGE, BUT IF A JURY WAS THE TRIER OF FACT, THE HEARING SHALL BE HELD BEFORE A JURY OF SIX DRAWN FROM THE ORIGINAL JURY IN ACCORDANCE WITH RULES ADOPTED BY THE SUPREME COURT]. At the hearing, the defendant has the burden of proving by clear and convincing [A PREPONDERANCE OF THE] evidence that he is not presently suffering from any mental illness [DISEASE OR DEFECT] that causes him to be dangerous to the public. If the court or jury determines

that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services. The verdict shall be unanimous.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) or until [THE MENTAL DISEASE IS CURED OR THE DEFECT CORRECTED] the defendant is not presently suffering from any mental illness that causes him to be dangerous to the public as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued [HOSPITALIZATION] commitment under this section determined or redetermined by the court sitting with[OUT] a jury of twelve under a petition filed in the superior court at intervals beginning no sooner than a year [SIX MONTHS] from his initial commitment, and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section and the verdict shall be unanimous. [EXCEPT THAT THE DEFENDANT IS NOT ENTITLED TO A JURY UNLESS HE FILES A MOTION FOR A JURY NO LATER THAN 15 DAYS BEFORE THE DATE SET FOR THE HEARING]. A copy of all petitions for release

shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS [12.45.083] 12.45.082(a)(3) is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of any (THE) mental illness (DISEASE OR DEFECT) that would cause him to be (AND IS NO LONGER) dangerous to the public peace or safety, the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section.

\*Section 11, AS 12.45.090 is amended to add new sections (i) and (j) as follows:

(i) A. order entered under (c) or (e) of this section may be reviewed by the court of appeals on appeal brought by either the defendant or the state within 40 days from the entry of the order.

(j) In this section,

(1) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public or safety, however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.45.080, or that the mental illness presently suffered by the defendant be the same one he suffered at the time of the criminal conduct;

(2) "dangerous" means a determination involving both the magnitude of the risk that the defendant will commit an act threatening the public peace or safety, as well as the magnitude of the harm that could be expected to result from this conduct; a finding that a defendant is "dangerous" may result from a great risk of relatively slight harm to persons or property, or may result from a relatively slight risk of substantial harm to persons or property.

\*Section 12. This act takes effect immediately in accordance with AS 01.10.070(c)

Section 23

AS 12.45.025(E) IS AMENDED TO READ:

(E) EXCEPT AS PROVIDED IN SUBSECTION (G),

IF THE DEFENDANT IS CONVICTED OF TWO OR MORE CRIMES BEFORE THE JUDGMENT ON EITHER HAS BEEN ENTERED, ANY SENTENCES OF IMPRISONMENT (MAY) SHALL RUN (CONCURRENTLY OR) CONSECUTIVELY(,) (AS THE COURT PROVIDES. IF THE COURT DOES NOT SPECIFY, THE SENTENCES OF IMPRISONMENT SHALL RUN CONCURRENTLY. IF THE DEFENDANT IS IMPRISONED UPON A PREVIOUS JUDGMENT OF CONVICTION FOR A CRIME, THE JUDGMENT MAY PROVIDE THAT THE IMPRISONMENT COMMENCES AT THE EXPIRATION OF THE TERM-LIMITED BY THE PREVIOUS JUDGMENT OR ON THE DATE OF IMPOSITION OF SENTENCE.)

*AS 12.45.025 is amended by adding a new subsection to read:*

(G) IF THE DEFENDANT IS CONVICTED OF TWO OR MORE CRIMES BEFORE THE JUDGMENT ON EITHER HAS BEEN ENTERED, ANY SENTENCES OF IMPRISONMENT MAY RUN CONCURRENTLY IF:

- (1) THE CRIMES VIOLATE SIMILAR SOCIETAL INTERESTS;
- (2) THE CRIMES ARE PART OF A SINGLE, CONTINUOUS CRIMINAL EPISODE;
- (3) THERE WAS NOT A SUBSTANTIAL DIFFERENCE IN THE NATURE OF THE CRIMINAL OBJECTIVES<sup>n</sup> INCLUDING A CHANGE IN THE PARTIES TO THE CRIME, THE PROPERTY OR TYPE OF PROPERTY RIGHT OFFENDED, OR THE PERSONS OFFENDED;

- (4) THE CRIMES WERE NOT COMMITTED WHILE THE DEFENDANT ATTEMPTED TO ESCAPE OR AVOID DETECTION OR APPREHENSION AFTER THE COMMISSION OF ANOTHER CRIME;
- (5) THE SENTENCE IS FOR VIOLATION OF AS 11.41.100-11.41.140, AS 11.41.200-11.41.250, OR AS 11.41.300-11.41.350;
- (6) THE SENTENCE IS FOR A VIOLATION OF AS 11.41.500-11.41.530 THAT RESULTS IN PHYSICAL INJURY OR SERIOUS PHYSICAL INJURY AS THOSE TERMS ARE DEFINED IN AS 11.41.900; OR
- (7) THE SENTENCE IS FOR A VIOLATION OF AS 11.41.410-11.41.455.

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Section 28 - should be modified  
to reflect this rewording - as well -  
subsection (6)

\* Section 1. AS 12 is amended by adding a new chapter to read:

CHAPTER 47. INSANITY AND COMPETENCY TO STAND TRIAL.

