

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672
9157 HOUSE JUDICIARY

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PUBLISHER AND EDITORS
ANCHORAGE DAILY NEWS
JAN. 10, 1997

KNEW ABOUT THE LIMITED FACILITIES WHEN
ADOPTING THE RULE YEARS AGO, WHEN
~~FACIL~~ FACILITIES WERE EVEN MORE LIMITED,
THE PROSECUTION WOULD ~~FOR~~ ASK THE COURT
SYSTEM TO ABOLISH VILLAGE TRIAL SITES,
ELEVATING PERSONAL COMFORT OF COURT SYSTEM
PERSONNEL OVER THE NEED TO EXTEND THE
CRIMINAL JUSTICE SYSTEM INTO THE RURAL
AREAS OF THIS VILLAGE STATE. AS A MATTER
OF FACT, THERE ARE PLENTY OF FACILITIES
IN THE VILLAGES TO ACCOMMODATE VILLAGE TRIAL

110. THE ^{APPELLATE} COURTS APPLY NO OVERSIGHT
OVER THE LESSER STANDARDS OF PROOF IN
ALASKA LAW, PRINCIPALLY THE PREPONDERANCE
OF THE EVIDENCE STANDARD. THIS IS THE
LOWEST STANDARD OF EVIDENCE AND ALLOWS
THE COURT TO TAKE ACTION (JAIL) ^{TO} A
DEFENDANT IF IT FINDS IT SIMPLY "MORE
LIKELY THAN NOT" THAT SOMETHING OCCURRED
(51% PROBABILITY OUT OF 100%). THIS STANDARD
IS EMPLOYED IN PROBATION REVOCATION

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HEARINGS, THAT COULD RESULT IN MANY YEARS IN JAIL, AND IN MANY OTHER EVIDENTIARY SITUATIONS. FOR INSTANCE, UNDER ALASKA STATE LAW A JURY CAN FIND A DEFENDANT NOT GUILTY OF A CHARGED CRIME BUT GUILTY OF A LESSER-INCLUDED CRIME. IF THE JUDGE THINKS THE DEFENDANT ACTUALLY COMMITTED THE MORE SERIOUS CRIME THEN, BASED ON THIS EVIDENTIARY STANDARD, ^{AT HEARING} THE JUDGE CAN THEN SENTENCE THE DEFENDANT AS THOUGH HE HAD COMMITTED THE MORE SERIOUS CRIME DESPITE THE CONSTITUTIONAL ACQUITTAL BY THE TRIAL JURY. IN BRADY V. U.S., THE U.S. 9TH CIRCUIT COURT OF APPEALS ^{APRIL} (1991) CALLED THIS A "PERVERSION OF JUSTICE". THE 9TH CIRCUIT INCLUDES ALASKA.

WHEN THE STANDARD OF PROOF IS "PREPONDERANCE OF THE EVIDENCE", THE DEFENSE PRACTICALLY NEVER HAS A CHANCE OF PREVAILING - AND THIS STANDARD COMES UP EVERY DAY. THE JUDGE CAN CITE ANY SLIGHT FACTUAL JUSTIFICATION TO COVER

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HIS RULING. AND THE APPELLATE COURTS
WILL NEVER OVERTURN THESE RULINGS
ABSENT EXTRAORDINARY CIRCUMSTANCES
THAT ARE ALMOST IMPOSSIBLE TO
DEMONSTRATE. THE RULES ARE REFINED
TO CRIPPLE THE DEFENSE.

I HOPE THAT YOU WILL REVIEW THESE
MATERIALS AND INVESTIGATE THEM IN
CONNECTION WITH THE APPOINTMENT OF
A HARD-HITTING, STRONG STATE PUBLIC
DEFENDER. IN MY 11-24-96 LETTER TO
THE ALASKA JUDICIAL COUNCIL, I ALSO TALK
ABOUT THE DISPARITY IN CONDITIONS
BETWEEN URBAN AND RURAL OFFICES
IN THE PUBLIC DEFENDER AGENCY.

THE RURAL OFFICES ARE TREATED MORE
AS HARDSHIP POSTS TO BE ENDURED
WHILE HOPING FOR TRANSFER TO THE
CITY, RATHER THAN AS PLACES WORTH
SETTLING IN FOR A SIGNIFICANT PERIOD
OF TIME. BOTH THE BARROW AND SITKA

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PUBLIC DEFENDERS HAVE NEVERTHELESS BEEN IN THOSE COMMUNITIES FOR LONG PERIODS (6 YEARS IN BARROW), AND IT IS WORTH CHECKING WITH THEM ABOUT THESE ISSUES. THE BETHEL OFFICE, WITH ITS OUTRAGEOUS CASELOAD, HAS BEEN IN THE NEWS WITHIN THE PAST YEAR.

THE STATE PUBLIC DEFENDER APPOINTMENT IS HEADED TO THE LEGISLATURE. I HOPE ^{THAT} YOU WILL AIR THIS ISSUE NOW, WHILE IT IS ESPECIALLY RELEVANT. THE APPOINTMENT WILL AFFECT THE COURSE OF THE CRIMINAL JUSTICE SYSTEM IN ALASKA FOR YEARS TO COME, INTO THE NEXT CENTURY, YEA, EVEN UNTO THE NEXT MILLENNIUM!

I WILL BE OUT OF CHANGCHUN, BUT STILL IN CHINA, DURING THE LAST OF JANUARY, UNTIL ABOUT FEBRUARY 10. YOU CAN CONTACT ME THROUGH THE ABOVE FAX NUMBER AND, UNTIL ABOUT

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~~P. 37~~

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→ P.S. SINCE THIS IS GOING TO
A NEWSPAPER, FROM CHINA,
I WILL SEND IT UNDER
SEPARATE COVER TO MY RELAT
IN DULUTH, MINNESOTA AND
HAVE IT FORWARDED TO YOU
John Holmes

FEBRUARY 6 AT THE ABOVE E-MAIL ADDRESS.
(THE E-MAIL WILL THEN BE CLOSED FOR ABOUT
TWO WEEKS WHILE THE PEOPLE ARE OUT OF TOWN.
I WILL KEEP IN CONTACT WITH THE FAX
AND E-MAIL ADDRESSES AND ARRANGE A
WAY TO TALK WITH YOU. THE FAX IS ALWAYS
AVAILABLE.

