

ATLAS THE COMPASSIBLES
7/98-1986

1698
ST 535

471 - Chairman Rodey laid SB 774 on the table.

474 - The next item brought before the Committee was SB 855.

496 - Merle Jensen, Budget & Audit, testified in favor of SB 855.

546 - Pat Sharrock, representing the ABC Board, testified, stating that he had no opposition to the bill.

585 - SB 855 was laid on the table.

591 - Mr. Bruce distributed a bill relating to interest in eminent domain cases for the Committee member's approval of introduction. There was no objection.

603 - SB 654 was the last item before the Committee.

610 - Mr. Sharrock, Bill Gordon, and Mr. House, of the ABC Board, testified in favor of SB 654.

SIDE TWO

068 - After discussion, SB 654 was laid on the table.

074 - Adjournment at 2:25 P.M.



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

DATE: February 1, 1982

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray
Senate Secretary's office

FROM: Kevin K. Bruce

RE: SB 535

The following sections of SB 535 are those indicated by Assistant Attorney General Barry St. rn as "secondary" in the Department's priorities:

Sections: 5, 6, 7, 10, 11, 12, 14, 15, 18, and 21.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 535
 Title "An Act relating to the criminal laws of the state."
 Requested by Judiciary Committee Date March 4, 1982

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, Or Subprogram(s) Affected Adult Confinement
 (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						1,160.4
200 TRAVEL						16.8
300 CONTRACTUAL						236.5
400 COMMODITIES						212.3
500 EQUIPMENT						28.0
600 LAND & STRUCTURES			3,808.8			
700 GRANTS, CLAIMS, ETC.						52.4
TOTAL	-0-	-0-	3,808.8	-0-	-0-	1,706.4

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	3,808.8	-0-	-0-	1,706.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	20
PART TIME						
TEMPORARY						

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

Assumptions

- The only section with any significant fiscal impact on the Division of Adult Corrections is Section 16 amending AS 12.55.125 (c)(1).
- The presumptive sentence length has been taken as the mean sentence for all offenders sentenced under AS 12.55.125 (c)(1).
- The impact of this legislation will not be experienced for 4½ years from the date of effect. At the present time, an average of 32 persons are convicted of first offense felonies with the use of a firearm. The current flat time sentence is 4½ years. Under the proposed legislation, the flat time served would be six years. Therefore, the population of inmates for which the Division of Adult Corrections is responsible would increase by 48 persons in the fifth and sixth years that the increased sentence length is in

IV. DATE March 9, 1982

PREPARED BY Roger C. Lange *Roger C. Lange by WZ*

AGENCY Division of Adult Corrections

Original: Legislative Finance
cc: Budget and Management

PHONE 465-3376

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

JCC

effect.

4. Capital budget projections are based on statewide average costs for the addition of 48 beds to be on line in FY '87. Based on current costs estimated to be \$69,000 per bed x 48 beds plus 15% inflation for one year = \$3,803,800.
5. It is estimated that an extension of a facility of this size would require a minimum staff of 20. Other costs are related to direct prisoner care and operation of the physical plant.

SB485, SB547

3460

Barry Stern / Vic Krumm - Attorney General's

3030

NINA KINNEY - DEPT. HSS

86-6623

CAREN ROBINSON - WOMAN'S STATE

JANA VARRITI - ~~WOMAN~~ AWARE

586-2977

~~WOMAN STATE~~ - WOMEN'S RESOURCE CENTER
DEBORAH KELLER

4338

PAUL CONGER - DEPT. OF PUBLIC SAFETY

279-7541

BOB STOKES - PUBLIC DEFENDER

SB 535

3460

Barry Stern - Dept. of Law

4338

PAUL CONGER - DEPT. PUBLIC SAFETY

GORDON EVANS - BIRTH - HONOR

279-7541

BOB STOKES - PUBLIC DEFENDER

279-2526

NICK MAROULIS - AK JUDICIAL COUNCIL

264-0550

DICK DEPLAPlane (SP?) - ANSCA Court System
CALLED FOR INFO 1-18-82

Alaska State Legislature

SENATOR

DON BENNETT

P.O. BOX 2801
FAIRBANKS, ALASKA 99707



Senate

LEGISLATIVE ADDRESS

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

RECEIVED

May 25, 1981

MAY 26 1981

Theodore Lehne
1028 Aurora Drive
Fairbanks, Alaska 99701

Dear Theodore:

I received your letter of support for Senate Bill 535 and can understand your concerns for "theft of service" in your business.

This bill is presently in the Judiciary Committee and we are reviewing it carefully from a legal standpoint. ~~I have forwarded a copy of your letter to Senator Rodey, Chairman of Senate Judiciary, for inclusion in the Senate Bill 535 File.~~

Rest assured I'll keep your views in mind as this important legislation comes before us, and thank you for this input.

Best Regards,

Senator Don Bennett

DB/jk

MAY 13 1981



10 May 1981

The Honorable Don Bennett
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Don:

I'm writing to ask you to help shepard through the Senate Section 14 of S.535. According to the draft I have, this amendment to AS 11.81.900 (i)(50) further defines the word "services" to clearly include all the forms of pay TV.

It is my understanding that this bill has been referred to the Senate Finance Committee. While I'm sure you, as co-chairman, have much more important fiscal measures to decide, I'm hoping this bill does not get lost in the shuffle.

Since SPECTRUM went on the air in December 1979 we have done what we could to inhibit "theft of service." We have had good cooperation from Harry Davis, the local district attorney. But Harry has been hesitant to prosecute anything but the most blatant case because he does not feel that the current statute clearly includes our form of pay TV. Obviously the worst thing that could happen to us would be for us to lose a case. That would be interpreted by many that their "right" to intercept our service without paying for it has been upheld. And, if a large number of people decide they don't have to pay us, we will be out of business!

I have attached for your information a copy of a letter from Harry Davis, along with a copy of a California statute in this area. Also attached is an article from a recent edition of Multichannel News.

Please do what you can to see that the amendme. I have referred to is adopted this session. We are prepared to give those who are now intercepting our service every opportunity to subscribe, rather than prosecute them. But we must have a credible threat to use to convince them to subscribe. Only if they refuse to subscribe will we use the law.

I understand you are very busy at this time of the session and may not get back to me personally. But if you have any questions that Harry or I can answer for you, please do not hesitate to give us a call.

Cordially

A handwritten signature in black ink, appearing to read "Lehne", is written over the word "Cordially". The signature is fluid and cursive, with a large initial "L".

Theodore Lehne
SPECTRUM

1028 Aurora Drive
Fairbanks, Alaska 99701
(907) 456-6160

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE DISTRICT ATTORNEY

604 Barnette St., Rm. 247
Fairbanks, Alaska 99701
(907) 452-1565

December 17, 1980

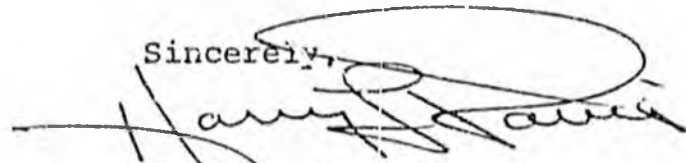
Mr. Ted Lehne
Spectrum
1028 Aurora Drive
Fairbanks, Alaska 99701

Dear Ted:

I have enclosed a copy of the California statute you referred to in your letter of December 10, 1980. Obviously a similar law in Alaska would be desirable. It is my opinion that a statute properly drafted to prohibit the attachment of a pirate receiver to a TV could withstand constitutional attack. Furthermore a statute could be drafted to make the installing of a pirate receiver attempted theft of services.

I suggest you seek legal advice from attorneys who are familiar with Alaska's new criminal code and have experience in drafting legislation. Hopefully by the end of the next session of the legislature Alaska will have some laws protecting the subscription television industry from unauthorized receptions.

Sincerely,



Harry L. Davis
District Attorney

HDD:11

Enclosures

CRIMES AND OFFENSES—TELEVISION—SUBSCRIPTION
TRANSMISSIONS

CHAPTER 1332

ASSEMBLY BILL NO. 3475

An act to add Section 593e to the Penal Code, relating to television transmissions, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

Existing law makes no provision prohibiting the sale, manufacture, or distribution of over-the-air decoding devices or parts thereof, including the plans for making such devices.

This bill would prohibit the knowing and willful manufacture, distribution, or sale of any device or plan or kit for a device, or printed circuit containing circuitry for interception or decoding for the purpose of facilitating an unauthorized interception or decoding of subscription television transmissions made pursuant to authority granted by the Federal Communications Commission, and would provide specified misdemeanor penalties for violations thereof.

Under existing law, Sections 2231 and 2234 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. Other provisions require the Department of Finance to review statutes disallowing these costs and provide, in certain cases, for making claims to the State Board of Control for reimbursement. These statutory provisions would be supplemented by a constitutional requirement of reimbursement effective for statutes enacted on or after July 1, 1980.

This bill provides that no appropriation is made and no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 593e is added to the Penal Code, to read:

593e.

Every person who for profit knowingly and willfully manufactures, distributes, or sells any device or plan or kit for a device, or printed circuit containing circuitry for interception or decoding with the purpose or intention of facilitating interception or decoding of any over-the-air transmission by a subscription television service made pursuant to authority granted by the Federal Communications Commission which is not authorized by the subscription television service is guilty of a misdemeanor punishable by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding 90 days, or both.

SEC. 2. No appropriation is made by this act pursuant to Section 2231 or 2234 of the Revenue and Taxation Code or Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be because this act creates a new crime or infraction, changes the definition of a crime or infraction, or eliminates a crime or infraction. Furthermore, this act does not create any present or future obligation to reimburse any local agency or school district for any costs incurred because of this act.

deletions by asterisks * * *

5131

Ch. 1332

STATUTES OF 1980

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

The need for legislative protection from piracy and other unauthorized reception of subscription television transmissions has become increasingly urgent to protect the subscription television industry, especially in light of the inadequate protection against illicit activities provided by existing law, and it is therefore necessary that this act go into effect immediately.

Approved and filed Sept. 30, 1980.

Multichann

The Newspaper for the New Electronic Media

Troubled Seas For Pay Pirates

By Peggy Ziegler
Assistant Editor

DENVER—Pay TV pirates may be facing a legal ebb tide in the wake of a number of recent court decisions against selling pirate devices.

In New York City, Home Box Office won a temporary injunction in its first suit against a pay TV pirate.

In Las Vegas, a class action suit is pending against retailers and consumers of pirate devices, following a preliminary injunction barring some 30 Las Vegas

companies from selling the devices.

In Phoenix, a pirate business operating in defiance of an injunction was seized and closed down. The company's bank account and its owners' homes are being attached in an attempt to collect a portion of the \$102,000 settlement ordered by a Phoenix judge.

In Miami, a multipoint distribution service (MDS) used private detectives to prepare a case against local pirates.

And two men convicted in Detroit on criminal charges of signal theft have agreed to a permanent injunction in settlement of a civil suit brought by Chartwell Communications Group and National Subscription Television.

A New York federal court judge granted Home Box Office the injunction in its suit against Advanced Consumer Electronics, a manufacturer of pirate devices, New York area distributor Movie Antenna Inc. and Movie Antenna owner Richard S. Kallin. The preliminary injunction bars the companies from advertising and selling the microwave antennae and down converters. HBO will pursue the suit on five counts: violation of Section 605 of the Communications Act, copyright infringement, improper use of trademark, violation of New York state theft of service law and violation of a federal wire-tap law, according to HBO director of corporate public relations Linda Davis. The HBO name was used by the companies in advertise-

Please turn to page 22

Continued from page one
ments in recent issues of the New York Daily News.