Sec. 12.47.010. INSANITY EXCLUDING RESPONSIBILITY. (a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, he was unable, as a result of a mental disease or defect, to appreciate the nature and quality of his conduct. <sup>(b)</sup> The affirmative defense defined in <sup>(a) of this</sup> ~~this~~ subsection may not be raised at trial unless the defendant, within 10 days of entering his plea or such later time as the court may for good cause permit, files a written <sup>notice</sup> ~~notice~~ of his intent to rely on the defense.

(c) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the affirmative defense under (a) of this section.

(d) The affirmative defense specified in (a) of this section is the affirmative defense of insanity.

~~(e)~~ A defendant who successfully raises the affirmative defense of insanity shall be found not guilty by reason of insanity and the verdict shall so state.

Sec. 12.47.020. MENTAL DISEASE OR DEFECT NEGATING CULPABLE MENTAL STATE. (a) Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a culpable mental state which is an element of the crime. However, evidence of mental disease or defect that tends to negate a culpable mental state is not admissible unless the defendant, within 10 days of entering his plea, or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense.

(b) When the trier of fact finds that all other elements of the crime have been proved but, as a result of mental disease or defect,

1 there is a reasonable doubt as to the existence of a culpable mental  
2 state that is an element of the crime, it shall enter a verdict of not  
3 guilty by reason of insanity. A defendant acquitted under this sub-  
4 section, and not found guilty of a lesser included offense, shall auto-  
5 matically be considered as if he had established the affirmative defense  
6 of insanity under AS 12.47.010. The defendant is then subject to the  
7 provisions of AS 12.47.090.

8 (c) If a verdict of not guilty by reason of insanity is reached  
9 under (b) of this section, the trier of fact shall also consider whether  
10 the defendant is guilty of any lesser included offense. If the defendant  
11 is convicted of a lesser included offense, the defendant shall be sen-  
12 tenced for that offense and shall automatically be considered guilty but  
13 mentally ill under AS 12.47.030<sup>and AS 12.47.050</sup>. Upon completion of a sentence for a  
14 lesser included offense, a hearing shall be held under AS 12.47.090(c)  
15 to determine the necessity of further commitment of the defendant, based  
16 on the acquittal for the greater charge under (b) of this section. If  
17 the defendant is committed under AS 12.47.090(c), he is subject to the  
18 provisions of AS 12.47.090(d)-(j).

19 Sec. 12.47.030. GUILTY BUT MENTALLY ILL. A defendant is guilty  
20 but mentally ill if, when he engaged in the criminal conduct, he lacked,  
21 as a result of a mental disease or defect, the substantial capacity  
22 either to appreciate the wrongfulness of his conduct or to conform his  
23 conduct to the requirements of law. A defendant found guilty but men-  
24 tally ill is not relieved of criminal responsibility for his conduct.

25 Sec. 12.47.040. FORM OF VERDICT WHEN EVIDENCE MENTAL DISEASE OR  
26 DEFECT ADMISSIBLE. (a) In a prosecution for a crime when the affirma-  
27 tive defense of insanity is raised under AS 12.47.010, or when evidence  
28 of a mental disease or defect of the defendant is otherwise admissible  
29 at trial under AS 12.47.020, the trier of fact shall find, and the

and is subject  
to the provisions  
of AS 12.47.050

1 verdict shall state whether the defendant is

2 (1) guilty;

3 (2) not guilty;

4 (3) not guilty by reason of insanity; or

5 (4) guilty but mentally ill.

6 (c) When the jury is instructed as to the verdicts under (b) of  
7 this section, it shall also be instructed on the dispositions available  
8 under AS 12.47.050 and AS 12.47.090.

9 (d) To return a verdict under (b)(4) of this section, the jury  
10 must find beyond a reasonable doubt that the defendant committed the  
11 crime and find by a preponderance of the evidence that he was guilty  
12 but mentally ill as defined in AS 12.47.030. <sup>when he committed</sup>  
the crime

13 Sec. 12.47.050. DISPOSITION OF DEFENDANT FOUND GUILTY BUT MENTALLY  
14 ILL. (a) If the trier of fact finds that a defendant is guilty but  
15 mentally ill, the court shall sentence the defendant as provided by law  
16 and shall enter the finding <sup>of verdict</sup> of guilty but mentally ill as part of the  
17 judgment. ~~of guilty but mentally ill as part of the judgment.~~

18 (b) The Department of Health and Social Services shall provide  
19 mental health treatment to a defendant found guilty but mentally ill.  
20 The treatment must continue until the defendant no longer suffers from a  
21 mental disease or defect that causes him to be dangerous to the public  
22 peace or safety. ~~as defined in AS 12.47.030.~~ Subject to (c) and (d) of this section, the department  
23 shall determine the course of treatment.

24 (c) When treatment terminates under (b) of this section, the  
25 defendant shall be required to serve the remainder of his sentence.

26 (d) Notwithstanding any contrary provision of law, a defendant  
27 receiving treatment under (b) of this section may not be released on  
28 furlough or work release under AS 33.30.150, AS 33.30.150 or 33.33.260 or  
29 on parole.

~~Disposition of 14-56~~

1 (e) Nothing in this section limits the discretion of the court to  
2 recommend, or of the Department of Health and Social Services to provide,  
3 psychiatrically indicated treatment for a defendant who is not adjudged  
4 guilty but mentally ill.