SINCERELY,
John M. Holmes
JOHN M. HOLMES,
ATTORNEY AT LAW

ENCL:

- 1) 12-18-96 LETTER TO J. HOLMES FROM
~~TERESA~~ TERESA CARRIS, SENIOR STAFF
ASSOCIATE, ALASKA JUDICIAL
COUNCIL.
- 2) 11-24-96 LETTER FROM J. HOLMES TO ALASKA
JUDICIAL COUNCIL.
- 3) 12-08-95 LETTER FROM J. HOLMES TO ALASKA
JUDICIAL COMMITTEE ON FAIRNESS
AND ACCESS.
- 4) 11-02-95 MEMO ENTITLED "A COLONIAL
SYSTEM" FROM J. HOLMES TO
PUBLIC DEFENDER AGENCY.
(IN JAN. 1996 KOTZEBUE JUDGE RICHARD
ERLICH DISTRIBUTED A MONOGRAPH
ACKNOWLEDGING THAT THE CRIMINAL
JUSTICE SYSTEM IS COLONIAL BUT
ADVOCATING NOTHING TO CHANGE IT.)

END OF
LETTER

1-15-97
COPY TO AK LEGISLATURE
HOUSE JUDICIARY
COMMITTEE CHAIR
John M. Holmes

NOVEMBER 24, 1996

JOHN M. HOLMES, ATTORNEY
46 HONGQI STREET
ENGLISH TEACHERS' OFFICE
CHANGCHUN FOREIGN LANGUAGES SCHOOL
CHANGCHUN, JILIN PROVINCE
CHINA 130012
(ALASKA BAR ASSN. NO. 7811103)

DIRECTOR,
ALASKA JUDICIAL COUNCIL
C/O ALASKA STATE COURTHOUSE
3RD + K STREET
ANCHORAGE, ALASKA 99501

RE: PUBLIC DEFENDER APPOINTMENT

DEAR JUDICIAL COUNCIL:

THIS LETTER IS IN RESPONSE TO THE JUDICIAL COUNCIL'S OCTOBER SURVEY OF ATTORNEYS REGARDING APPLICANTS FOR THE STATE PUBLIC DEFENDER POSITION. THIS LETTER ADDRESSES THE APPLICATION OF BARBARA BRINK.

I WORKED IN THE PUBLIC DEFENDER AGENCY FROM DECEMBER 1988 TO SEPTEMBER 1991 AND FROM AUGUST 1994 TO JULY 19, 1996: ANCHORAGE 12/88 - 3/89 (PRIOR TO TRANSFER TO BARROW); BARROW 3/89 - 3/90; KETCHIKAN 3/90 - 9/91; KOTZEBUE 8/94 - 7/19/96.

AS DEPUTY PUBLIC DEFENDER, BARB BRINK RESPONDED PROMPTLY AND KNOWLEDGEABLY TO REQUESTS FOR INFORMATION AND APPROVALS, ON SHORT NOTICE. SHE IS AN EXPERIENCED ATTORNEY AND AN ORGANIZED ADMINISTRATOR. BARBARA BRINK IS A DEDICATED PROFESSIONAL.

HOWEVER, I DO NOT RECOMMEND BARBARA BRINK'S APPOINTMENT AS STATE PUBLIC DEFENDER FOR THE FOLLOWING REASON. IN CONTRAST TO THE USUAL

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ALASKA JUDICIAL COUNCIL

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PUBLIC PERCEPTION OF THE CRIMINAL JUSTICE PROCESS, I SEE THAT PROCESS IS GROSSLY UNFAIR TO DEFENDANTS, BOTH IN TERMS OF STEADILY ERODING CONSTITUTIONAL RIGHTS AND ALSO IN PRACTICAL TERMS OF A STATE COURT SYSTEM THAT IS BIASED IN FAVOR OF THE PROSECUTION AND THAT TREATS DEFENDANTS FROM THE OUTSET AS THOUGH THEY WERE GUILTY. IT CAN BE SAID THAT THE PUBLIC DEFENDER AGENCY REPRESENTS THE OVERWHELMING MAJORITY OF DEFENDANTS WHO ARE REPRESENTED BY COUNSEL (AROUND 85-90%?). THE PUBLIC DEFENDER AGENCY'S POSITION AND STRATEGY CONCERNING THIS SYSTEMIC PROBLEM REALLY DETERMINES WHETHER THERE WILL BE MOVEMENT IN ALASKA TO REVERSE THE ABUSE OF DEFENDANTS IN ALASKA. I BELIEVE THAT THE PUBLIC DEFENDER AGENCY CANNOT BE RUN AS JUST ANOTHER STATE AGENCY. IT HAS AN OVERRIDING, A CONSTITUTIONAL, OBLIGATION ~~OBLIGATION~~ TO DEFENDANTS AND TO FAIR FAIR APPLICATION OF THE JUDICIAL PROCESS. I BELIEVE THAT THE PUBLIC DEFENDER AGENCY MUST TAKE A VERY STRONG POSITION TO REVERSE THIS SYSTEMIC SLIDE INTO AUTHORITARIANISM. I DO NOT BELIEVE THAT BARBARA BRINK IS THE PERSON TO DO IT.

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ALASKA JUDICIAL COUNCIL

RE: PUBLIC DEFENDER APPOINTMENT

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HERE ARE EXAMPLES OF PROBLEMS THAT HAVE CONTRIBUTED TO THE EROSION OF A FAIR JUDICIAL PROCESS.