It has been HBO policy to encourage individual MDS affiliates to pursue pirates, but because "New York is odd," with some nine MDS operations offering HBO in the region, the company decided to file the suit itself, Ms. Davis said.

Purchasers of pirate devices in Las Vegas may be liable for up to \$1 million in a class action suit filed by Tekkom Communications, a unit of Nevada Pay TV. Tekkom has given buyers, named in the suit along with 30 distributors of pirate equipment, until Feb. 27 to get rid of the pirate equipment. Buyers are being encouraged to subscribe to Tekkom's service. According to Jay Coon, hired by Tekkom to head anti-piracy efforts, the company has also offered assistance in recovering at least a portion of the money spent on pirate equipment. "But so many people paid cash, it's hard to track down," Mr. Coon said.

Mr. Coon estimated more than 7,000 Las Vegas are using pirate equipment. Mr. Coon said a lobbying effort to outlaw signal piracy in Nevada is under way. "We expect in six months, there won't be much of a question left," Mr. Coon said.

Maricopa County, AZ, sheriffs seized and shut down Pirate Electronics recently when it continued to sell pirate antennas in defiance of a Nov. permanent injunction, which also awarded Tele-Features, the local MDS operation, \$102,000 in damages. Phil Merrill, vice president of American Cable Television, Phoenix, which owns Tele-Features, said the firm is pursuing at least a dozen other companies selling the equipment in the Phoenix area and estimates the company is losing up to a quarter of a million dollars annually to signal theft.

Mr. Merrill says press coverage of suits has caused another headache. "Every time a story runs, they [the pirates] get calls asking how to set up a pirate outlet in other cities."

"I feel like Jim Rockford sometimes," said Ellen Wedner, general manager of Miami's Private Channels Club, the MDS operation that used private detectives in its pursuit of pirates. Private Channels, which serves some 12,000 customers in the Miami area, is jointly owned by American Television & Communications Corp. and Midwest Corp.

Ms. Wedner estimated about 5,000 people in the Miami area illegally receive the system's signal.

records, but you know what happens—they burn them," Ms. Wedner said. "The only way to fight piracy is to build a strong case." She said manufacturing of the devices is particularly prevalent in Miami because manufacturers claim to be producing the devices for export only.

The private detectives' reports will be used in a suit the company plans to file at the end of Feb. An injunction against advertising, selling and installing pirate devices will be sought.

Philip G. Westbrook and Robert Moser, convicted in Detroit on criminal charges for violations of the Communications Act, have agreed to a permanent injunction barring them from making, distributing or selling illegal subscription television decoders. The agreement closes a \$10 million civil suit brought by Chartwell and National Subscription Television's ON TV. "Our litigation has been successfully concluded," said ON TV Detroit president Patrick Kerich, adding that damages will not be sought from the two defendants. "Our objective was to put them out of business," said Mr. Kerich. □



Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 19, 1981

Ms. Dana Fabe
Public Defender
State of Alaska
716 West 4th Avenue
Anchorage, Alaska 99501

Dear Dana:

Please find enclosed a sectional analysis for SB 535 prepared by the Department of Law.

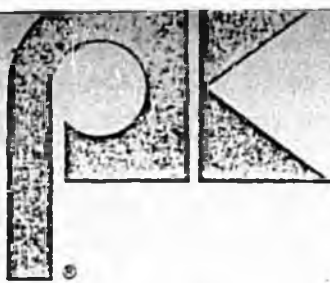
I hope it will be of some use to you in your preparation for the committee.

Sincerely

A handwritten signature in cursive script, appearing to read "Kevin K. Bruce".

Kevin K. Bruce
Committee Aide

KKB/ods
Enclosure



MULTICAST

Pirate interview.....p.1
 Sony/Betamax decision.p.2
 Salt Lake City delay..p.3
 Foreign programming...p.4
 Laramie, WY launch....p.5
 Recent FCC action.....!

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

No. 223
 November 13, 1981

PAUL KAGAN ASSOCIATES, INC.
 26386 CARMEL RANCHO LANE
 CARMEL, CALIFORNIA 93923
 (408) 624-1536

TO LC LF
 JL LW
 SKO
 CLV

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)

"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)

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



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

Ex. 3B
Ace

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 \$350. 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 orders 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
Thunderbolt bank
5704 W. Glen
Meridale, Pa.
01-144/4-5
Our bank office
Call their bank
602-242-1111
Bill Martin of
Thunderbolt

Ace
EX. CC

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) 855-3325

EXH
C

Slake

EXHIBIT 2 2105



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 !!

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ENCLOSURE PAGE

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

Video pirates

By Jonathan Greenberg

EVEN 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 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 trap 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 re-wiring basic cable units to get extra service for free.



Microantenna antenna on sale in New York. Presto! 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 Qube 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 unknowns. ■



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

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

FRANCE W. MCGARRY
 LOS ANGELES (UPI) — The
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 Pirate TV offers is
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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 assist-
 ant to three chairmen of the
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 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.

TV broadcasters are
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 lawsuits, but the pirate
 s is booming, say John
 and MacKenzie Davis.
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 states by Davis' Pirate
 he Los Angeles suburb
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"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 Electron-
 ics 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.

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 in their business.
 Subscription TV compa-
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 bert Cahill, one of the
 s of the National

"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.

"Here's some 100 cities
 where this (microwave) system
 is in use and ma. 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 manufact
 equipment that takes the "pay" out of pay TV by receiving signals without
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 UPI

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"We were in court in Phoenix
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 adv for July 27 or thereafter

Sampson and Davis maintain
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Odds And Ends

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 "The Great Escape"

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 Kim Schmidt, the 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. 15 to Aug. 17. The
 foremaster will inaugurate the
 event with a parade and the
 ships will be open to the public

A major problem, they
 complained, is with other
 dealers who set up shop "as
 Pirate something or other" and
 market cheaply equipment.
 "We worry about our reputation."

"The name is almost as big
 an asset now as the good
 antenna we make. I have a
 dozen pirate t-shirts in my
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Eventually, Davis said, "the
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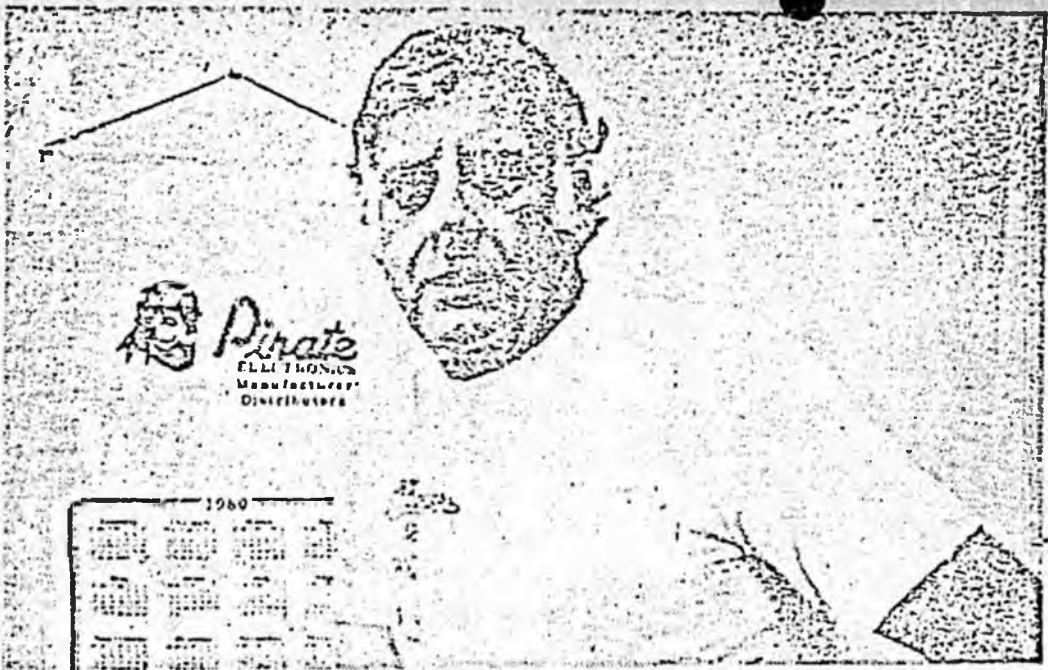
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 when, instead of cannon and
 musket fire, the entire port will
 be lit by fireworks.



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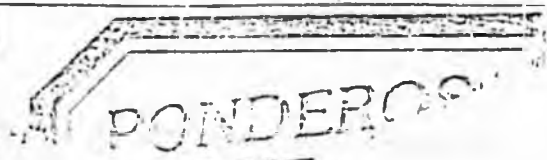
Both argue that by offering

competition to the pay TV companies, they are "performing a public service by preventing establishment of a monopoly." The broadcasters will always have a large market among those who would rather make low monthly payments than buy the equipment outright for a higher 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," Sampson said. "If we're doing anything wrong, it's not wrong enough for them to bother with us."



We
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 Lounge
 Dinner



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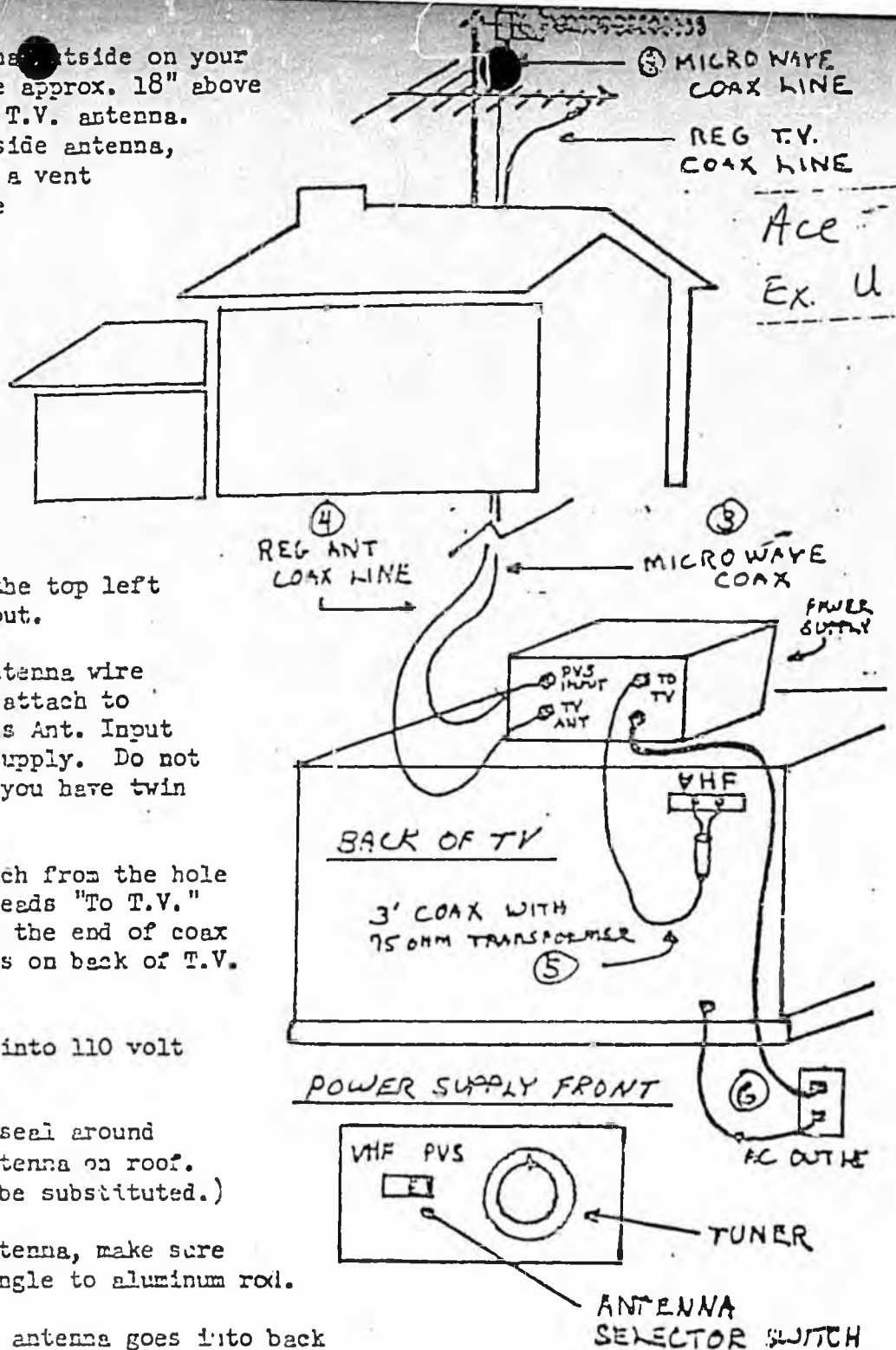
Mount the microwave antenna outside on your existing T.V. antenna pole approx. 18" above or 18" below your regular T.V. antenna. If you do not have an outside antenna, mount a pole on roof with a vent clamp and attach microwave antenna.