5 (f) Not less than 30 days before the expiration of the sentence  
6 of a defendant found guilty but mentally ill, the commissioner of health  
7 and social services shall file a petition under AS 47.30.700 for a  
8 screening investigation to determine the need for further treatment of  
9 the defendant if:

10 (1) the defendant is still receiving treatment under (b) of  
11 this section; and

12 (2) the commissioner has good cause to believe that the  
13 defendant is suffering from a mental illness that causes him to be  
14 dangerous to the public peace or safety. As used in this paragraph,  
15 "mental illness" has the meaning ascribed to it in AS 47.30.915

16 Sec. 12.47.060. POST CONVICTION DETERMINATION OF MENTAL ILLNESS.

17 (a) In a prosecution for a crime when the affirmative defense of insanity  
18 is not raised and when evidence of mental disease or defect of the  
19 defendant is not admitted at trial under AS 12.47.020, and the defendant  
20 is convicted of a crime, the defendant, the prosecuting attorney, or the  
21 court on its own motion may raise the issue of whether the defendant is  
22 guilty but mentally ill. A hearing must be held on this issue at or  
23 before the sentencing hearing. At the hearing the court shall determine  
24 whether the defendant has been shown to be guilty but mentally ill by a  
25 preponderance of the evidence presented at the hearing and any evidence  
26 relevant to the issue that was presented at trial.

27 (b) If <sup>the</sup> a court finds that a defendant is guilty but mentally ill <sup>it</sup>  
28 as part of the judgment. ~~The court~~ shall sentence the defendant as  
29 provided by law <sup>and shall enter</sup>

*the finding of guilty but mentally ill,*

Law  
or has filed notice under AS 12.47.020(c),  
or to make the defense specified in

1 (c) A defendant determined to be guilty but mentally ill under  
2 this section is subject to the provisions of AS 12.47.050.

3 (d) As used in this section, guilty but mentally ill has the mean-  
4 ing ascribed to it in AS 12.47.030.

5 Sec. 12.47.070. PSYCHIATRIC EXAMINATION. (a) If a defendant has  
6 filed a notice of intention to rely on the affirmative defense of  
7 insanity under AS 12.47.010, or there is reason to doubt his fitness to  
8 proceed, or there is reason to believe that mental disease or defect of  
9 the defendant will otherwise become an issue in the case, the court  
10 shall appoint at least two qualified psychiatrists or two forensic  
11 psychologists certified by the American Board of Forensic Psychology  
12 to examine and report upon the mental condition of the defendant. If  
13 the court appoints psychiatrists, the psychiatrists may select psycholo-  
14 gists to provide assistance. If the defendant has filed notice under  
15 AS 12.47.090(a), the report shall consider whether the defendant can  
16 still be committed under AS 12.47.090(c). The court may order the defendant  
17 to be committed to a secure facility for the purpose of the examination  
18 for not more than 60 days or such longer period as the court determines  
19 to be necessary for the purpose and may direct that a qualified psychia-  
20 trist retained by the defendant be permitted to witness and participate  
21 in the examination.

22 (b) In an examination under (a) of this section, any method may be  
23 employed which is accepted by the medical profession for the examination  
24 of those alleged to be suffering from mental disease or defect.

25 (c) The report of an examination under (a) of this section, shall  
26 include the following:

- 27 (1) a description of the nature of the examination;  
28 (2) a diagnosis of the mental condition of the defendant;  
29 (3) if the defendant suffers from a mental disease or defect,

1 an opinion as to his capacity to understand the proceedings against him  
2 and to assist in his own defense;

3 (4) if a notice of intention to rely on the affirmative  
4 defense of insanity under AS 12.47.010 has been filed, an opinion as to  
5 the extent, if any, to which the capacity of the defendant to appreciate  
6 the nature and quality of his conduct was impaired at the time of the  
7 crime charged; and

8 (5) ~~if directed by the court,~~ <sup>if notice has been filed under AS 12.47.020 (a),</sup> an opinion as to the capacity  
9 of the defendant to have a culpable mental state which is an element of  
10 the crime charged.

11 (d) If the examination under (a) of this section cannot be con-  
12 ducted by reason of the unwillingness of the defendant to participate in  
13 it, the report shall so state and shall include, if possible, an opinion  
14 as to whether the unwillingness of the defendant was the result of  
15 mental disease or defect.

16 (e) The report of the examination under (a) of this section shall  
17 be filed with the clerk of the court, who shall cause copies to be  
18 delivered to the <sup>prosecuting</sup> ~~district~~ attorney and to counsel for the defendant.

19 Sec. 12.47.090. PROCEDURE AFTER RAISING DEFENSE OF INSANITY. (a)  
20 At the time the defendant files notice to raise the affirmative defense  
21 of insanity under AS 12.47.010 or files notice under AS 12.47.020(a), he  
22 shall also file notice as to whether, if found not guilty by reason of  
23 insanity under AS 12.47.010 or AS 12.47.020(b), he will assert that he  
24 is not presently suffering from any mental illness that causes him to be  
25 dangerous to the public peace or safety.

26 (b) If the defendant is found not guilty by reason of insanity  
27 under AS 12.47.010 or AS 12.47.020(b), and he has not filed the notice  
28 required under (a) of this section, the court shall immediately commit  
29 him to the custody of the commissioner of health and social services.

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Sec. 12.47.<sup>080</sup>~~11~~. PROCEDURE UPON VERDICT OF NOT GUILTY. (a) If a defendant is found <sup>040(b)(i)</sup> "not guilty" under AS 12.47.~~11~~, the district attorney shall, within 24 hours, file a petition under AS 47.30.700 for a screening investigation to determine the need for treatment if the pr. <sup>ti.</sup>

~~(2)~~ ~~the district~~ attorney has good cause to believe that the defendant is suffering from a mental illness and as a result is gravely disabled or likely to cause serious harm to himself or others.