1) THE MIRANDA NOTICE REQUIREMENTS HAVE BEEN STEADILY RESTRICTED OVER THE YEARS, TO THE POINT THAT THE ALASKA COURT PERMITS THE POLICE TO ACTIVELY CONSPIRE TO HYDID THE REQUIREMENT OF GIVING NOTICE OF RIGHTS TO SILENCE AND COUNSEL. THIS IS IN A STATE IN WHICH A LARGE PERCENTAGE OF DEFENDANTS ARE RURAL PEOPLE FROM MINORITY CULTURES WHO ARE MORE VULNERABLE TO TECHNICAL VIOLATIONS OF THEIR RIGHTS. IN MY OPINION - THE PUBLIC DEFENDER AGENCY ACCEPTS CURRENT LEGAL DOGMA AS PERMANENT, WHERE PRECEDENT AGAINST IT CANNOT BE FOUND, RATHER THAN CAMPAIGNING FOR CHANGE. FOR INSTANCE, IN STATE V. J. HAWLEY, 2KB-94-198 CR, I BROUGHT TWO EXPERT WITNESSES TO A NOVEMBER 1994 EVIDENTIARY HEARING IN THAT CASE TO TESTIFY THAT INUPRIAT ESKIMOS IN THE KOTZEBUE AREA DID NOT GIVE VOLUNTARY STATEMENTS TO THE POLICE AND TROOPERS, REGARDLESS ~~BE~~ OF LEGAL DOCTRINE OTHERWISE. EXCEPT FOR THE SITKA PUBLIC DEFENDER, I FOUND NO ONE ELSE INTERESTED IN THE ISSUE BECAUSE OF THE FACT THAT ALASKA LAW UNQUESTIONABLY HOLDS SUCH STATEMENTS TO BE CONSTITUTIONAL. DESPITE THE OBVIOUS INJUSTICE, THERE IS NO APPARENT INCENTIVE TO KEEP RATTLING THE BARS OF THE

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ALASKA JUDICIAL COUNCIL
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JUDICIAL SYSTEM UNTIL THE COURTS RECOGNIZE WHAT BOTH JUDGES AND ATTORNEYS ALREADY KNOW, THAT DEFENDANTS ARE DEPRIVED OF THEIR CONSTITUTIONAL RIGHT TO MIRANDA WARNINGS. THE PUBLIC DEFENDER AGENCY SHOULD VIGOROUSLY FIGHT SUCH AN ISSUE, WHETHER PRECEDENT IS AVAILABLE OR NOT. IF THE PUBLIC DEFENDER AGENCY DOES NOT DO IT, WHO WILL?

2) THE COURTS EXCUSE VIRTUALLY ANY VIOLATION OF THE GRAND JURY PROCESS. A REVIEW OF THE SECTIONS ON INDICTMENT/INFORMATION AND GRAND JURY IN THE ALASKA DIGEST SHOW AN ALMOST UNINTERRUPTED LITANY OF DECISIONS EITHER NOT RECOGNIZING DEFECTS OR EXCUSING THEM. LIKEWISE, COURTS GRANT SEARCH WARRANTS AS THOUGH THEY WERE MEDIEVAL INDULGENCES (I'M NOT SAYING THAT THE COURTS SELL THEM.). THE PUBLIC DEFENDER AGENCY SHOULD CAMPAIGN AGAINST THESE VIOLATIONS OF DEFENDANTS' RIGHTS AND ABUSES OF THE JUDICIAL PROCESS. (A 1980s CASE FORTHOUGH POSES THE NECESSITY OF POST-GRAND JURY PRELIMINARY HEARINGS.

3) THE PROSECUTION ROUTINELY OVERCHARGES, GOING TO GRAND JURY WHEN MISDEMEANOR PROSECUTION IS SUFFICIENT. THE PROSECUTION AND DEFENSE THEN WORK TO EXPEDITIOUSLY SETTLE THE CASES, TO THE NET ADVANTAGE TO THE PROSECUTION. INSTEAD OF WORKING

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ALASKA JUDICIAL Council.
Re: Public Defender Appointment
November 24, 1976

TO ACCOMMODATE THE EFFICIENT PRACTISING
OF DEFENDANTS, THE PUBLIC DEFENDER AGENCY
SHOULD HOLD OUT AND FEROE THE PROSECUTION
TO PROSECUTE ON A REALISTIC BASIS. THE
COURTS AND PROSECUTORS SHOULD UNDERSTAND
THAT IT IS INAPPROPRIATE PRECEDENT THAT
CREATES THE LOGJAMS IN THE SYSTEM. THE
ETHICAL RULES DO NOT ADVOCATE PROSECUTION IN
EVERY CASE IN WHICH THE ELEMENTS OF A CHARGE
MAY BE MET, PROSECUTION, AND THE LEVEL OF
PROSECUTION, ARE SUBJECT TO A NUMBER OF
FACTORS UNDER PROSECUTORIAL ETHICAL RULES.

4) IN MY EXPERIENCE, THE COURTS DO
NOT TREAT DEFENDANTS FAIRLY DURING THE
JUDICIAL PROCESS. THE DEFENDER OF THE
JUDGE SAYS EVERYTHING ABOUT THE FAIRNESS
OF THE PROCESS. DEFENDANTS ARE ROUTINELY
TREATED - THROULED - AS THOUGH THEY WERE
GUILTY WHEN BROUGHT BEFORE THE COURT.
THE JUDGES' DEFENDER IN FRONT OF JURIES
SHOW BIAS IN FAVOR OF THE PROSECUTION.

THE PUBLIC COMPLAINS THAT DEFENDANTS
GET OFF ON "TECHNICALITIES", BUT ANYONE
FAMILIAR WITH THE TRIAL PROCESS KNOWS THAT
THE LACK MAJORITY OF DECISIONS ON ALL OF THE
TECHNICAL QUESTIONS THAT ARISE DURING A CASE,
AND DURING TRIAL, RUN IN FAVOR OF THE
PROSECUTION. THE COURTS ARE SIMPLY
UNACQUAINTED TO ADDRESSING ISSUES WITH

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THE DEFENSE VIEW IN MIND.