- 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 roll.
- 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 we receive your 90 day warranty. Please fill out this card and mail it today to the place of purchase.



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Month Day Year

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Pirate

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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.

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Ph. 276-9224

You Can Watch Those Secret TV Channels

— a complete MDS receiving system

Good-bye, commercials!

Jim Barber K0JB
Rt. 1, 22518-97th Ave. North
Rogers MN 55374

Jayon Lieberg K8FQA
Rt. 1, 12285 Genesee 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, amplifier, power supply, and complete mechanical layout.

The frequencies of the two microwave MDS video channels are 2154.75 MHz for channel 1 and 2160.75 MHz for channel 2. The audio is 4.5 MHz below the video. For more detailed information about microwave TV, read *A Vidiar's Guide to Microwave TV* by Paul Shuch!

Locating the MDS Transmitter

If you have seen or

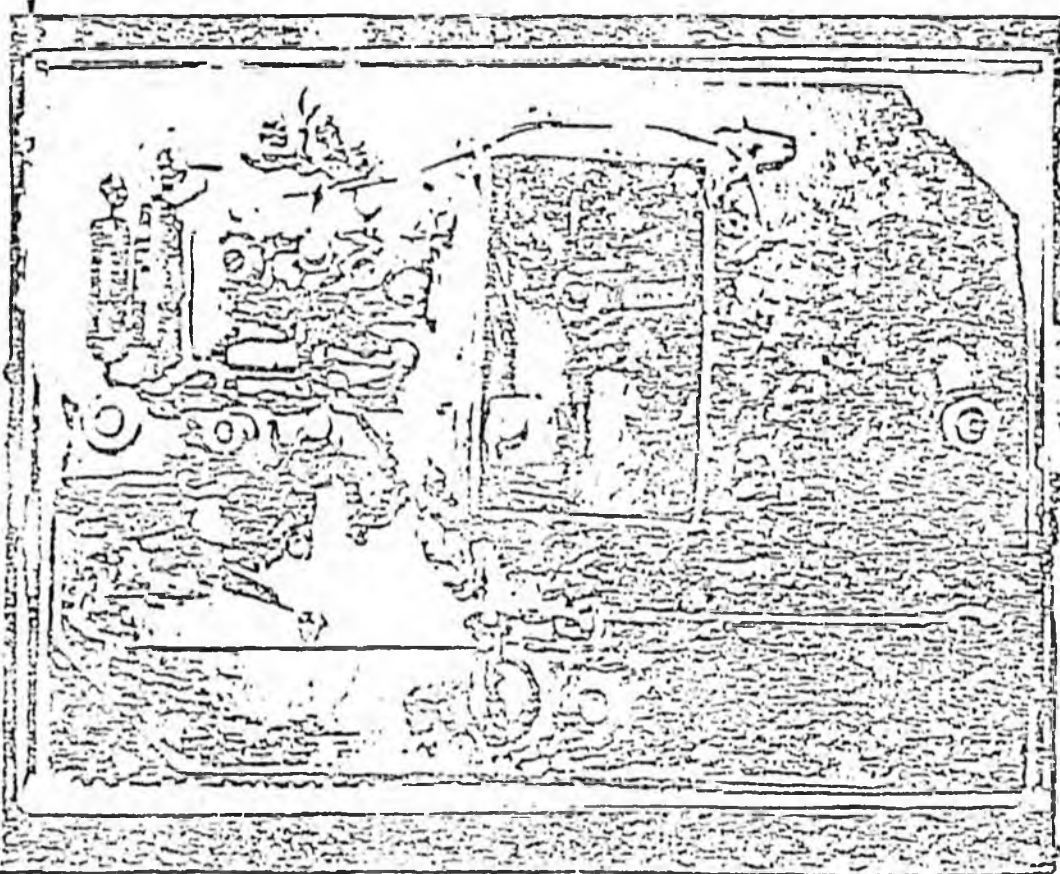


Photo A. This is a close-up of the downconverter showing its amplifier, mixer, and the local oscillator in its brass box with the cover removed. The piece of angle aluminum used to mount the box to the mast can also be seen.

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 free-booter 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 \$50 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 22,300 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 15 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 Barley, 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 Riverton, 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 \$35,500.

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 qualms 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 money 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 Winsor Humphreys, 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 specially 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.

February 24, 1982

Gordon Evans, Esquire
ELY, GUESS & RUDD
Menden Hall Building, Suite A
Juneau, Alaska 99801

Dear Gordon:

In connection with your theft-of-service lobbying efforts on our behalf, let me respond to Senator Parr's concerns over theft of service language presently included in S.B. 535.

First of all, let me assure that theft of service is a significant problem to all subscription television operators nationwide. The issue is not one of technology but rather of opportunists taking illegal advantage of outmoded legislation that provides totally inadequate remedies for legitimate operators such as ourselves. The enclosed trade journal articles illustrate the current situation very graphically.

Here in Anchorage, VISIONS offers a single channel, 24-hour per day selection of proprietary programming via a microwave frequency not receivable on any television set without the benefit of specialized operator supplied receiving equipment (i.e., antenna plus electronic components). Our service is intended for and available to only those individuals desiring it. They sign a subscription agreement with us, pay an installation charge and thereafter a monthly fee to cover the costs of programming and antenna equipment rental and maintenance. (Our receiving equipment always remains our property and we are responsible for repairing it at all times without additional cost to our subscriber).

MDS receiving equipment is single purpose in nature. That is, it is capable of receiving only the single microwave frequency authorized by the FCC for our service in Anchorage and, in turn, converts the microwave frequency to a signal watchable on a normal television set. (Here in Anchorage we convert to Channel 6.)

Our problem, in the main, stems from out-of-state individuals or companies who illegally manufacture receiving equipment capable of receiving our service and then sell it in Alaska and elsewhere on the pretext of saving money by avoiding paying the monthly fee. Typically, these out-of-state manufacturers solicit in-state TV repair shops, electronic stores or the like to be their local distributors. While many local

Gordon Evans, Esquire
February 24, 1982
Page 2

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.

Gordon Evans, Esquire
February 24, 1982
Page 3

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

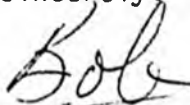
Gordon Evans, Esquire
February 24, 1982
Page 4

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.

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

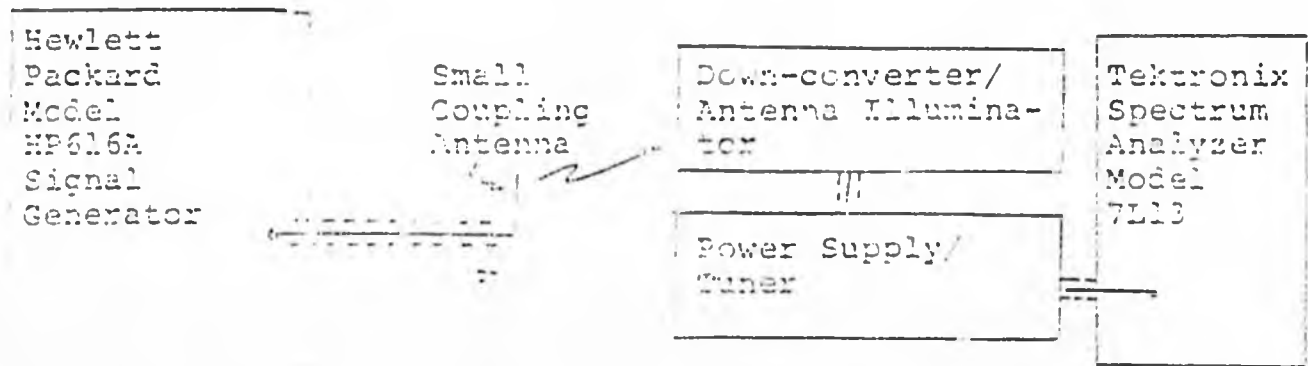
The unit tested had the following components and markings:

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

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.

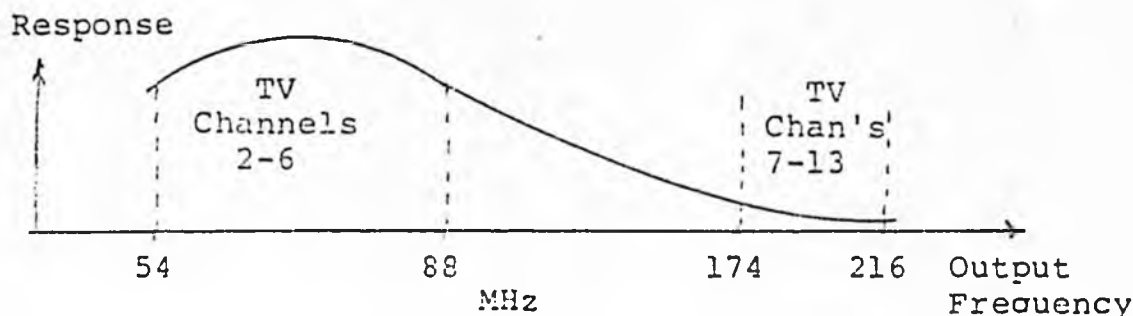
Before making conversion tests, the local oscillator frequency range was checked by using the calibrated frequency meter in the spectrum analyzer. This was done by checking the radiation from the down-converter detected at the fiberglass tube enclosure. The oscillator tuned from 2206 to 2246 MHz.

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.



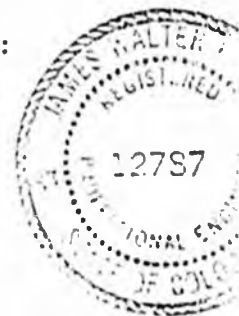
The conclusion reached in laboratory testing is that the receiving system will receive MDS signals and the bottom 34 MHz of the 2300 to 2450 MHz Amateur Radio band with output on channels 2 to 6 of a standard television set.

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.



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 10-65 INVASCAN 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.

SELECTED EXPERIENCEMICROWAVE 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.

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 (1-74 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", PRD, 1-75.
- c. "Value Added Network Services, Marketing Characteristics", PRE, 5-75.
- 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 EXPERIENCE1. 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 RFL (reconverted mode level).