(b) In this section, "mental illness" has the meaning ascribed to it in AS 47.30.915(12).

1 (c) If the defendant is found not guilty by reason of insanity  
2 under AS 12.47.010 or AS 12.47.020(b), and he has filed the notice  
3 required under (a) of this section, a hearing shall be held immediately  
4 after a verdict of not guilty by reason of insanity to determine the  
5 necessity of commitment. The hearing shall be held before the same  
6 trier of fact as the underlying charge. At the hearing, the defendant  
7 has the burden of proving by clear and convincing evidence that he is  
8 not presently suffering from any mental illness that causes him to be  
9 dangerous to the public. If the court or jury determines that the  
10 defendant has failed to meet his burden of proof, the court shall order  
11 the defendant committed to the custody of the commissioner of health and  
12 social services.

13 (d) A defendant committed under (b) or (c) of this section shall  
14 be held in custody for a period of time not to exceed the maximum term  
15 of imprisonment for the crime for which the defendant was acquitted  
16 under AS 12.47.010 or AS 12.47.020(b) or until the mental illness is  
17 cured or corrected as determined at a hearing under (e) of this section

18 (e) A defendant committed under (b) or (c) of this section may  
19 have the need for his continued commitment under this section reviewed  
20 by the court sitting without a jury under a petition filed in the  
21 superior court at intervals beginning no sooner than a year from his  
22 initial commitment, and yearly thereafter. The burden and standard of  
23 proof at a hearing under this subsection are the same as at a hearing  
24 under (c) of this section. A copy of all petitions for release shall be  
25 served on the attorney general at Juneau, Alaska. A copy shall also be  
26 served upon the attorney of record, if he is not the attorney general,  
27 who represented the state or a municipality at the time the defendant  
28 was first committed.

29 (f) Continued commitment following expiration of the maximum term

1 of imprisonment for the crime for which the defendant was acquitted  
2 under AS 12.47.010 or AS 12.47.020(b) is governed by the standards per-  
3 taining to civil commitments as set out in AS 47.30.735.

4 (g) A person committed under this section may not be released  
5 during the term of commitment except upon court order following a hear-  
6 ing in accordance with <sup>(e)</sup>~~(d)~~ of this section. On the grounds that the  
7 defendant has been cured of any mental illness that would cause him to  
8 be dangerous to the public peace or safety, the state may at any time  
9 request the court to hold a hearing to decide if the defendant should be  
10 released.

11 (h) The commissioner of health and social services or his author-  
12 ized representative shall submit periodic written reports to the court  
13 on the mental condition of a person committed under this section.

14 (i) An order entered under (c) or (e) of this section may be re-  
15 viewed by the court of appeals on appeal brought by either the defendant  
16 or the state within 40 days from the entry of the order.

17 (j) In this section,

18 (1) "mental illness" means any mental condition that increases  
19 the propensity of the defendant to be dangerous to the public peace or  
20 safety, however, it is not required that the mental illness be sufficient  
21 to exclude criminal responsibility under AS 12.47.010, or that the  
22 mental illness presently suffered by the defendant be the same one he  
23 suffered at the time of the criminal conduct;

24 (2) "dangerous" means a determination involving both the  
25 magnitude of the risk that the defendant will commit an act threatening  
26 the public peace or safety, as well as the magnitude of the harm that  
27 could be expected to result from this conduct; a finding that a defen-  
28 dant is "dangerous" may result from a great risk of relatively slight  
29 harm to persons or property, or may result from a relatively slight risk

1 of substantial harm to persons or property.

2 Sec. 12.47.100. INCOMPETENCY TO PROCEED. (a) <sup>A</sup>~~No~~ person who as  
3 a result of mental disease or defect lacks capacity to understand the  
4 proceedings against him or to assist in his own defense <sup>not</sup> may be tried,  
5 convicted or sentenced for the commission of a crime so long as the  
6 incapacity exists.

7 (b) When, after arrest and before the imposition of sentence or  
8 before the expiration of any period of probation, the attorney general,  
9 the prosecuting attorney, or the attorney for the accused has reason-  
10 able cause to believe that a person charged with an ~~offense~~ <sup>crime</sup> may be  
11 presently suffering mental disease or defect or is otherwise so mentally  
12 incompetent that he is unable to understand the proceedings against him  
13 or properly to assist in his own defense, he may file a motion for  
14 a judicial determination of the mental competency of the accused. Upon  
15 that motion or upon a similar motion in behalf of the accused, or upon  
16 its own motion, the court shall have the accused, whether or not  
17 previously admitted to bail, examined as to his mental condition by at  
18 least one qualified psychiatrist, who shall report to the court. For  
19 the purpose of the examination the court may order the accused committed  
20 for a reasonable period as the court may determine to a suitable  
21 hospital or other facility to be designated by the court. If the report  
22 of the psychiatrist indicates a state of present mental disease or defect  
23 or of other mental incompetency in the accused, the court shall hold a  
24 hearing, upon due notice, at which evidence as to the mental condition  
25 of the accused may be submitted, including that of the reporting  
26 psychiatrist, and make a finding with respect to his mental condition.  
27 No statement made by the accused in the course of an examination into  
28 his mental competency provided for by this section, whether the examina-  
29 tion is with or without the consent of the accused, may be admitted in

1 evidence against the accused on the issue of guilt in a criminal pro-  
 2 \* ceeding unless the accused later relies on a defense based on mental  
 3 disease or defect at trial. A finding by the judge that the accused  
 4 is mentally competent to stand trial in no way prejudices the accused  
 5 in a defense based on insanity; the finding may not be introduced in  
 6 evidence on that issue or otherwise be brought to the notice of the jury.