THERE ARE INSTITUTIONAL MECHANISMS THAT COURTS USE TO FAVOR THE PROSECUTION. A DEFENDANT CAN BE TRIED BEFORE A JURY UNDER 2 OR 3 DIFFERENT THEORIES FOR THE SAME ALLEGED ACT, PREJUDICING JURIES TO SUPPOSE THAT THE DEFENDANT MUST REALLY BE GUILTY IF HE IS CHARGED WITH TWO DIFFERENT SEXUAL ASSAULT CRIMES (FOR THE SAME ACT) OR 2 OR 3 PHYSICAL ASSAULTS (FOR THE SAME ACT). IN A WHOLLY CYNICAL VIEW OF THE PROCESS, THE COURTS SAY THAT ^{ANY} INJUSTICE CAN BE RECTIFIED AFTER TRIAL WITH SENTENCING LIMITED TO ONLY ONE CONVICTION. LIKEWISE, UNDER ALASKA LAW, A JUDGE CAN SENTENCE A DEFENDANT WHO IS ACQUITTED OF A HIGHER CHARGE BUT CONVICTED OF A LESSER CHARGE AS THOUGH HE WERE GUILTY OF THE HIGHER - ACQUITTED - CHARGE IF THE JUDGE THINKS THAT THE DEFENDANT IS REALLY GUILTY OF THE HIGHER CHARGE. ^(IN DISAGREEMENT WITH THE JURY) A 1991 9TH CIRCUIT FEDERAL APPELLATE CASE CALLS THIS A PERVERSION OF THE JURY SYSTEM. AFTER TRIAL, PROBATIONERS ARE SUBJECT TO THE LOWEST STANDARD OF PROOF IN REVOCATION HEARINGS - PREPONDANCE OF THE EVIDENCE. JUDGES USUALLY ACT AS THOUGH ^{THERE} ~~WERE~~ WERE NO STANDARD AT ALL PREVENTING FINDINGS AGAINST DEFENDANTS.

PART OF THE SOLUTION TO ALL OF THIS IS TO CAMPAIGN HARD ON THE LEGAL ISSUES. PART OF THE SOLUTION IS TO

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HIGHEST JUDICIAL OFFICER

RE: Public Defender Appointment
NOVEMBER 24, 1996

BE WILLING TO PERSONALLY CONFER WITH JUDGES.
I DON'T THINK THAT MOST LAWYERS ARE
WILLING TO DO THIS. THE PUBLIC DEFENDER MUST
TAKE A HARD POSITION ON BEHALF OF CLIENTS.
IF THE PUBLIC DEFENDER AGENCY IS NOT WILLING
TO DO IT, WHO WILL?

IN MY OPINION THE PUBLIC DEFENDER
AGENCY IS RUN LIKE OTHER STATE AGENCIES.
IN OTHER WORDS, THERE IS AN UNDERSTANDING,
A NECESSARY, EFFORT TO CREATE SOME
WORKING ^{LEGAL} SCHEDULES FOR EMPLOYEES AND
TO PROVIDE SERVICES AS FULLY AS POSSIBLE.
BUT THE PUBLIC DEFENDER AGENCY IS NOT
JUST ANOTHER AGENCY. IT IS FIRST AND ALL
A MECHANISM THAT WAS SET UP TO PROVIDE
CONSTANT TRIALLY-MANAGED REPRESENTATION
TO DEFENDANTS. BECAUSE OF THE CASELOAD,
BECAUSE OF THE LACK OF SUFFICIENT PERSONNEL
AND RESOURCES, AND BECAUSE OF MISTRUSTMENT
OF DEFENDANTS UNDER THE JUDICIAL PROCESS,
THE PUBLIC DEFENDER AGENCY HAS A MISSION
THAT IS SIGNIFICANTLY DIFFERENT FROM THAT
OF OTHER STATE AGENCIES.

THE Public Defender Agency OPERATES
UNDER GREAT PRESSURE. WHILE THE PROSECUTION
CAN GENERALLY DELAY COMMENCEMENT OF
FORMAL PROSECUTION UNTIL IT IS PREPARED
TO DO SO, THE DEFENSE HAS NO SUCH
DISCRETION. SINCE THE PROSECUTION HAS

SPS

ALASKA JUDICIAL COUNCIL
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COMMENCED PROSECUTION, THE DEFENSE MUST ABSORB THE CASE AND DEFEND IT WITHIN DEADLINES. THIS IS IMPOSSIBLE TO DO EFFECTIVELY IF THERE IS A CASELOAD OF 75-100 ON-GOING CASES. PRESSURE IS THEREBY EXERTED TO PLEAN OUT CASES IN ORDER TO TRY DESPERATELY TO KEEP UP WITH THE CASELOAD. THE COURT AND THE PROSECUTION HAVE SIMILAR GOALS, TO MOVE CASES THROUGH THE SYSTEM. THEY ACT IN TANDEM TO FORCE THE DEFENSE TO MOVE CASES ALONG, BY PLEADING THEM OUT. THIS, DESPITE THE FACT THAT THE PROSECUTION GLUTS THE SYSTEM BY PROSECUTING CASES THAT COULD BE DIVERTED OR BY OVERCHARGING CASES. THIS, DESPITE THE FACT THAT THE COURTS HELP GLUT THE SYSTEM BY GRANTING SEARCH WARRANTS ON ANY GROUND AND BY OVERLOOKING ALMOST ANY DEFECT IN THE GRAND JURY PROCESS. THE ENTIRE WEIGHT OF THE OVERLOADED SYSTEM RESTS ULTIMATELY ON THE BACKS OF THE DEFENDANTS. MANY BARELY SEE THEIR ATTORNEYS. NO RESEARCH OR INVESTIGATION IS DONE ON THEIR CASES. NO TIME IS SPENT IN PREPARATION. DEFENDANTS ARE PLED OUT TO MEET COURT DEADLINES. IT IS A HARD, CYNICAL SYSTEM.