HARTSCH 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.

15 February 1982

Rep. Bob Bettisworth
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

FEB 18 1982

Dear Bob:

I am writing to ask for your help with a serious problem we have - the theft of our through-the-air pay TV service.

Since we began service in December 1979 we have enjoyed the wholehearted cooperation of the Attorney General's consumer affairs office and the District Attorney's office here in Fairbanks. A "consumer alert" was issued, and the DA has called firms advertising devices to intercept our signal to discourage them. That "moral suasion" has worked to a degree and the problem has not grown to the proportions here that it has in many other markets outside. In Miami, Las Vegas, Phoenix and others there were as many "unauthorized subscribers" as paying subscribers before a major crackdown.

We have not attempted prosecutions here because DA Harry Davis is concerned that the Alaska theft of service statute is vague about pay TV. It only refers to theft of "communications" services. In an effort to cure this problem the Administration included in SB 535 - an omnibus bill to cure many problems with the criminal laws of the state - a section improving the definition of "services" to specifically include pay TV.

This is Section 14 of SB 535. If this amendment to the criminal code were adopted we would immediately take steps to notify the public of our intention to prosecute under state theft of service statutes if they did not stop unauthorized interception. Then we would hand deliver notices to specific offenders. If they continued to intercept our service without authorization we would file a complaint.

We have no desire to prosecute our neighbors. On the other hand, it is not reasonable to expect most of the people in town who desire our service to pay us regularly while others receive it without paying. Clearly if few paid us we would not be able to provide the service and there would be nothing for anyone to steal.

We have the option now of prosecuting the Federal Court but frankly they have little interest in these kinds of problems.

I hope this amendment can be accomplished, and accomplished quickly. The longer the situation continues, the more consumers will be encouraged to spend \$250-400 buying equipment to intercept our signal with the expectation

1028 Aurora Drive
Fairbanks, Alaska 99701
(907) 455-6160

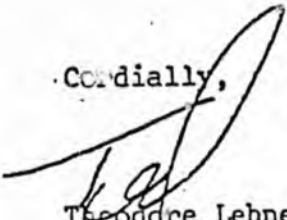
that they won't have to pay us. And, of course, at some point we will have to take action or abandon the business. Enclosed is a copy of a recent advertisement in the News-Miner offering for sale "microwave antenna and down converter for those hard to receive signals."

I would like to put the lid on this problem now - not let it get worse so that it becomes just that much harder to cure and more people are hurt.

Please do what you can to ensure the adoption of the amendment to the definition of "services" in the Alaska criminal laws. If, for some reason, you can not support this amendment and will not work for it, I would like to know that.

I hope the session is treating you well and you are able to accomplish the goals you had established. I am sure you are terribly busy as the legislature works for quicker adjournment than in recent sessions.

Cordially,



Theodore Lehne
Managing Partner
SPECTRUM

150. Miscellaneous For Sale

CATAGATOR OFF ROAD rig, dual axle equipment trailer, also small single axle trailer. Sell as a package or separately. \$6,800. 488-7276.

CHAMPION 60,000 BTU space heater \$250, double bed w/new frame, good condition \$100, Tivo 7x14 white spoke wheels for Chevy Luv, AM/FM portable stereo cassette player \$100, 454-6705 days, 354-7001 eves.

COMMERCIAL FISHING LIC., Upper Yukon. Call 479-6770.



MUST SELL: BEAUTIFUL Alaskan gold charm bracelet. Twelve 10 karat charms, mounted on 14 karat chain. Must see to appreciate. Asking \$1200. Call 452-7488 or 452-8218 and ask for Deb.

MUST SELL: COMPONENT Stereo system, Marantz receiver, base 561, Garrard turntable, and more. \$1300 or best offer. Call 488-6371.

NEW, ELECTRONIC SCALES, Scientec/SE-200, DWT-CT. grams, new, Mark 3 Gemolite (Bausch & Lomb), 1/2 oz., natural gold nugget, new extra electronic scales, Model 200, all new in box. 452-3431.

NEW FUEL PUMPS and rebuild water pumps at discount prices at Av. o World. 452-2688.

Rebuild Kirby Vacuum Cleaners
\$129 & UP

Misc. use vacuum cleaners,
\$19.00 & UP
840 College Rd. 452-2101

SCULPTRESS INTIMATE FASHIONS
The "Bra" that can make a better looking you! 479-2705

SNOW BLOWER, \$225. 452-7279.

SNOW PLOWING RESIDENTIAL, North Pole Badger Road area. \$15 minimum. Call 488-6402.

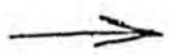
SNOW PLOWING: COMMERCIAL, residential, \$25. minimum. \$35. an hour. Town, College, Goldstream. 455-6767, or 454-2008.

SPOTTED SEAL PARKA, Badger ruff, ladies size 10. \$350. Daytime 479-7967, evenings 479-1787.

TUB SHOWER DOORS, bench press and weights, range hood, bathroom mirror cabinet, blue fox stole, Arctic sleeping bag, copper cookware, call 479-5445.

VIDEOCASSETTE RECORDER Sanyo VTC 9100 A, 3 hour color video cassette recorder. Never unpacked, full warranty. Asking \$700.00. 452-1734.

VIDEO DECODER, REMOVES VidGuard signal, (has to find, add on component), microwave antenna and down converter for those hard to receive signals. VHF/ UHF, 45 DB. Gain. Call 452-3431.



150. Miscellaneous For Sale

CATAGATOR OFF ROAD rig, dual axle equipment trailer, also small single axle trailer. Sell as a package or separately. \$6,800. 488-0778.

CHAMPION 60,000 BTU space heater \$250, double bed w/new frame, good condition \$100, Two 2x14 white spoke wheels for Chevy Luv, AAM/FM portable stereo cassette player \$100, 454-6705 days, 334-2003 eves.

COMMERCIAL FISHING LIC.
Upper Yukon. Call 479-6778.

MUST SELL: BEAUTIFUL Alaskan gold charm bracelet. Twelve 10 karat charms, mounted on 14 karat chain. Must see to appreciate. Asking \$1200. Call 452-7488 or 452-8218 and ask for Deb.

MUST SELL: COMPONENT Stereo system, Marantz receiver, base 501, Garrard turntable, and more. \$1300 or best offer. Call 488-6371.

NEW, ELECTRONIC SCALES, Scientec/SE-300, DWT.-CT. grams, new, Mark 4 Gemolite (Bausch & Lomb), 1/2 oz. natural gold nugget, new extra electronic scales. Model 100, all new in box. 452-3431.

NEW FUEL PUMPS and rebuilt water pumps at discount prices at Auto World. 452-2484.

Rebuilt Kirby Vacuum Cleaners

\$129 & UP

Misc. used vacuum cleaners.

\$19.00 & UP

840 College Rd. 452-2101

SCULPTRESS INTIMATE FASHIONS
The "Bra" that can make a better looking you! 479-2705.

SNOW BLOWER, \$225. 452-2749.

SNOW PLOWING RESIDENTIAL, North Pole Badger Road area. \$15 minimum. Call 488-6402.

SNOW PLOWING: COMMERCIAL residential \$25 minimum. \$35 an hour. Town, College, Goldstream. 455-6767, or 454-2006.

SPOTTED SEAL PARKA, Badger ruff, ladies size 10, \$350. Daytime 479-2967, evenings 479-2787.

TUB SHOWER DOORS, bench press and weights, range hood, bathroom mirror cabinet, blue fox stole, Arctic sleeping bag, copper cookware, call 479-5445.

VIDEO CASSETTE RECORDER
Sanyo VTC 9100 A, 3 hour color video cassette recorder. Never unpacked, full warranty. Asking \$700.00. 452-1734.

VIDEO DECODER, REMOVES Vid Guard signal. (hard to find, add-on component), microwave antenna and down converter for those hard to receive signals. VHF/ UHF. 45 DB Gain. Call 452-3431.

REVISE PROPOSED SECTION 5 AS FOLLOWS:

* Sec. 5. AS 11.46.482(a) is amended by adding a new paragraph to read:

(5) he sells, leases, trades, or offers for sale, lease, or trade, any device designed to intercept cable, microwave, subscription, or pay television, or any other telecommunications service, with intent to defraud another of the lawful charges for the service, ^{(b) A} but any person who violates ^{(a)(5) of this section by} ~~the provisions of AS 42.20.030-038~~ by the interception of satellite telecommunications shall not be subject to the ~~penalties provided for such violation~~ if the satellite interception was not done for commercial advantage or private financial gain.

prosecution under

also part in 11.46.000 (c)

remember (b) to (c) limiting

EXPLANATION (LEGISLATIVE HISTORY):

The term "private financial gain" in the limiting portion of AS 11.46.482(a)(5) is not intended to include someone who intercepts satellite communications signals for his own private use, i.e., the "backyard" or bush user who intercepts signals through use of a private non-commercial earth station solely for his own personal use and not for distribution or sale to other persons.

REVISIONS FOR PROPOSED SECTION 14:

Delete the proposed language on lines 11-12 referring to "the use of a computer program, system, or network," and retain only the language referring to television and telecommunications service.

EXPLANATION:

This would also require deletion of proposed Section 12, which expands the definition of the term "property" to include data or information stored in a computer program, system or network. Senator Parr indicated that he had trouble with this section because of the effect it might have on Bush schools who borrow computer programs from one another. Senator Parr has indicated that he plans to draft a resolution calling for the Administration to do a study on the "state of the art" relating to computers and their illegal use. However, there is no reason that the television "theft of service" provision should also be affected.

FEB 9 1982

Jan. 29, 1982

Mr. Don Bennett,

My name is Alan M. Armbruster and I live in Fairbanks. I am a Private Satellite Reception Enthusiast, experimenting with signals falling on my own residence (public airwaves) and I enjoy what is available to me for my own entertainment.

I have the equipment and the knowledge to enjoy the Radio Signals that are there for the enjoyment of being a hobbieist. Something in the likes as shortwave radio, but video too.

I am opposed to Senate Bill 535 Section 5, as it could enclude the private receive only earth stations.

This bill is very confusing to me. I see that some people are concerned about the MDS type of pay television (Multi-Distrubution System) and it is possible for people to build their own receiving equipment to receive the MDS "re-broadcast signal" and what I am concerned about is the TVRCES (Television Receive Only Earth Station).

There is a big difference in the two subjects, but the Criminal Bill could also mean TVROES, which is a big mistake. The bill is taking too much in the easy to say few words, "or any other telecommunications service".

If the originator does not want me to see their signals, then they should scramble them.

The SB 535 would say I am a Criminal for being interested in the Satellite Technology. I'm doing no harm, if that's the way they want it, then send no signals on my home.

In many areas of Alaska, Private TVROES provide the only means of access to the multiple channels of television programming presently available. Passage of the bill would prevent the viewing and render rural Alaskans second class citizens, as far as video entertainment is concerned.

Tonight I was on the phone with Pat Moore, who is the President of the Artic Amateur Radio Club, and he is going to bring the subject matter of the bill to the attention of the Radio Club in Fairbanks. By the way, Fred Brown is a member of the Fairbanks Artic Amateur Radio Club, and you might ask his views on the bill. I sent a letter to Mr. Brown also.

I am a member of a lobbieist group in Washington D.C., that has addressed the same issue on a Federal level. The group is called S.P.A.C.E. (The Society for the Private and Commercial Earth Stations). We have been very effective in Washington on expressing our concerns about this same issue, as SB 535 here in Alaska. I wish you would contact them, they would be more than happy to give you more detailed information on tae issue.