7 Sec. 12.47.110. COMMITMENT ON FINDING OF INCOMPETENCY. (a) When  
 8 the trial court determines by a preponderance of the evidence, in  
 9 accordance with AS 12.47.100, that a defendant is so mentally incompe-  
 10 tent that he is unable to understand the proceedings against him or  
 11 properly to assist in his own defense, the court shall order the pro-  
 12 ceedings against him stayed, except as provided in (d) of this section,  
 13 any may commit the defendant to the custody of the commissioner of health  
 14 and social services or his authorized representative for further eva-  
 15 luation and treatment until the defendant is mentally competent to  
 16 stand trial, or until the pending charges against him are disposed of  
 17 according to law, but in no event longer than 90 days.

18 (b) On or before the expiration of the initial 90-day period of  
 19 commitment the court shall conduct a hearing to determine whether or  
 20 not the defendant remains incompetent. If the court finds by a pre-  
 21 ponderance of the evidence that the defendant remains incompetent, the  
 22 court may recommit the defendant for a second period of 90 days. The  
 23 court shall determine at the expiration of the second 90-day period  
 24 whether the defendant has become competent. If at the expiration of the  
 25 second 90-day period the court determines that the defendant continues  
 26 to be incompetent to stand trial, the charges against him shall be  
 27 dismissed without prejudice and continued commitment of the defendant  
 28 shall be governed by the provisions relating to civil commitments under  
 29 AS 47.30.700 -- 47.30.915 unless the defendant is charged with a crime

1 involving force against a person and the court finds that the defendant  
2 presents a substantial danger of physical injury to other persons and  
3 that there is a substantial probability that the defendant will regain  
4 competency within a reasonable period of time, in which case the court  
5 may extend the period of commitment for an additional six months. If  
6 the defendant remains incompetent at the expiration of the additional  
7 six-month period, the charges shall be dismissed without prejudice and  
8 either civil commitment proceedings shall be instituted or the court  
9 shall order the release of the defendant. If the defendant remains  
10 incompetent for five years after the charges have been dismissed under  
11 this subsection, the defendant may not be charged again for an offense  
12 arising out of the facts alleged in the original charges, except if the  
13 X original charge is a class A felony or unclassified felony.

14 (c) The defendant is not responsible for the expenses of hos-  
15 pitalization or transportation incurred as a result of his commitment  
16 under this section. Liability for payment under AS 47.30.910 does not  
17 apply to commitments under this section.

18 (d) A defendant receiving medication for either a physical or a  
19 mental condition may not be prohibited from standing trial, if the  
20 medication either enables him to understand the proceedings against him  
21 and to properly assist in his own defense or does not disable him from  
22 understanding the proceedings and assisting in his own defense.

23 Sec. 12.47.120. DETERMINATION OF SANITY AFTER COMMITMENT. (a)  
24 When, in the medical judgment of the custodian of an accused person  
25 committed under AS 12.47.110, the accused is considered to be mentally  
26 competent to stand trial, the committing court shall hold a hearing,  
27 after due notice, as soon as conveniently possible. At the hearing,  
28 evidence as to the mental condition of the accused may be submitted  
29 including reports by the custodian to whom the accused was committed for

1 case.

2 (b) If at the hearing the court determines that the accused is  
3 presently mentally competent to understand the nature of the proceedings  
4 against him and to assist in his own defense, appropriate criminal  
5 proceedings may be commenced against the accused.

6 (c) If at the hearing the court determines that the accused is  
7 still presently mentally incompetent, the court shall recommit the  
8 accused in accordance with AS 12.47.110.

9 (d) A finding by the court that the accused is mentally competent  
10 to stand trial in no way prejudices the accused in a defense based on  
11 mental disease or defect excluding responsibility. This finding may not  
12 be introduced in evidence on that issue or otherwise be brought to the  
13 notice of the jury.

14 ~~Sec.~~ 12.47.130. DEFINITIONS. As used in this chapter <sup>2</sup>(1) "affirma-  
15 tive defense" has the meaning ascribed to it in AS 11.81.900(b)(1).  
16 <sup>1</sup>(2) "mental disease or defect" means a disorder of thought or mood which  
17 substantially impairs judgment, behavior, capacity to recognize reality,  
18 or ability to cope with the ordinary demands of life. "Mental disease  
19 or defect" also includes mental retardation, which means a significantly  
20 below average general intellectual functioning which impairs a person's  
21 ability to adapt to or cope with the ordinary demands of life.  
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29

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 898  
 Title "An Act relating to the insanity defense"  
 Requested by House Judiciary Date May 15, 1982

II. FISCAL DETAIL

Agency Affected Health and Social Services  
 Program Category Affected Offender Confinement, Reformation & Supervision  
 BRU, Program, Or Subprogram(s) Affected Adult Corrections  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

|                          | FY 82 | FY 83 | FY 84   | FY 85   | FY 86   | FY 87   |
|--------------------------|-------|-------|---------|---------|---------|---------|
| 100 PERSONAL SERVICES    |       | 627.6 | 1,151.3 | 1,231.8 | 1,318.1 | 1,410.3 |
| 200 TRAVEL               |       | 11.7  | 21.8    | 23.8    | 25.9    | 28.2    |
| 300 CONTRACTUAL          |       | 248.1 | 463.7   | 505.4   | 550.9   | 600.5   |
| 400 COMMODITIES          |       | 49.6  | 92.7    | 101.0   | 110.1   | 120.0   |
| 500 EQUIPMENT            |       |       |         |         |         |         |
| 600 LAND & STRUCTURES    |       |       |         |         |         |         |
| 700 GRANTS, CLAIMS, ETC. |       |       |         |         |         |         |
| TOTAL                    |       | 937.0 | 1,729.5 | 1,862.0 | 2,005.0 | 2,159.0 |