I BELIEVE THAT FOR THE MOST PART THE PUBLIC DEFENDER AGENCY HAS

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ACCOMMODATED ITSELF TO THIS SYSTEM.
THE PROSECUTION AND THE PUBLIC DEFENDER
AGENCY IN ANCHORAGE HAVE A SYSTEM
FOR PROCESSING PRE-INDICTMENT OFFERS.
THIS MEANS THAT THE PROSECUTION WANTS
A GOOD CHANCE OF GETTING AN ALMOST FREE
PROSECUTION BY THREATENING INDICTMENT
BY THE GRAND JURY. THE PROSECUTOR HAS
THE IMPLICIT SUPPORT OF THE COURTS SINCE
THE DEFENSE KNOWS THAT NO JUDGE IN
HIS RIGHT MIND WOULD THINK OF THROWING
OUT A GRAND JURY INDICTMENT. THE AVERAGE
ATTORNEY MAY THEN ENCOURAGE A DEFENDANT
TO PLEAD OUT EARLY, BEFORE LITIGATION
ABOUT THE STRENGTHS OR WEAKNESSES OF
THE CASE.

DUE TO LACK OF TIME AND RESOURCES,
MISDEMEANORS ARE RARELY INVESTIGATED,
AND MOTIONS ARE ONLY OCCASIONALLY FILED.
CLIENTS MAY NEVER SEE THEIR LAWYERS FOR
MORE THAN A FEW MINUTES, IN TOTAL.

MY PROBLEM WITH THIS IS THE
FACT THAT THE PUBLIC DEFENDER AGENCY
CAN BE REDUCED TO A FRAME OF MIND
THAT THIS IS THE PERMANENT, UNALTERABLE
REALITY, THAT THIS THE WAY THINGS WILL ALWAYS
BE, THAT THIS IS FATE. IF THIS IS SO, THE
DEFENSE BECOMES A PERMANENT UNDERDOG,
RACING AGAINST IMPOSSIBLE DEADLINES,
SCRAMBLING TO TAKE THE BIGGEST BITE THE

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PROSECUTION WILL OFFER, TRYING TO EFFICIENTLY
MANAGE AN OVERWHELMING CASELOAD.

I BELIEVE THAT THE PUBLIC DEFENDER
AGENCY DOES OPERATE UNDER THIS
MISCONCEPTION. THE ENTIRE PROCESS
BECOMES ONE OF SETTLING CASES, BASICALLY
WITHIN PROSECUTION-SGT BOUNDARIES.
TO THE EXTENT THAT CASELOADS ARE
PROCESSED EFFICIENTLY, NOT ONLY DO THEY
COME UNDER ^{AT LEAST} MINIMAL CONTROL, BUT
THE ATTORNEYS ALSO CAN LEAD MORE
NORMAL LIVES. I WAS RARELY IN THE
ANCHORAGE ^{PUBLIC DEFENDER} OFFICE, BUT, WHEN I WAS,
I NOTICED FEW ATTORNEYS WORKING
EVENINGS OR ON WEEKENDS. IT
APPEARED THAT THE PLACE PRETTY MUCH
EMPTIED OUT AFTER NORMAL WORKING
HOURS.

ON THE OTHER HAND, WORK IN THE
RURAL OFFICES NEVER ENDS. THE ATTORNEY
LIVES SO CLOSE TO THE COMMUNITY THAT
THERE IS NO INSULATION FROM THE JOB.
THE PUBLIC DEFENDER AGENCY DOES NOT
CONSIDER OFFICES SUCH AS BARROW, KOTzebue,
AND BETHEL TO BE LONGTERM PLACEMENTS
(THOUGH THE BARROW PUBLIC DEFENDER HAS
BEEN ON THE JOB THERE FOR 6 YEARS, TO
HER EVERLASTING CREDIT). INSTEAD THEY
SEEM TO BE STEPPING STONES TO POSSIBLE
EMPLOYMENT IN THE URBAN OFFICES,

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SOMETHING THAT DOES NOT PROMOTE THE HEALTH OF THE RURAL OFFICES. THE PUBLIC DEFENDER AGENCY HAS NO SYSTEM OF PERIODIC TRIPS BY CENTRAL-OFFICE OFFICIALS TO THE OUTER OFFICES. IN MY YEARS IN OUTER OFFICES, I REMEMBER ONLY ONE TRIP BY THE HEAD OF THE AGENCY, AND THE PRIMARY PURPOSE OF THAT TRIP (WHEN I WAS FIRST TRAVELING TO START WORK IN KOTZEBUE) WAS TO ~~BE~~ PARTICIPATE IN A SPECIALIZED COURT HEARING.

ONE REASON FOR MY POSITION REGARDING BARB BRINK'S APPLICATION HAS TO DO WITH A TELEPHONE CALL THAT I RECEIVED AROUND MID-DECEMBER, 1995. BOTH THE ALASKA PUBLIC DEFENDER AND BARB BRINK CALLED ME, TOGETHER, FROM ANCHORAGE. I WAS IN THE PUBLIC DEFENDER AGENCY OFFICE IN KOTZEBUE. THEY SAID THAT THE THEN CURRENT KOTZEBUE DISTRICT ATTORNEY HAD CALLED TO COMPLAIN THAT I WAS BEING UNREASONABLY INTRANSIGENT IN NEGOTIATING CASES. (THE DA NEVER TOLD ME THAT HE HAD MADE THE CALL).

THE PUBLIC DEFENDER AND BARB (WHO WAS VERY ACTIVE IN THE 15-20 MINUTE CONVERSATION) BEGAN ASKING ME, IN A CROSS-EXAMINING KIND OF WAY, ABOUT HOW I WORKED WITH THE DA. I WAS UNCOMFORTABLE WITH THE CONDUCT OF THE CONVERSATION, BUT IT WAS

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ONLY LATER, AFTER I HAD HAD TIME TO THINK ABOUT IT, THAT I FIGURED OUT WHY. FIRST, THEY HAD ACCEPTED WHAT THE DA HAD SAID WITHOUT FIRST LISTENING TO ME, THEIR OWN PUBLIC DEFENDER. THEIR STYLE WAS CONFRONTATIONAL. SECOND, THEY REPRESENTED THE DA'S INTEREST RATHER THAN THE INTEREST OF THE PUBLIC DEFENDER AGENCY IN KATIEBVE.