The address and phone for SPACE is: SPACE
1920 N Street, NW
Washington. DC 20036
202-887-0605

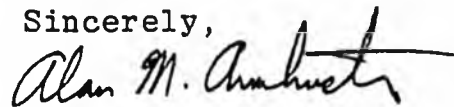
I'm available to discuss the terrible notion of saying that I would be a criminal for being a concerned modern Radio (Satellite) Amateur. I am sure if the public was made aware of this pending bill, then many other people would express my same views.

I am sending additional letters on this same subject to Pat Rodey, Charles Parr, and Fred Brown. Please get with these persons in the near future. I understand the bill was introduced May 1981, and timing may be of great importance.

My name and address and phone number is: Alan M. Armbruster
517 Glacier Ave.
Fairbanks, Alaska
99701
452-8851

Please get in contact with me if you need more information on the subject matter.

Sincerely,


Alan M. Armbruster

MSG 02-00001441 PRTY 1 01/15/82 15:50:11 ORIG: LA00 IN= 0022 OUT= 01
FROM: HARCIE, AND INFO TO: POM, JUNEAU INFO
TARGET: LHM2 SUBJ: P O M PAGE 000

TO: SENATE JUDICIARY COMMITTEE MEMBERS:
SENATORS RODEY, BENNETT, HOHMAN, PARR AND RAY

FROM: HOLLI PLOOG, ANCHORAGE POLICE DEPT. EMPLOYEES ASSOCIATION
2702 DENALI, SUITE 209, ANC 99503 (H 276-3644)

THE ANCHORAGE POLICE DEPARTMENT EMPLOYEES ASSOCIATION SUPPORT SB 535
AS WRITTEN AND URGES ITS PASSAGE FROM YOUR COMMITTEE, MONDAY, JANUARY 18.
WE ALSO SUPPORT SENATE BILL 545, HOWEVER, WOULD LIKE TO SEE THE BILL COVER
ALL UNCLASSIFIED FELONIES INSTEAD OF JUST MURDER.

PAT:

F.Y.I. I HAVE
ASKED HOUSE JUDICIARY
TO INCLUDE THIS ON
SB 535. THEY SAID
OK.

KEVIN

Send a
letter to find ^{the ground}
PAT

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH H 01
JUNEAU, ALASKA 99811
PHONE: 465-3030

March 24, 1982

DOCUMENT NO. 110-82

The Honorable Patrick M. Rodey
Chairman
Senate Judiciary Committee
Pouch V
Juneau, AK 99811

Dear Senator Rodey:

We wish to bring to your attention to an inconsistency in the Alaska State Statutes which directly impacts the operation of our Department.

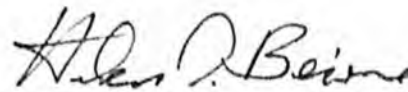
The Alaska State Legislature in 1978 passed a substantial revision of the criminal code in the Alaska Statutes. At that time, the penalties for fraud in public assistance programs were not specifically addressed since they were contained in Title 47 (Welfare, Social Services, and Institutions), rather than in Title 11 (Criminal Code).

The penalties for fraud in public assistance programs in Title 47 do not match those for fraud in similar financial transactions contained in Title 11. For example, fraud of \$500 of public assistance benefits in Title 47 has a misdemeanor penalty while similar behavior covered under Title 11 would be categorized as a felony. We believe this to be inequitable and have enclosed drafted language to correct that deficiency. The enclosed draft bill repeals the current penalties in Title 47 to permit these fraudulent acts in public assistance programs to be addressed under the Title 11 provisions.

We anticipate no additional cost to the department, including our Division of Adult Corrections, if this bill were passed into law. We would welcome the opportunity to discuss this further with you, if you have additional questions or comments.

We appreciate your interest in this matter.

Sincerely,



Helen D. Beirne
Commissioner

Enclosure

*David -
WRITE McGinnis
AND TELL HIM WE
HAVE ASKED HOUSE
TO INCLUDE THIS
SB 535.*

1
2
3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act pertaining to fraud in public assistance
7 programs."

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

9 * Section 1. DECLARATION OF LEGISLATIVE PURPOSE. The purpose of this Act
10 is to repeal specific criminal statutes defined in AS 47.25 prohibiting
11 various frauds in public assistance programs, and, in doing so, to insure
12 that prosecution can be brought under the general criminal statutes in
13 Alaska's revised criminal code, including Theft by Deception (AS 11.46.180)
14 and Scheme to Defraud (AS 11.46.600). The legislature has concluded that the
15 conduct regulated in the statutes to be repealed is already adequately cover-
16 ed by the general crimes in the criminal code, and that it is therefore
17 unnecessary to retain the more specific crimes in AS 47.25.

18 * Sec. 2. AS 47.25.280, AS 47.25.403, AS 47.25.405, AS 47.25.600,
19 AS 47.25.760, AS 47.25.950, AS 47.25.983, AS 47.25.900(a)(3) are repealed.
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SECTIONAL ANALYSIS FOR CSSB535(Jud)

Section 1. AS 11.41.200(a)(1). Assault in the First Degree.

This amendment changes the culpable mental state for this form of Assault in the First Degree from "intentionally" to "recklessly." The effect of this change is to eliminate the defense of intoxication when a person is charged with the crime. See AS 11.81.900(a)(3).

Additionally, the amendment requires that serious physical injury result before the crime occurs. This change has been made because the definition of physical injury in AS 11.81.900(b)(40) is very broad and would include relatively minor injuries. Recklessly causing physical injury by means of a dangerous instrument is classified as Assault in the Third Degree under AS 11.41.220(a)(2).

Section 2. AS 11.41.210(a). Assault in the Second Degree.

This amendment eliminates paragraph (2) of the Assault in the Second Degree statute and covers the conduct described in that section under paragraph (3) by providing that recklessly causing serious physical injury is a class C felony regardless of whether a dangerous instrument is used.

Section 3. AS 11.41.220(a). Assault in the Third Degree.

This amendment closes a significant gap in existing law by providing that recklessly causing physical injury by means of a dangerous instrument is a felony. Under current law, recklessly placing a person in fear of imminent serious physical injury by means of a dangerous instrument is classified as a class C felony, but the actual causing of physical injury is only a misdemeanor.

Section 4. AS 11.41.230(a)(3). Assault in the Fourth Degree.

Similar to the change made to AS 11.41.200(a)(1), this amendment changes the culpable mental state for Assault in the Fourth Degree under paragraph (3) from "intentionally" to "recklessly" and thereby eliminates the defense of intoxication.

Section 5. AS 11.46.200

Provides an exemption from prosecution under 11.46.200(a) (theft of services) if the interception of telecommunications is not done for commercial advantage. This section is intended to allow individuals that own private earth stations to operate them for their own use.

Section 6. AS 11.46.482(a). Criminal Mischief in the Second Degree.

This amendment adds a new section to the crime of Criminal Mischief in the Second Degree that provides that it is a class C felony for a person to trade, sell, lease or offer to trade, sell or lease any device designed to intercept cable, microwave or pay television or any other

telecommunications service. To commit the crime the defendant must act with an intent to defraud another of the lawful charges for the service. The unauthorized distribution of devices that would allow a person to receive the service without paying a monthly fee, for example, would be sufficient to establish the requisite level of intent.

The person who actually uses the device for the unauthorized reception of the service commits the crime of Theft. AS 11.46.120 -- 11.46.150, AS 11.46.200. Section 10 of this bill (discussed supra) emphasizes that subscription television constitutes a "service" as that term is used in the criminal code. The degree of the theft will be dependent on the value of the service received, but will constitute at least Theft in the Fourth Degree, a class B misdemeanor, since even a single day of unauthorized receipt of the service with intent to avoid payment constitutes the receipt of services of some value.

Section 7. AS 11.46.492(c).

Provides an exemption from prosecution under (a) of the same section if the device sold is not for commercial advantage or intended to defraud another. This section is intended to allow for the sale, lease or trade of private earth stations.

Section 8. AS 11.81.650. Mental Disease or Defect Excluding Responsibility.

This amendment places the insanity defense in the criminal code (it currently appears in AS 12.45.083 which is repealed by section 22 of

this bill) and has the effect of placing the burden of proof on the defendant in a criminal proceeding to establish his insanity by a preponderance of the evidence. While the existing statute refers to insanity as an "affirmative defense", it defines that term in a manner which requires the state to disprove the defense beyond a reasonable doubt once the issue is raised. This compares with the definition of affirmative defense in the criminal code (AS 11.81.900(b)(1) which requires the defendant to establish an affirmative defense by a preponderance of the evidence.

The constitutionality of requiring a defendant to establish his insanity by a preponderance of the evidence was recognized by the Alaska Supreme Court in State v. Alto, 589 p.2d 402 (Alaska 1979). Approximately 25 states place this burden on the defendant.

Requiring a defendant to establish his insanity in a criminal trial by a preponderance of the evidence is good public policy. Under existing law, a defendant who has committed a violent crime but is found not guilty by reason of insanity may completely escape confinement, even though there may be a reasonable doubt as to his sanity. The amendment attempts to minimize such an unacceptable result. Because the defendant would be required to establish his insanity by a preponderance of the evidence at the criminal trial, the court at a subsequent commitment proceeding could rely on that prior determination of insanity in deciding whether commitment was appropriate.

Section 9. AS 11.81.900(b)(49). Definition of "Serious Physical Injury".

This amendment restructures the definition of "serious physical injury" to include physical injury caused by an act performed under circumstances which create a substantial risk of death, as compared to the current requirement that the physical injury itself created the risk of death.

The necessity for this change is best illustrated by considering a case involving a defendant who stabs a victim in the chest two inches from the heart. If major blood vessels are not severed and the victim makes a rapid recovery from his wound, it could be argued that serious physical injury has not occurred since the existing definition requires that the wound itself create a substantial risk of death. This change resolves any ambiguity on this issue by providing that serious physical injury occurs when the circumstances surrounding the infliction of physical injury create a substantial risk of death. Under the amended definition, a stab wound two inches from the heart would constitute serious physical injury since the injury occurred under circumstances that created a substantial risk of death.

Section 10. AS 11.81.900(b)(50). Definition of "Services".

This amendment emphasizes that subscription television is included in the definition of "services". While this category of service is already covered under the existing broad definition, it appears appropriate to specifically list it in view of concerns that have recently been expressed pertaining to the unauthorized reception of subscription television.

Section 11. AS 12.55.155(c)(8). Aggravating Factor.

This amendment repeals and reenacts this section, allowing sentencing judges to consider aggravated or repeated instances of assault behavior beyond convictions, such as evidence of injunctive relief in cases involving domestic violence.

Section 12. AS 12.55.125(c). Aggravating Factor.

This section adds an aggravating factor that can be considered by a judge in increasing a presumptive sentence: prior juvenile adjudicating for conduct that would have been a felony if committed by an adult. In view of the fact that the overwhelming majority of defendants subject to presumptive sentencing will have one or more prior adult felony convictions, consideration of juvenile felony conduct is a relevant consideration of imposing a sentence.

Section 13. AS 12.45.083

This section is repealed. (see discussion of Sec. 8)

DECISIONS UNDER PRIOR LAW

Meaning of "culpable negligence," etc.

In accord with original. See *O'Leary v. State*, Sup. Ct. Op. No. 2003 (File No. 3466, 604 P.2d 1099 (1979)).

Under the former culpable negligence statute, etc.

In Alaska, negligent homicide is a form of manslaughter, and intent is not an element of the crime. *O'Leary v. State*, Sup. Ct. Op. No. 2003 (File No. 3466), 604 P.2d 1099 (1979).