FUNDING (Thousands of Dollars)

|                        |  |       |         |         |         |         |
|------------------------|--|-------|---------|---------|---------|---------|
| GENERAL FUND           |  | 937.0 | 1,729.5 | 1,862.0 | 2,005.0 | 2,159.0 |
| FEDERAL FUNDS          |  |       |         |         |         |         |
| OTHER (Specify Source) |  |       |         |         |         |         |

POSITIONS

|           |  |    |    |    |    |    |
|-----------|--|----|----|----|----|----|
| FULL TIME |  | 24 | 24 | 24 | 24 | 24 |
| PART TIME |  |    |    |    |    |    |
| TEMPORARY |  |    |    |    |    |    |

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

A. Assumptions

1. All persons with mental illnesses who also are charged with criminal offenses are being housed either at Alaska Psychiatric Institute or within one of the state's correctional centers. Therefore, no additional beds will be needed if this legislation is enacted.
2. Persons in pre-trial status requiring psychiatric evaluation and observation be placed at the Anchorage Pre-trial Facility. The anticipated opening date is January 1, 1983, therefore, seven month funding is identified for this program component, allowing for facility familiarization and training. This will be a 36 bed mental health unit as an integral program within this facility.

IV. DATE May 20, 1982 PREPARED BY Roger C. Lange  
 AGENCY Division of Adult Corrections  
 PHONE 465-3376

Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)

B. Expenditures

1. Personal Services

A total of 24 positions are required to implement this legislation.

The positions, are as follows:

| <u>Position Classification</u>                              | <u>Number Requested</u> |
|---|-------------------------|
| Forensic Psychiatrist R/28F + 5%                            | 1                       |
| Mental Health Clinician III<br>(Clinical Psychologist) R/21 | 1                       |
| Mental Health Clinician II<br>(Social Worker) R/19          | 1                       |
| Activity Therapist R/14B                                    | 1                       |
| Psychiatric Nurse Sup. R/17                                 | 1                       |
| Registered Nurses I-III R/14B                               | 5                       |
| Correctional Officer R/13B                                  | 12                      |
| Clerk/Typist II R/7B  | 1                       |
| Secretary I R/10B   | 1                       |
| Total   | <u>24</u>               |

Of the 24 positions, 7 are included in the FY 1983 budget request for Alaska Psychiatric Institute. These positions are:

| <u>Position Classification</u> | <u>Number Requested</u> |
|--------------------------------|-------------------------|
| Correctional Officer II        | 6                       |
| Activity Therapist             | 1                       |
| Total                          | <u>7</u>                |

These positions will be transferred to the Anchorage Pre-trial Facility.

2. Travel

Travel funds are necessary to transport inmates to the treatment unit and, subsequently, to other facilities when they are classified to be ready for a general prison environment.

3. Contractual

Contractual funds are requested to provide psychiatric services to inmates found guilty but mentally ill. This will permit an average of 36 hours of psychiatric medical treatment per month in each of the states correctional centers.

4. Commodities

The majority of these costs are for pharmaceutical products to be used in the treatment program. Some office supplies are also included.

5. Equipment

Specialized medical equipment will be required for both program components. Equipment will also be needed for the new positions.

6. Inflation was considered to be constant over the period covered by the fiscal note, as follows:

|                              |     |
|------------------------------|-----|
| Personal Services            | -7% |
| Other expenditure categories | -9% |

Sec. 12.45.083. Mental disease or defect excluding responsibility. (a) A person is not responsible for criminal conduct if at the time of the 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.

(b) Reliance on mental disease or defect as excluding responsibility is an affirmative defense. The burden of proof beyond a reasonable doubt does not require the prosecution to disprove an affirmative defense unless and until there is evidence supporting the defense. The requirement of evidence supporting the affirmative defense is not satisfied solely by evidence of an abnormality which is manifested only by repeated criminal or otherwise antisocial conduct.

(c) If the defendant is acquitted on the ground of mental disease or defect excluding responsibility, the verdict and the judgment shall so state.

(d) When a person offers a defense based on mental disease or defect excluding responsibility for his criminal conduct, he may waive a jury trial without the consent of the state. (§ 1 ch 119 SLA 1972)

Sec. 12.45.085. Evidence of mental disease or defect. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense. However, evidence of mental disease or defect excluding responsibility is not admissible unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his intent to rely on that defense. (§ 1 ch 119 SLA 1972)

Sec. 12.45.087. Psychiatric examination. (a) If a defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or there is reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one qualified psychiatrist, or a forensic psychologist certified by the American Board of Forensic Psychology, or shall request the superintendent of the Alaska Psychiatric Institute to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. If the defendant has filed notice under AS 12.45.090(a) the report shall consider whether the defendant can still be committed under AS 12.45.090. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for not more than 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(b) In an examination under (a) of this section, any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(c) The report of an examination under (a) of this section shall include the following:

- (1) a description of the nature of the examination;
- (2) a diagnosis of the mental condition of the defendant;
- (3) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(4) if a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was impaired at the time of the criminal conduct charged; and

(5) if directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(d) If the examination under (a) of this section cannot be conducted by reason of the unwillingness of the defendant to participate in it, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(e) The report of the examination under (a) of this section shall be filed with the clerk of the court, who shall cause copies to be delivered to the district attorney and to counsel for the defendant. (§ 1 ch 119 SLA 1972; am § 2 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, added "or a forensic psychologist certified by the American Board of Forensic Psy-

chology" following "one qualified psychiatrist" in the first sentence and added the second sentence of subsection (a).