BOTH BARD AND THE P.D. EMPHASIZED THAT IT WAS NECESSARY TO HAVE A PERSONAL RELATIONSHIP WITH THE DISTRICT ATTORNEY IF WE WERE TO KEEP CONTROL OF OUR CASELOADS. THEY SAID THAT THE DA WAS COMPLAINING ABOUT OUR RELATIONSHIP.

I EXPLAINED THAT WE DID HAVE A RELATIONSHIP, THAT WE DID TAKE OUT CASES. I SAID, THOUGH, THAT A RELATIONSHIP MUST BE BASED ON SOMETHING AND THAT IT WAS NOT ENOUGH JUST TO CULTIVATE FRIENDLY RELATIONS. IF WE DO THAT, WE WILL END UP SETTLING CASES WITHIN THE PROSECUTOR'S PARAMETERS. IT IS FIRST A POWER RELATIONSHIP. THE DA MUST FIRST KNOW THAT WE WILL ALWAYS GO TO TRIAL. IF WE DON'T LIKE OFFERS, WE HOLD OUT TO THE BITTER END, EVEN GOING TO TRIAL IN LOSING CASES IF THE DEFENDANT WANTS TO GO. EVEN THOSE CASES HAVE THEIR VALUE, BECAUSE THE DA WILL NOT SEEK TO PUSH SO HARD IF HE KNOWS WE ARE CRAZY...

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ENOUGH TO GO TO TRIAL ON ANYTHING.
OUT OF ALL THIS A RELATIONSHIP DEVELOPS.
SURE THE DA WAS FRUSTRATED. THE
CALENDAR WAS CRAMMED WITH TRIAL
DATES - AND AS MANY MOTIONS AS I
COULD FILE (OFTEN LATE-FILED UNFORTUNATELY).
THE WHOLE KOTZEBUE CALENDAR WAS
BOGGED DOWN.

I BELIEVE I TOLD THEM THAT I
SAW THIS AS A FORM OF GUERRILLA WARFARE.
THERE WERE WAY TOO MANY CASES.
BUT I REFUSED TO JUST PLEAD THEM
OUT BECAUSE IN GENERAL THAT DID NOT
BENEFIT CLIENTS. SO I PUSHED EVERY CASE
I COULD TO THE WIRE. THAT ~~WAS~~
INCLUDED THE JUVENILE AND CHILDREN'S
CASES, IN WHICH I HAD MANY ADVERSARIAL
HEARINGS THAT - DOUBTLESS - HAD RARELY
BEEN SEEN IN COURT IN THE PAST.
(I DID THE SAME IN ADULT PAROLE HEARINGS;
ASK THE PAROLE BOARD - WHO WERE GENERALLY
VERY GOOD.)

THE KOTZEBUE CALENDAR WAS A
MESS. THE DA AND THE COURT SAW THAT AS
MY FAULT. I SAW THAT AS THEIR FAULT.
I SAW NO ALTERNATIVE ^{TO WHAT I WAS DOING} EXCEPT TO START
PLEADING OUT DEFENDANTS QUICKLY. I
SAW THAT AS ^{BEING} AN ACCOMMODATION TO A
SYSTEM THAT WAS ALREADY DENYING
CLIENTS DUE PROCESS IN KOTZEBUE.

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I TOLD THEM THAT THIS STRATEGY HAD WORKED, THAT BY HOLDING OUT I HAD GOTTEN MANY GOOD DEALS FOR CLIENTS. WE NEVER HAD A SINGLE MISDEMEANOR TRIAL IN KOTzebue (ONLY FELONY TRIALS). IN EVERY ^{MISDEMEANOR} CASE THAT WAS PUSHED TO TRIAL, AND I WAS THE ONLY PUBLIC DEFENDER IN THE OFFICE DOING TRIALS, THE PROSECUTION EITHER DISMISSED THE CASE ENTIRELY OR FINALLY THREW THE CASE AWAY WITH A VERY LOW OFFER.

I WOULD DEMAND VILLAGE TRIALS IN MISDEMEANORS, KNOWING THAT THE DA DID NOT WANT TO TRAVEL. (BOTH THE DA AND HIS PREDECESSOR WROTE THE JUDICIAL OFFICE DEALING WITH CR 18 VILLAGE TRIAL SITES AND ASKED THAT KOTZEBUE-AREA VILLAGE TRIAL SITES BE ELIMINATED BECAUSE THEY HAD NO RESTAURANTS, HOTELS, OR COURT FACILITIES.) IN JANUARY, 1996, A MONTH AFTER THIS CONVERSATION, WE ACTUALLY TRAVELED TO SELAWIK TO TRY ^{TWO MISDEMEANOR} CASES. WHILE THERE THE DA GAVE OFFERS IN BOTH CASES (ONE WHEN A JURY PANEL HAD BEEN ASSEMBLED) THAT WERE SO ATTRACTIVE THAT THE DEFENDANTS TOOK THEM - NO JAIL. I TOLD THEM I THOUGHT WE COULD WIN, BUT THEY WERE HOME AND WANTED OUT OF THE CASES.