There is no diminished capacity defense to the crime of negligent manslaughter, since manslaughter is a general rather than a specific intent crime. *O'Leary v. State*, Sup. Ct. Op. No. 2003 (File No. 3466), 604 P.2d 1099 (1979).

Proof required.

The crime of negligent homicide is established upon proof that the accused was driving while intoxicated and that such act was the proximate cause of death. *Lupro v. State*, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Where there is sufficient evidence that the driver was intoxicated at the time of the accident, the state need only show beyond a reasonable doubt that the intoxication was the cause of the victim's death. *Lupro v. State*, Sup. Ct. Op. No. 1960 (File No. 2987), 603 P.2d 468 (1979).

Indictment supported by evidence. — Indictment which in negligent homicide charge stated that defendant did unlawfully, by culpable negligence, kill a child by striking the child with his hands

with excessive force and violence, was supported by the evidence although the pathologist who examined the infant told the grand jury that death resulted from a "blunt force injury of some kind" to the head, and no evidence showed that defendant ever struck the child on the head, since a "blunt force injury to the head" does not necessarily require a blow to the head itself; the term "striking," as used in the indictment was not limited to a blow or a punch, but might include other forms of violent physical conduct, and the grand jury testimony established that defendant had severely spanked the child and then bounced him against the floor. *Harvey v. State*, Sup. Ct. Op. No. 1996 (File No. 3921), 604 P.2d 586 (1979).

Sentencing considerations. — In any case involving loss of life, and particularly in an offense involving driving while under the influence of alcohol, major considerations in sentencing are the goals to deterrence of the members of the community, and community condemnation of the offender and the offense so as to reaffirm societal norms and to maintain respect for those norms. *Rosendahl v. State*, Sup. Ct. Op. No. 1807 (File No. 4087), 591 P.2d 538 (1979).

Sentence for negligent homicide upheld.

In accord with original. See *Annayoc v. State*, Sup. Ct. Op. No. 1803 (File No. 3704), 590 P.2d 64 (1979); *Rosendahl v. State*, Sup. Ct. Op. No. 1807 (File No. 4087), 591 P.2d 538 (1979).

Article 2. Assault and Reckless Endangerment.

Section

210. Assault in the second degree

220. Assault in the third degree

230. Assault in the fourth degree

Sec. 11.41.200. Assault in the first degree.

NOTES TO DECISIONS

Quoted in *Smith v. State*, Sup. Ct. Op. No. 2121 (File No. 4228), 614 P.2d 300 (1980).

Stated in *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979);

Coleman v. State, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980).

Cited in *Handley v. State*, Sup. Ct. Op. No. 2155 (File Nos. 3946, 4935), 615 P.2d 627 (1980).

DECISIONS UNDER PRIOR LAW

For case construing former statute relating to mayhem, see *Burleson v. State*, Sup. Ct. Op. No. 1222 (File No. 2466), 543 P.2d 1195 (1975); *Adams v. State*, Sup. Ct. Op. No. 1864 (File No. 3067), 598 P.2d 503 (1979).

For cases construing former statute relating to shooting, stabbing, etc.

In accord with original. See *Menard v. State*, Sup. Ct. Op. No. 1623 (File No. 2865), 578 P.2d 966 (1978); *Abraham v. State*, Sup. Ct. Op. No. 1836 (File No. 4013), 593 P.2d 621 (1979); *Johnson v. State*, Sup. Ct. Op. No. 1856 (File No. 4104), 595 P.2d 985 (1979); *Smith v. State*, Sup. Ct. Op. No. 2121 (File No. 4228), 614 P.2d 300 (1980); *Larson v. State*, Sup. Ct. Op. No. 2128 (File No. 4131), 614 P.2d 776 (1980); *Nielson v. State*, Sup. Ct. Op. No. 2279 (File No. 4857), 623 P.2d 304 (1981); *Kagak v. State*, Sup. Ct. Op. No. 2311 (File No. 5228), 624 P.2d 818 (1981).

For cases construing former statute relating to assault with intent to kill, etc.

In accord with original. See *Abraham v. State*, Sup. Ct. Op. No. 1836 (File No. 4013), 593 P.2d 621 (1979); *Calantas v. State*, Sup. Ct. Op. No. 1914 (File No. 3663), 599 P.2d 147 (1979), aff'd on rehearing, 608 P.2d 34 (1980); *Brookins v. State*, Sup. Ct. Op. No. 1936 (File No. 3972), 600 P.2d 12 (1979); *Holden v. State*, Sup. Ct. Op. No. 1959 (File No. 3753), 602 P.2d 452 (1979); *Helmer v. State*, Sup. Ct. Op. No. 2181 (File No. 4383), 616 P.2d 884 (1980).

For case construing former statute relating to assault while armed, etc.

In accord with original. See *Sevier v. State*, Sup. Ct. Op. No. 2134 (File No. 4632), 614 P.2d 791 (1980).

For cases construing former statute relating to careless use of firearms, etc.

In accord with original. See *Elisovsky v. State*, Sup. Ct. Op. No. 1816 (File Nos. 3440, 3467), 592 P.2d 1221 (1979); *Loesche v. State*, Sup. Ct. Op. No. 2202 (File No. 4443), 620 P.2d 646 (1980).

For cases construing former statute relating to assault with a dangerous weapon, etc.

In accord with original. See *Mill v. State*, Sup. Ct. Op. No. 1751 (File No. 2692), 585 P.2d 546 (1978), cert. denied, 444 U.S. 827, 100 S. Ct. 51, 62 L. Ed. 2d 34 (1979); *Marsden v. State*, Sup. Ct. Op. No. 1784 (File No. 3957), 589 P.2d 863 (1979); *Ferguson v. State*, Sup. Ct. Op. No. 1791 (File No. 3890), 590 P.2d 43 (1979); *Price v. State*, Sup. Ct. Op. No. 1794 (File No. 3524), 590 P.2d 419 (1979); *Elisovsky v. State*, Sup. Ct. Op. No. 1816 (File Nos. 3440, 3467), 592 P.2d 1221 (1979); *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979); *Cooper v. State*, Sup. Ct. Op. No. 1852 (File No. 3588), 595 P.2d 648 (1979); *Gilbert v. State*, Sup. Ct. Op. No. 1889 (File No. 3406), 598 P.2d 87 (1979); *Creer v. State*, Sup. Ct. Op. No. 1941 (File No. 4180), 600 P.2d 1095 (1979); *Kraus v. State*, Sup. Ct. Op. No. 1989 (File No. 4669), 604 P.2d 12 (1979); *Holmes v. State*, Sup. Ct. Op. No. 2000 (File No. 4532), 604 P.2d 248 (1979); *Lacy v. State*, Sup. Ct. Op. No. 2039 (File No. 3741), 608 P.2d 19 (1980); *Cochrane v. State*, Sup. Ct. Op. No. 2086 (File No. 4531), 611 P.2d 61 (1980); *Sevier v. State*, Sup. Ct. Op. No. 2134 (File No. 4632), 614 P.2d 791 (1980); *Loesche v. State*, Sup. Ct. Op. No. 2202 (File No. 4443), 620 P.2d 646 (1980); *Calder v. State*, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980); *Grant v. State*, Sup. Ct. Op. No. 2261 (File No. 3750), 621 P.2d 1338 (1981); *Kagak v. State*, Sup. Ct. Op. No. 2311 (File No. 5228), 624 P.2d 818 (1981); *Neal v. State*, Sup. Ct. Op. No. 2341 (File No. 4787), 628 P.2d 19 (1981).

For cases construing former statute relating to assault and assault and battery, etc.

In accord with original. See *Penn v. State*, Sup. Ct. Op. No. 1774 (File No. 3873), 588 P.2d 288 (1978).

Sec. 11.41.210. Assault in the second degree.

- (a) A person commits the crime of assault in the second degree if
- (1) with intent to cause physical injury to another person, he causes physical injury to any person by means of a dangerous instrument;
 - (2) with intent to cause physical injury to another person, he causes serious physical injury to any person; or

(3) he recklessly causes serious physical injury to another person by means of a dangerous instrument.

(b) Assault in the second degree is a class B felony. (§ 3 ch 166 SLA 1978; am § 4 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment, in subsection (a), redesignated former paragraph (1) as present paragraph (2), added "or" to the end of that paragraph, added present paragraph (1), and deleted former paragraph (2), which read: "he intentionally places another person in fear of imminent serious physical injury by means of a dangerous instrument; or."

Editor's notes. — The provisions of paragraph (2) of subsection (a) as it existed prior to the 1980 amendment may now be found in AS 11.41.220.

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

NOTES TO DECISIONS

Applied in *State v. Silas*, Sup. Ct. Op. No. 1851 (File No. 4237), 595 P.2d 651 (1979).

Stated in *Coleran v. State*, Sup. Ct. Op. No. 2190 (File No. 4416), 621 P.2d 869 (1980).

Sec. 11.41.220. Assault in the third degree. (a) A person commits the crime of assault in the third degree if he recklessly places another person in fear of imminent serious physical injury by means of a dangerous instrument.

(b) Assault in the third degree is a class C felony. (§ 5 ch 102 SLA 1980)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511) see 1980 Senate Journal

Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Sec. 11.41.230. Assault in the fourth degree. (a) A person commits the crime of assault in the fourth degree if

(1) he recklessly causes physical injury to another person;

(2) with criminal negligence he causes physical injury to another person by means of a dangerous instrument; or

(3) by words or other conduct he intentionally places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 6 ch 102 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "fourth" for "third" preceding "degree" in the introductory paragraph in subsection (a), and in subsection (b), and deleted "intentionally or" near the beginning of paragraph (1) in subsection (a).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

POSITION PAPER

SENATE BILL NO. 535
(REVISED)

"An Act relating to the criminal laws of the state."

Senate Bill No. 535 clarifies and modifies several sections of Chapters 11 and 12 of the state statutes; the revised criminal code which became effective January 1, 1980.

The modification of AS 12.55.125 (c)(1), page 4 - line 19, increases the presumptive sentence of a person convicted of an A class felony, first conviction, from 6 years to 8 years. The present presumptive sentence of 6 years can be mitigated down to a 3-year term. While an 8-year presumptive sentence would mitigate down to a 4-year sentence. This means each person convicted for the first time of an A class felony, with use of a firearm, will be sentenced, at a minimum, to one more year than under present law and a maximum increase of two years.

The prison population would be impacted by such an increase in sentence length. That impact would begin in 4 1/2 years after enactment of Senate Bill No. 535. We calculate there would be a maximum prison population increase of 48 man years. The minimum prison population increase would be 24 man years.

It should be noted that if the presumptive sentence for this offense were to be changed from an 8 to a 7 year term then the accumulative prison population impact would be reduced by half to a maximum prison population increase of 24 man years and a minimum prison population increase of 12 man years.

Recommended by:

C. F. Campbell
Charles F. Campbell, Director
Division of Adult Corrections

Date:

5-28-81

Approved by:

Helen D. Beirne
Helen D. Beirne, Commissioner

Date:

6-2-81

POSITION PAPER

SENATE BILL NO. 535

"An Act relating to the criminal laws of the state."

Senate Bill No. 535 clarifies and modifies several sections of Chapters 11 and 12 of the state statutes; the revised criminal code which became effective January 1, 1980.