Sec. 12.45.080. Procedure after raising defense of mental disease or defect. (a) At the time the defendant files notice to raise the affirmative defense of mental disease or defect as excluding responsibility he shall also file notice as to whether if found not guilty by reason of mental disease or defect as excluding responsibility he will assert that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public peace or safety.

(b) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility and he has not filed the notice required under (a) of this section, the court shall immediately commit him to the custody of the commissioner of health and social services.

(c) If the defendant is found not guilty by reason of mental disease or defect as excluding responsibility, and he has filed the notice required under (a) of this section, a hearing shall be held immediately after the verdict is returned to determine the necessity of further commitment. The hearing shall be held before the same trier of fact as the underlying charge, but if a jury was the trier of fact, the hearing shall be held before a jury of six drawn from the original jury in accordance with rules adopted by the supreme court. At the hearing, the defendant has the burden of proving by a preponderance of the evidence that he is not presently suffering from a mental disease or defect that causes him to be dangerous to the public. If the court or jury determines that the defendant has failed to meet his burden of proof, the court shall order the defendant committed to the custody of the commissioner of health and social services.

(d) A defendant committed under (b) or (c) of this section shall be held in custody for a period of time not to exceed the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 or until the mental disease is cured or the defect corrected as determined at a hearing under (e) of this section.

(e) A defendant committed under (b) or (c) of this section may have the need for his continued hospitalization determined or redetermined under a petition filed in the superior court at intervals beginning no sooner than six months from his initial commitment and yearly thereafter. The burden and standard of proof at a hearing under this subsection is the same as at a hearing under (c) of this section except that the defendant is not entitled to a jury unless he files a motion for a jury no later than 15 days before the date set for the hearing. A copy of all petitions for release shall be served on the attorney general at Juneau, Alaska. A copy shall also be served upon the attorney of record, if he is not the attorney general, who represented the state or a municipality at the time the defendant was first committed.

(f) Continued commitment following expiration of the maximum term of imprisonment for the crime for which the defendant was acquitted under AS 12.45.083 is governed by the standards pertaining to civil commitments as set out in AS 47.30.735.

(g) A person committed under this section may not be released during the term of commitment except upon court order following a hearing in accordance with (c) of this section. On the grounds that the defendant has been cured of the mental disease or defect and is no longer dangerous to public peace or safety the state may at any time request the court to hold a hearing to decide if the defendant should be released.

(h) The commissioner of health and social services or his authorized representative shall submit periodic written reports to the court on the mental condition of a person committed under this section. (§ 6.10 ch 34 SLA 1962; am § 6 ch 104 SLA 1971; am § 2 ch 119 SLA 1972; am § 3 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote this section.

Revisor's notes. — In the first sentence

of subsection (e), the word "section" was substituted for "position" by the revisor of statutes pursuant to AS 01.05.031(b).

Sec. 12.45.100. Determination of mental disease or defect during trial or probation. (a) No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures.

(b) When, after arrest and before the imposition of sentence or before the expiration of any period of probation, the attorney general, the district attorney, or the attorney for the accused has reasonable cause to believe that a person charged with an offense may be presently suffering mental disease or defect or is otherwise so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, he may file a motion for a judicial determination of the mental competency of the accused. Upon that motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall have the accused, whether or not previously admitted to bail, examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for a reasonable period as the court may determine to a suitable

hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present mental disease or defect or of other mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect to his mental condition. No statement made by the accused in the course of an examination into his mental competency provided for by this section, whether the examination is with or without the consent of the accused, may be admitted in evidence against the accused on the issue of guilt in a criminal proceeding. A finding by the judge that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility; the finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 6.11 ch 34 SLA 1962; am § 3 ch 119 SLA 1972)

Sec. 12.45.110. Commitment on finding of incompetency. (a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.45.100, that a defendant is so mentally incompetent that he is unable to understand the proceedings against him or properly to assist in his own defense, the court shall order the proceedings against him stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or his authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against him are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against him shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 — 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is murder.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of his commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables him to understand the proceedings against him and to properly assist in his own defense or does not disable him from understanding the proceedings and assisting in his own defense. (§ 6.12 ch 34 SLA 1962; am § 1 ch 43 SLA 1966; am § 6 ch 104 SLA 1971; am § 4 ch 84 SLA 1981)

Effect of amendments. — The 1981 amendment, effective October 1, 1981, rewrote the section.

Sec. 12.49.115. Determination of sanity after commitment. (a) When, in the medical judgment of the custodian of an accused person committed under AS 12.45.110, the accused is considered to be mentally competent to stand trial, the committing court shall hold a hearing, after due notice, as soon as conveniently possible. At the hearing, evidence as to the mental condition of the accused may be submitted including reports by the custodian to whom the accused was committed for care.

(b) If at the hearing the court determines that the accused is presently mentally competent to understand the nature of the proceedings against him, and to assist in his own defense, appropriate criminal proceedings may be commenced against the accused.

(c) If at the hearing the court determines that the accused is still presently mentally incompetent, the court shall recommit the accused in accordance with AS 12.45.110.