BARB BRINK AND THE PUBLIC DEFENDER THEN CONFRONTED ME WITH 3 SPECIFIC

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JAN. 10, 1997
* NOTE: PAGES 15 & 16 ARE BEING REWRITTEN *
TO REMOVE PERSONAL REFERENCES TO
CLIENTS, TO PROTECT THEIR PERSONAL
PRIVACY.
John Holmes

CASES IN WHICH THE DA SAID I HAD BEEN UNREASONABLE. THE 1ST TWO I CANNOT REMEMBER FOR SURE, ALTHOUGH I BELIEVE I REMEMBER THE SECOND CASE SPECIFICALLY. I KNOW THAT I HAD GOTTEN GOOD RESOLUTIONS IN BOTH CASES BY REFUSING TO SIMPLY PLEAD OUT. IN THE SECOND CASE THE DEFENDANT HAD AN EXTENSIVE PRIOR RECORD AND WOULD HAVE BEEN SUBJECT TO A MINIMUM OF 15 YEARS IF CONVICTED OF THE CURRENT CHARGE; AS A PRACTICAL MATTER, HE COULD HAVE RECEIVED MANY MORE YEARS IF CONVICTED OF THE CHARGE. I PUSHED THE CASE TO TRIAL. THE DAY BEFORE TRIAL THE DA OFFERED US A MISDEMEANOR, WHICH CARRIED A 1-YEAR MAXIMUM. SINCE THE DEFENDANT HAD ALREADY BEEN IN JAIL FOR 4½ MONTHS, HE HAD ONLY 3½ MONTHS LEFT TO SERVE, COUNTING 4 MONTHS ADDITIONAL CREDIT FOR GOOD TIME. (HE ALSO FACED 3 YEARS IN PAROLE AND PROBATION VIOLATIONS, BUT UNDER ALASKA LAW WOULD HAVE FACED THESE VIOLATIONS EVEN IF HE

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→ JAN. 10, 1997
*NOTE: PAGES 15 + 16 ARE BEING
REWRITTEN TO REMOVE PERSONAL
REFERENCES TO CLIENTS, TO PROTECT
THEIR PERSONAL PRIVACY.
John Halme

HAD BEEN ACQUITTED BY A JURY ON THE
CURRENT CHARGE, ANOTHER EXAMPLE OF
THE BUILT-IN BIAS OF THE JUDICIAL SYSTEM
TOWARD DEFENDANTS.

DID IT PAY TO FIGHT THIS CASE? OF COURSE
IT DID. THE DA EXPECTED AN EASY PLEA
BECAUSE OF THE MAN'S RECORD. THE MAN
WAS BEING PROSECUTED ON A CLASS A FELONY
BECAUSE OF HIS RECORD, NOT BASED ON
THE FACTS OF THE CURRENT CASE. WHEN
PUSH CAME TO SHOVE, THE DA SETTLED
FOR A CLASS A MISDEMEANOR BECAUSE
THAT WAS WHAT HE THOUGHT HE COULD
PROVE IN THE END — A SIMPLE MISDEMEANOR
RATHER THAN A MAJOR FELONY. SO ~~WHY~~ WHO
WASTED THE TIME AND RESOURCES OF THE
JUDICIAL SYSTEM FOR MONTHS, FROM GRAND
JURY TO MOTION PRACTICE, TO TRIAL
PREPARATION, TO GEARING-UP THE COURT
SYSTEM AND JURY PANELS — RIGHT UP TO
THE DAY BEFORE TRIAL? OBVIOUSLY, IT
WAS NOT THE DEFENSE. IT WAS THE
OVERREACHING PROSECUTION. AND YET

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* * * NOTE: PAGES 15, 16 (+16A) ARE REWRITTEN *
TO REMOVE PERSONAL REFERENCES TO
CLIENTS, TO PROTECT THEIR PERSONAL
PRIVACY. John Holmes

THIS WAS ONLY ONE CASE AMONG MAYBE
150-200 CASES BEING ACTIVELY HANDLED
BY THE 2 LAWYERS IN THE KOTZEBURG
PUBLIC DEFENDER OFFICE AT THAT TIME.

BARB BRINK AND THE STATE PUBLIC
DEFENDER THEN ASKED ME ABOUT THE
THIRD SPECIFIC CASE THAT THE DA HAD
CITED IN COMPLAINING ABOUT MY
INTRANSIGENCE IN NEGOTIATIONS.
"WHOEVER ASKED ME PUT IT LIKE THIS:
"WELL, WHAT ABOUT (CLIENT)?", AS IF
THIS CASE WOULD REALLY PROVE THE
DA'S POINT. I COULDN'T RECALL THE
FACTS OFF-HAND, ALTHOUGH IT WAS RECENT.
I SAID I'D WRITE THEM A MEMO ON IT.
THEY NOTED THAT SINCE I HAD REJECTED
THE DA'S OFFER TO PLEAD TO A CLASS C
FELONY, I HAD "FORCED" THE DA TO TAKE
THE CASE TO GRAND JURY, AND THAT
HE HAD ADDED ABOUT 8 MISDEMEANORS
TO THE FELONY CHARGE.

SOME DAYS LATER I RESPONDED WITH
A MEMO. IT TURNED OUT THAT I HAD

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→ JAN. 10, 1997
* * NOTE: PAGES 15 + 16 (AND 16A, 16B) ARE
REWRITTEN TO REMOVE PERSONAL
REFERENCES TO CLIENTS, TO PROTECT
THEIR PERSONAL PRIVACY.
John Holmes

WRITTEN A COUNTEROFFER TO THE DA IN
THAT CASE. IN IT I HAD ANALYZED THE
FACTS TO SHOW THAT MY CLIENT COULD
BE PROSECUTED FOR ONLY ONE SINGLE
MISDEMEANOR. WE OFFER TO PLEAD
TO PLEAD TO ONLY A SINGLE MISDEMEANOR—
NO FELONY OR OTHER MISDEMEANORS.

THE DA ACCEPTED THE OFFER,
FAXING HIS REPLY ON MY COUNTEROFFER.
HE ~~HAD~~ WROTE ON THE BOTTOM OF MY
COUNTEROFFER: "GOOD ANALYSIS" AND
"CONSIDER THIS A DONE DEAL".