The modification of AS 12.55.125 (c)(1), page 4 - line 19, increases the presumptive sentence of a person convicted of an A class felony, first conviction, from 6 years to 8 years. The present presumptive sentence of 6 years can be mitigated down to a 3-year term. While an 8-year presumptive sentence would mitigate down to a 4-year sentence. This means each person convicted for the first time of an A class felony, with use of a firearm, will serve, at a minimum, one more year than under present law. Furthermore, if the average offender receives the presumptive sentence, the time served until release would be the flat time based on current good time practice. Thus, under current statutes, 4 1/2 years would be served per offender, whereas the proposed change would permit flat time release of the average case in six years.

The prison population would be impacted by such an increase in sentence length. That impact would begin in 4 1/2 years after enactment of Senate Bill No. 535. We calculate there would be a prison population increase of 48 man years.

It should be noted that if the presumptive sentence for this offense were to be changed from an 8 to a 7 year term then the accumulative prison population impact would be reduced by half or to 24 man years.

Recommended by :

Wally Jones for Charles Campbell
Charles F. Campbell, Director
Division of Adult Corrections

Date:

5/27/81

Approved by:

Helen D. Beirne
Helen D. Beirne, Commissioner

Date:

5/27/81

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 535
 Title "An Act relating to the criminal laws of the state."
 Requested by Judiciary Committee Date May 4, 1981

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services
 Program Category Affected Offender Confinement, Reformation & Supervision
 BRU, Program, or Subprogram(s) Affected Adult Confinement
 (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 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						1,962.2
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES				4,100.0		
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	4,100.0	-0-	1,962.2

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND	-0-	-0-	-0-	4,100.0	-0-	1,962.2
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

Assumptions

- The only section with any significant fiscal impact on the Division of Adult Corrections is Section 16 amending AS 12.55.125 (c)(1).
- The presumptive sentence length has been taken as the mean sentence for all offenders sentenced under AS 12.55.125 (c)(1).
- The impact of this legislation will not be experienced for 4 1/2 years from the date of effect. At the present time, an average of 32 persons are convicted of first offense felonies with the use of a firearm. The current flat time sentence is 4 1/2 years. Under the proposed legislation, the flat time served would be six years.

IV. DATE May 27, 1981 PREPARED BY William W. Ladwig
 AGENCY Division of Adult Corrections
 Original: Legislative Finance PHONE 465-3376
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

Therefore, the population of inmates for which the Division of Adult Corrections is responsible would increase by 48 persons in the fifth and sixth years that the increased sentence length is in effect.

4. Capital budget projections are based on statewide average costs for the addition of 48 beds to be on line in FY '86. If the 8-year presumptive sentence is reduced to 7 years, the costs are reduced to 2.1 million for a 24-man facility.
5. FY '86 operating costs are shown as a block as the actual placement of the facility will have an impact on the line item distribution. These costs are projected on current statewide average cost per day increased by inflation. They are based on a 48-man facility. For a 24-man facility, these costs would be reduced by half.

ASSAULT IN THE FIRST DEGREE

NEW CRIMINAL CODE

Sec. 11.41.200. ASSAULT IN THE FIRST DEGREE. (a) A person commits the crime of assault in the first degree if

(1) with intent to cause serious physical injury to another person, he causes physical injury to any person by means of a dangerous instrument;

(2) with intent to cause serious physical injury to another person, he causes serious physical injury to any person; or

(3) he intentionally performs an act that results in serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life.

(b) Assault in the first degree is a class A felony.

PRIOR CRIMINAL CODE

See AS 11.15.140, Mayhem; AS 11.15.220, Assault with a dangerous weapon; AS 11.15.225, Aggravated assault.

COMMENTARY

From Senate Journal, 15:

Assault in the first degree, a class A felony, is the most serious form of assault in the Code. The crime may be committed by any of three methods.

The first, subsection (a)(1), coincides with existing law by providing that an assault by means of a dangerous instrument is treated more severely than other forms of assault. The subsection requires that the defendant act with an intent to cause serious physical injury and that he

cause physical injury to any person (of course, excluding himself) by means of a dangerous instrument. An attempt to cause such injury, as with other forms of assault, is covered under the Code's general attempt statute, § 11.31.-100. The terms "dangerous instrument", "physical injury" and "serious physical injury" are defined in § 11.81.900(b).

Subsection (a)(2) describes conduct where the defendant, intending to cause serious physical injury, causes such injury by any means. The subsection coincides with the existing mayhem statute.

Subsection (a)(3) is particularly significant when considered in conjunction with § 11.41.110(a)(2) defining the same conduct as second degree murder when death results. The murder provision applies to conduct of extreme depravity, such as shooting a bullet through a tent without any specific homicidal intent. Although this conduct will constitute manslaughter under current law in the event of a fatality, it does not constitute assault if the result was serious but non-fatal injury. This obvious gap in existing law is closed by subsection (a)(3).

See also TD I, 43-46; LR 49-51.

CROSS REFERENCES

Definition of "serious physical injury", "physical injury", "dangerous instrument" - AS 11.81.900(b)
Definition of "intentionally" - AS 11.81.900(a)
Assault in the second and third degree - AS 11.41.210;
230 Reckless endangerment - AS 11.41.250
Murder in the second degree - AS 11.41.110(a)(2)

ASSAULT IN THE SECOND DEGREE

NEW CRIMINAL CODE

Sec. 11.41.210. ASSAULT IN THE SECOND DEGREE. (a) A person commits the crime of assault in the second degree if

(1) with intent to cause physical injury to another person, he causes physical injury to any person by means of a dangerous instrument;

(2) with intent to cause physical injury to another person, he causes serious physical injury to any person; or

(3) he recklessly causes serious physical injury to another person by means of a dangerous instrument.

(b) Assault in the second degree is a class B felony.

(Amended by §4, ch. 102 SLA 1980)

PRIOR CRIMINAL CODE

Sec. 11.15.220. ASSAULT WITH DANGEROUS WEAPON. A person armed with a dangerous weapon, who assaults another with the weapon, is punishable by imprisonment for not more than 10 years nor less than six months, or by a fine of not more than \$1,000 nor less than \$100, or by both.

COMMENTARY

From 1980 Senate Journal Supplement No. 44, 3-4:

This amendment makes two changes to the Assault in the Second Degree statute to conform the sections pertaining to assaults with a dangerous instrument to conduct included under the former law.

Amended paragraph (1) covers the situation when a person intentionally causes physical injury by means of a dangerous instrument. Under the old law this conduct was the felony crime of Assault with a Dangerous Weapon. Under the new code, however, this conduct would only be

included under Assault in the Fourth Degree, a misdemeanor, absent the presence of an intent to cause serious physical injury. The amendment closes this obvious gap in coverage by requiring that the defendant only intend to cause physical injury.

The second change made by the amendment is to eliminate former paragraph (2) which covered intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument. This conduct is now included within the new crime of Assault in the Third Degree.

From Senate Journal, 16:

Subsection (a)[(2)] parallels subsection (a)(2) of the first degree statute. In committing second degree assault, however, the defendant need only act with an intent to cause physical injury. An intent to cause serious physical injury is required under the first degree provision.

Subsection (a)(3) covers the reckless causing of serious physical injury by means of a dangerous instrument. As an intoxicated person acts recklessly (AS 11.81.900(a)(3)) and because an automobile can be a dangerous instrument (AS 11.81.900(b)(11)), it is expected that this subsection will primarily be used to prosecute drunk drivers who seriously injure their victims.

See also TD I, 46-49; LR 51-54.

CROSS REFERENCES

Definition of "physical injury", "serious physical injury", "dangerous instrument" - AS 11.81.900(b)

Definition of "intentionally", "recklessly" - AS 11.81.900(a)

Assault in the first, third and fourth degree - AS 11.41.200; 220; 230

Reckless endangerment - AS 11.41.250

ASSAULT IN THE THIRD DEGREE

NEW CRIMINAL CODE

Sec. 11.41.220. ASSAULT IN THE THIRD DEGREE. (a) A person commits the crime of assault in the third degree if he recklessly places another person in fear of imminent serious physical injury by means of a dangerous instrument.

(b) Assault in the third degree is a class C felony.

(Added by §5, ch. 102 SLA 1980)

PRIOR CRIMINAL CODE

See former AS 11.15.220, Assault with dangerous weapon.

COMMENTARY

From 1980 Senate Journal Supplement, No. 44, 4-5:

This amendment adds a new degree of assault to the criminal code. The conduct is classified as a C felony, and covers recklessly placing another person in fear of imminent serious physical injury by means of a dangerous instrument. By using the culpable mental state of "recklessly" the statute allows proof of the crime if the state can establish that the conduct was committed either "recklessly", "knowingly" or "intentionally". (See AS 11.81.610(c), proof of a higher form of culpability then required in the statute establishes the crime). The effect of this amendment is to restore what is commonly referred to as "ADW" (Assault with a Dangerous Weapon) to a general intent crime from a specific intent crime.

Providing specifically that an assault with a dangerous instrument is a general intent crime is consistent with Menard v. State, 578 P.2d 996 (Alaska 1978), a decision published by the Supreme Court during the final days of the legislature's consideration of the Code. In Menard, the court held that a "jury did not have to find any specific intent to do any particular kind or degree of harm to the victim in order to find [the defendant] guilty of assault with a dangerous weapon." Id. at 970. With the addition of

the word "recklessly" the Code provision is consistent with the court's prior interpretation of the repealed "ADW" statute in Menard and would restore "ADW" to a general intent crime.

CROSS REFERENCES

Definition of "serious physical injury", "dangerous instrument" - AS 11.81.900(b)

Definition of "recklessly" - AS 11.81.900(a)

Assault in the first, second and fourth degree - AS 11.41.200; 210; 230

Reckless endangerment - AS 11.41.250

ASSAULT IN THE FOURTH DEGREE

NEW CRIMINAL CODE

Sec. 11.41.230. ASSAULT IN THE FOURTH DEGREE. (a) A person commits the crime of assault in the fourth degree if

(1) he recklessly causes physical injury to another person;

(2) with criminal negligence he causes physical injury to another person by means of a dangerous instrument;
or

(3) by words or other conduct he intentionally places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor. (Amended by § 6, ch. 102 SLA 1980)

PRIOR CRIMINAL CODE

Sec. 11.15.230. ASSAULT AND ASSAULT AND BATTERY. A person who unlawfully assaults or threatens another in a menacing manner, or unlawfully strikes or wounds another, is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both.

See also AS 11.15.200, Careless use of firearms.

COMMENTARY

From Senate Journal, 16-17:

Assault in the [fourth] degree is a class A misdemeanor. The three subsections of the statute require that the victim be threatened with physical injury or that he suffer physical injury.

Subsection (a)(1), by providing that intentionally or

recklessly causing physical injury to another person constitutes misdemeanor assault, parallels the existing assault and assault and battery statute, AS 11.15.230.

Under subsection (a)(2) a person commits assault in the [fourth] degree if he acts with the culpable mental state of criminal negligence and causes physical injury to another person by means of a dangerous instrument. Unlike existing AS 11.15.200 the statute is not limited to firearms but includes all dangerous instruments.

Subsection (a)(3), the nonaggravated form of [third] degree assault under AS 11.41.[220], provides that intentionally placing another in fear of imminent physical injury is a class A misdemeanor.

From 1980 Senate Journal Supplement, No. 44, 5:

Because of the general rule regarding proof of higher forms of culpable mental states in AS 11.81.610(c) (proof of a higher form of culpability establishes a lower form) this amendment deleting the unnecessary words "intentionally or" from paragraph (1) has been made. The name of the crime has been changed to Assault in the Fourth Degree to reflect the addition of the new crime of Assault in the Third Degree.

See also TD I, 48-50; LR 54-55.