(d) A finding by the court that the accused is mentally competent to stand trial in no way prejudices the accused in a defense based on mental disease or defect excluding responsibility. This finding may not be introduced in evidence on that issue or otherwise be brought to the notice of the jury. (§ 2 ch 43 SLA 1966; am §§ 4 — 6 ch 119 SLA 1972; am § 5 ch 84 SLA 1981)

*Effect of amendments.* — The 1981 amendment, effective October 1, 1981, in subsection (a), substituted "AS 12.45.110" for "AS 12.45.110(a)" and deleted "after release of the accused from custody" following "conveniently possible" in the first sentence. The amendment, in subsec-

tion (b), substituted "and" for "or" preceding "to assist" and substituted "may" for "shall" preceding "be commenced." In subsection (c), the amendment substituted "in accordance with AS 12.45.110" for "as provided in AS 12.45.110(a)."

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Official Business

# Alaska State Legislature

## Senate

### Committee on Judiciary

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MINUTES OF THE SENATE JUDICIARY COMMITTEE

OF

JANUARY 20, 1982

Butrovich Committee Room, State Capitol Juneau, Alaska

#### Legislation Before Committee:

- SB 545 - "An Act relating to release after conviction of an offense."
- SB 547 - "An Act permitting the videotaping of, or the exclusion of the public during, testimony of young victims of sexual assault or sexual abuse of a minor; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."
- SB 485 - "An Act permitting the videotaping of testimony of young victims of sexual assault or sexual abuse of a minor; and changing Rule 804, Alaska Rules of Evidence relating to exceptions to the hearsay rule."

The meeting of the Senate Judiciary Committee was called to order by Chairman Rodey at 1:40 P.M. Committee members present were: Senator Rodey, Bennett, Ray, and Parr. Senator Hohman was absent.

First on the agenda was SB 545. Barry Stern, Department of Law, reported back to the committee on the instances of offenders released on bail prior to sentencing and subsequently apprehended for similar felonies.

The next witness called was James Sterling, Anchorage Police Department Employees Association. He reported his association was strongly in favor of this bill as written.

Senator Ray moved that the bill be amended to read that, Pg. 1, Line 12 between the word "kidnapping" and the phrase "a Class A felony", insert the word "or" and to delete the phrase "or a Class B felony". There was no objection to the amendment and it was adopted.

Senator Bennett moved that the bill be passed from committee. Members had the following recommendations: Chairman Rodey, do pass; Senator Bennett, do pass; Senator Ray, do pass; Senator Parr, no recommendation.

Senator Bennett was excused from the meeting due to Finance Committee meetings.

Chairman Rodey then took up Senate bills 485 and 547. Senator Bradley, prime sponsor of SB 547, was the first witness. He gave an overview of his legislation and explained the differences between the two bills. Senator Parr, sponsor of SB 485, also discussed the differences and a history of the proposed legislation.

The next witness was Barry Stern, Department of Law. He indicated the administration's support of both bills. He requested that the committee consider three changes to the legislation: 1.) He felt that the order allowing videotaping should be automatic rather than necessitating a hearing on the matter. 2.) He was concerned that the bill only spoke to a sexual assault and felt that additional offenses could be covered. 3.) The committee should consider expanding the use to young witnesses as well as victims.

James Sterling, APDEA, testified that the association was in full support of both bills and that they would like to see this provision applied to all victims of sexual assault.

Deborah Keller, parent of abused child, supported the legislation, but wanted to eliminate the presence of the defendant while the testimony was recorded.

John Pugh, Department of Health and Social Services, testified that the Department's position was favorable to both bills. He suggested the committee delineate which persons could be present during the videotaping of testimony.

Sarah Felix, AWARE attorney, testified in favor of both bills. Her written testimony is attached.

Chairman Rodey directed staff to work with the Department of Law and have a committee substitute ready for the following week. The bills were laid on the table and the meeting was adjourned.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 545 am  
 Title An Act relating to release after conviction of an offense  
 Requested by House Judiciary Date \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected Department of Public Safety  
 Program Category Affected Administration of Justice  
 BRU, Program, Or Subprogram(s) Affected Alaska State Troopers  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

|                          | FY 82 | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES    |       |       |       |       |       |       |
| 200 TRAVEL               |       |       |       |       |       |       |
| 300 CONTRACTUAL          |       |       |       |       |       |       |
| 400 COMMODITIES          |       |       |       |       |       |       |
| 500 EQUIPMENT            |       |       |       |       |       |       |
| 600 LAND & STRUCTURES    |       |       |       |       |       |       |
| 700 GRANTS, CLAIMS, ETC. |       |       |       |       |       |       |
| <b>TOTAL</b>             | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |

FUNDING (Thousands of Dollars)

|                        |     |     |     |     |     |     |
|------------------------|-----|-----|-----|-----|-----|-----|
| GENERAL FUND           |     |     |     |     |     |     |
| FEDERAL FUNDS          |     |     |     |     |     |     |
| OTHER (Specify Source) |     |     |     |     |     |     |
|                        | -0- | -0- | -0- | -0- | -0- | -0- |

POSITIONS

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL TIME |  |  |  |  |  |  |
| PART TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

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

No fiscal impact.

IV. DATE 2-25-82 PREPARED BY *Michael Orelove*  
 AGENCY Department of Public Safety  
 Original: Legislative Finance PHONE 465-4350  
 cc: Budget and Management *(Pub)*  
 Prime Sponsor (First Legislator Named)  
 33-001 (Rev. 12/81)