CROSS REFERENCES

- Definition of "physical injury", "dangerous instrument"
- AS 11.81.900(b)
- Definition of "intentionally" - AS 11.81.900(a)
- Assault in the first, second and third degree - AS 11.41.200; 210; 220
- Disorderly conduct - AS 11.61.110(a)(5)
- Harrassment - AS 11.61.120(a)(5)
- Arrest without a warrant - AS 12.25.030

CRIMINAL MISCHIEF IN THE SECOND DEGREENEW CRIMINAL CODE

Sec. 11.46.482. CRIMINAL MISCHIEF IN THE SECOND DEGREE. (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with intent to damage property of another, he damages property of another in an amount of \$500 or more;

(2) he tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) he recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

(4) he drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (Paragraph (a)(4) amended by § 13, ch. 102 SLA 1980).

PRIOR CRIMINAL CODE

Sec. 11.20.515. MALICIOUS MISCHIEF AND DESTRUCTION OF PROPERTY. (a) A person who wilfully or maliciously destroys, defaces, injures or exposes to injury real or personal property not his own, is guilty of malicious destruction of property. Upon conviction, if the property

TAMPERING WITH A WITNESS

NEW CRIMINAL CODE

Sec. 11.56.540. TAMPERING WITH A WITNESS. (a) A person commits the crime of tampering with a witness if he knowingly induces or attempts to induce a witness to

(1) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding; or

(2) absent himself from an official proceeding to which he has been summoned.

(b) Tampering with a witness is a class A misdemeanor.

PRIOR CRIMINAL CODE

See former AS 11.30.320, Influencing witnesses, judges or jurors or obstructing administration of justice (reprinted under this heading in section on AS 11.56.510).

COMMENTARY

From Senate Journal, 81-82:

The crime of tampering with a witness differs in three primary respects from the crime of interference with official proceedings. First, the means by which tampering with a witness is committed (inducing or attempting to induce) are not as culpable or as overt as the means specified in the crime of interference with official proceedings (force, threat or bribery). Tampering with a witness is consequently graded as a class A misdemeanor.

Second, unlike the interference statute, an attempt to induce a prospective witness to avoid process is not made an offense. This distinction is discussed in the Commentary to the Proposed Michigan Revised Criminal Code § 5020 at 414.

[W]hile [§ 11.56.510] make[s] it unlawful to use a bribe or threat to induce a witness

to avoid legal process, [§ 11.56.540] does not bar an attempt to achieve that objective by persuasion or argument. A defense attorney, for example, would not be prohibited from attempting by persuasion or pleading to induce a witness to avoid process by leaving the state. Although the attorney's activity might raise certain ethical issues, it should not give rise to criminal liability, since neither the means used nor the objective sought is unlawful in itself.

Finally, while interference with official proceedings includes acts done with intent to induce a witness to "withhold testimony", tampering with a witness requires an intent to induce a witness to "unlawfully withhold testimony." While it would not be tampering with a witness to persuade a witness to lawfully refuse to testify on grounds of personal privilege, i.e., privilege against self-incrimination, it would be interference with official proceedings to attempt to do so by force, threat or bribe.

See also TD IV, 59-60.

CROSS REFERENCES

Definition of "official proceeding" - AS 11.81.900(b)
Definition of "knowingly" - AS 11.81.900(a)
Definition of "witness" - AS 11.56.900
Interference with official proceedings - AS 11.56.510
Receiving a bribe by a witness or juror - AS 11.56.520

JUSTIFICATION: NECESSITY

NEW CRIMINAL CODE

Sec. 11.81.320. JUSTIFICATION: NECESSITY. Conduct which would otherwise be an offense is justified by reason of necessity to the extent permitted by common law when

(1) neither this title nor any other statute defining the offense provides exemptions or defenses dealing with the justification of necessity in the specific situation involved; and

(2) a legislative intent to exclude the justification of necessity does not otherwise plainly appear.

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 126:

Under the necessity defense, conduct which would otherwise be criminal may be justified if the defendant avoids a greater injury by engaging in that conduct. Examples of possible application of the necessity defense would include blasting a building to prevent a major fire from spreading or forcibly restraining a person infected with a highly contagious and dangerous disease.

The Code does not contain a statutory formulation of the necessity defense. Instead, the defense is incorporated into the Code "to the extent permitted by common law." Under subsection (1) the defense will be inapplicable if another statute covers the defense in the particular situation involved. See, e.g., § 11.46.340. Subsection (2) provides that the defense does not apply if a legislative intent to exclude the defense plainly appears.

See also TD II, 48-49.

CROSS REFERENCES

Justificaton: defense - AS 11.81.300

Defense: emergency use of premises - AS 11.46.340

JUSTIFICATION: USE OF FORCE IN RESISTING
OR INTERFERING WITH ARREST

NEW CRIMINAL CODE

Sec. 11.81.400. JUSTIFICATION: USE OF FORCE IN RESISTING OR INTERFERING WITH ARREST. (a) A person may not use force to resist the arrest of himself or interfere with the arrest of another by a peace officer who is known by him, or reasonably appears, to be a peace officer, whether the arrest is lawful or unlawful, unless

(1) the force used by the peace officer exceeds that allowed under sec. 370 of this chapter; or

(2) the person resisted the arrest of himself and

(A) the arrest was unlawful;

(B) the person knew the arrest to be unlawful; and

(C) the person did not use deadly force in resisting the arrest.

(b) The use of force justified under this section in resisting arrest or interfering with the arrest of another may not exceed the use of force justified under sec. 330 or 335 of this chapter.

(c) The exception in (a)(2) of this section is an affirmative defense to a prosecution for an offense arising out of the use of force in resisting an arrest under the circumstances specified.

(d) In this section, "unlawful" means that there was no probable cause to arrest. The issue whether there was probable

cause to arrest, when an affirmative defense is raised under (c) of this section, is a question of law to be established by the court sitting without a jury. (Subsections (c) and (d) added by § 26, ch. 102, SLA 1980)

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 132-133:

Ordinarily a person may not resist or interfere with an unlawful arrest. However, the Code provides two exceptions to this rule. Under subsection (a)(1) a person may resist or interfere with an unlawful arrest if the peace officer is using excessive force in making the arrest. In allowing resistance under such circumstances the Code is consistent with existing law. See, Gray v. State, 463 P.2d 897, 908 (Alaska 1970). Note that subsection (b) provides that the amount of force used in resisting the arrest may not exceed the amount of force that would be authorized in self defense. For example, if the peace officer is using excessive non-deadly force in making the arrest, only nondeadly force may be used in resisting the arrest.

Subsection (a)(2) provides a limited right to use nondeadly force in resisting (but not in interfering with) an unlawful arrest. This provision is necessary since the crime of resisting arrest, AS 11.56.700, is committed when a person uses force against an officer. The definition of force (AS 11.81.900(b)(22)) is broad enough to cover virtually all physical resistance to an arrest.

To lawfully resist an unlawful arrest three conditions must be met: (1) the arrest must in fact be unlawful, (2) the resister must know the arrest to be unlawful, and (3) deadly force may not be used. One example of a situation in which nondeadly force would be justified is this: a peace officer requests a bribe from a citizen. The citizen refuses and the officer places the citizen under arrest for disorderly conduct. Under these circumstances, the citizen may use nondeadly force in resisting arrest. In allowing the citizen to use nondeadly force under these circumstances, the Code provision is contrary to the rule formulated in Miller v. State, 462 P.2d 421 (Alaska 1969).

From 1980 Senate Journal Supplement No. 44, 17:

This amendment makes two changes to the statute describing when a person may resist an unlawful arrest. Subsection (c) makes the defense an affirmative one which the defendant must prove by a preponderance of the evidence. The defense provided for is one that should be appropriately made an affirmative defense consistent with other provisions of the code because it exists only as a matter of legislative policy and involves a matter that is subjectively in the possession of the defendant. Additionally, because this defense expands the current rule of law with respect to the circumstances when resistance is allowed, shifting the burden of proof on the issue is clearly permissible.

Subsection (d) provides that the issue of whether there was probable cause to arrest is a question of law that is to be determined by the court. While the current provision would undoubtedly be interpreted to include this provision consistent with other similar provisions in the criminal law, it is preferable to specifically set out this procedure.

See also TD II, 66.

CROSS REFERENCES

Definition of "force", "peace officer", "deadly force" - AS 11.81.900(b)

Definition of "knowingly" - AS 11.81.900(a)

Use of force in defense of self - AS 11.81.330;335

Use of force by peace officer in making an arrest or terminating an escape - AS 11.81.370

Resisting or interfering with arrest - AS 11.56.700

Justification: defense - AS 11.81.300

DEFINITIONS - CULPABLE MENTAL STATES

NEW CRIMINAL CODE

Sec. 11.81.900. DEFINITIONS. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when his conscious objective is to cause that result;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when he is aware that his conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless he actually believes it does not exist; a person who is unaware of conduct or a circumstance of which he would have been aware had he not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a

person who is unaware of a risk of which he would have been aware had he not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when he fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 139-143:

As discussed in the Alaska Criminal Code Revision, Tentative Draft, Part 2, Commentary at 8-11 (1977), the important area of culpable mental states is one of great confusion and uncertainty in existing law. The proliferation of culpable mental state terms coupled with their haphazard use hampers the interpretation of individual sections and frustrates one of the principal purposes of the mens rea concept: providing a structure for the classification of offenses according to their degree of blameworthiness. Additionally, some statutes are exposed to constitutional attack by their failure to specify a culpable mental state, or by their specification of an unconstitutional form of culpability.

The Code addresses itself to these three problems by replacing the myriad of existing terms with a four-tiered framework of culpable mental states that clearly establishes levels of blameworthiness. Only four culpable mental states apply throughout the Code: intentionally, knowingly, recklessly and criminal negligence. The terms are defined in § 11.81.900(a)(1)-(4). Use of one or more of these terms, whether specifically included in a statute or implied

through a rule of construction, should promote clarity and uniformity in the interpretation of individual sections and in the formulation of jury instructions.

The Code distinguishes between three elements of offenses to which the culpable mental states apply:

1. the nature of the conduct;
2. the circumstances surrounding the conduct; and
3. the result of the conduct.

The first element, conduct, involves the nature of the proscribed act or the manner in which the defendant acts. Kidnapping, for example, requires that one person restrain another. The conduct might be the locking of the only door to a windowless room. Knowingly is the culpable mental state applicable to conduct. The second element, circumstances surrounding the conduct, refers to a situation having a bearing on the actor's culpability. Kidnapping requires that the person inside the room not consent to being restrained. Lack of consent is an example of a circumstance surrounding the actor's conduct, and is an element of the crime. Knowingly, recklessly, and criminal negligence are the culpable mental states associated with the existence of circumstances. The result of the actor's conduct constitutes the final element. Kidnapping can occur if the victim is exposed to a substantial risk of serious physical injury. Intentionally, recklessly and criminal negligence are the culpable mental states associated with results.

a. Section 11.81.900(a)(1)-(2). INTENTIONALLY AND

KNOWINGLY

When a statute in the Code provides that a defendant must intentionally cause a result, the state must prove that it was the defendant's conscious objective to cause that result. This culpable mental state is comparable to the existing form of culpability commonly referred to as "specific intent." Bribery, for example, requires that the defendant confer a benefit upon a public servant with intent to influence him; the state must prove that it was the conscious objective of the defendant to cause the public servant to be influenced.

Under the Code, knowledge requires an awareness on the part of the defendant that his conduct is of the nature described by the statute defining the offense or that the circumstances described by the statute exist. It is not required that the defendant know that his conduct is prohibited by law. See [AS 11.81.620, supra]. The definition also covers the situation where a person deliberately avoids