(EMPHASIS ADDED)

SO, WHY WOULD THE DA HAVE COMPLAINED
ABOUT DEFENSE NEGOTIATING STRATEGY IN THIS
CASE. SHOULD I HAVE PLEADED THE CLIENT OUT
EARLY TO A FELONY? MORE TO THE POINT, WHY
WOULD PUBLIC DEFENDER AGENCY DIRECTORS
COMPLAIN ABOUT THIS EFFECTIVE REPRESENTATION.
WOULD JUSTICE HAVE BEEN SERVED
BY PLEADING THE DEFENDANT TO A FELONY
WHEN EVEN THE DA CONCEDED THAT THE
SINGLE MISDEMEANOR WAS ENOUGH. THINK OF
THE HOURS AND RESOURCES WASTED ON THIS
OVER MONTHS (INCLUDING GRAND JURY), THE BURDEN
→ ON OUR SMALL OFFICE.

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** * NOTE: THE FOLLOWING IS THE ORIGINAL TEXT ON PAGE 17, BEGINNING WITH THE ORIGINAL SECOND PARAGRAPH.

John Holmer

SO WHAT IS WRONG WITH THIS REPRESENTATION? WHY NOT SUPPORT A PUBLIC DEFENDER WHO IS OFF IN A RURAL OFFICE? WHY REPRESENT THE DA'S INTEREST? WHY NOT TELL THE DA TO GO COMPLAIN TO SOMEONE ELSE? WHAT IS WRONG WITH STRONG REPRESENTATION?

THE PUBLIC DEFENDER AND BARB BRINK ASKED ME HOW LONG I THOUGHT I COULD GO ON LIKE THIS, AND I SAID TWO YEARS. THEY BOTH REACTED IN DISBELIEF. I SAID NO, THAT I HAD ALREADY BEEN GOING LIKE THIS SINCE AUGUST 1994 AND THAT I WOULD CONTINUE TO JULY, 1996, A PERIOD OF TWO YEARS. I HAD BEEN ASKED TO A PERIOD OF ONE YEAR WHEN I CAME TO THE KOTZEBUE OFFICE IN AUGUST 1994. THE PUBLIC DEFENDER TOLD ME ~~THE~~ HE HAD HIRED ME BECAUSE HE KNEW THAT I WOULD BE ABLE TO ADJUST IN KOTZEBUE. IN MY OWN MIND I PLANNED TO STAY IN KOTZEBUE FOR TWO YEARS, FOR THE SAKE OF CONTINUITY FOR BOTH THE OFFICE AND MYSELF.

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OUR SECRETARY SAID THAT THE KOTZEBUE OFFICE HAD HAD 8 ATTORNEYS IN THE 4 1/2 YEARS BEFORE I CAME. I PLANNED TO LEAVE AFTER 2 YEARS BECAUSE I KNEW FROM MY YEAR IN BARRROW (ALSO HAD 6 PREVIOUS YEARS IN BARRROW WITH ALASKA LEGAL SERVICES) THAT IT WOULD BE A VERY HARD TWO YEARS. (I THINK I HAD EIGHTEEN JURY TRIALS DURING THE YEAR IN BARRROW; NOTHING LIKE THAT IN KOTZEBUE.)

I WILL TELL YOU THAT IT IS HARD TO TAKE THE AIR-IVE APPROACH IN REGARD TO CASES. IT UPSETS THE SYSTEM. THE DA RESENTS IT, THE COURT RESENTS IT, AND ASSOCIATED PEOPLE IN PROBATION AND DFYS (WHO CONSIDER IT IRRESPONSIBLE IN CHILDREN'S/JUVENILE CASES) RESENT IT. NOT EVEN THE SECRETARY IN THE KOTZEBUE OFFICE SUPPORTED IT, AND I DON'T THINK THAT THE NEWLY ADMITTED ATTORNEY IN THE OFFICE DID EITHER. IN ADDITION THE SHOTGUN APPROACH TO CASES UNQUESTIONABLY REDUCED EFFECTIVENESS WHEN ATTENTION NEEDED TO BE CONCENTRATED BUT WAS DILUTED. HOWEVER, ON BALANCE I THINK THAT MORE REPRESENTATION WAS GIVEN TO MORE PEOPLE THIS WAY, AND THE "INFLATION" OF PROSECUTION WAS BETTER REDUCED IN THIS WAY. MY THEORY WAS: IF THERE IS GOING TO BE CHAOS IN THE PUBLIC DEFENDER'S OFFICE DUE TO A HIGH CASELOAD AND

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INADEQUATE RESOURCES, THEN LET THERE
~~BE~~ BE CHAOS THROUGHOUT THE SYSTEM. I'M
NOT GOING TO PLEAD PEOPLE OUT ON AN
ASSEMBLY-LINE BASIS FOR THE SAKE OF
THE COURT'S CALENDAR AND THE D.A.'S
SCHEDULE.

PERSONALLY, I THINK THAT ATTORNEYS
TEND TO BE TOO TIMID, RELUCTANT TO
CONFRONT THE DAs AND JUDGES, PROBABLY
NOT SO MUCH ~~AS~~ ^{OUT OF FEAR} AS CONCERNED
ABOUT THE APPEARANCE OF THINGS, THAT
THEY MIGHT APPEAR UNPROFESSIONAL, FOOD
FOR GOSSIP. AND ATTORNEYS MAY BE
ESPECIALLY PRONE TO KEEP AN EYE OUT
FOR THE FUTURE, LOOKING BEYOND THE CASE,
AND EVEN THE PUBLIC DEFENDER JOB TO
AS YET VAGUE FUTURE POSSIBILITIES. THESE
THINGS MAY IN PART CONTRIBUTE TO A
RELUCTANCE TO CONFRONT, TO ANTAGONIZE,
TO CHALLENGE, ~~ESPECIALLY~~ ^{ESPECIALLY} WHEN PRECEDENT
IS LACKING AND ONLY JUSTICE ITSELF
LEADS THE WAY.

THE GREAT LAWYERS AND THE GREAT
JUDGES WERE NOT ~~HEESITANT PEOPLE~~ ^{HEESITANT PEOPLE} WHO
TIMIDLY LOOKED BEHIND THEM EACH STEP
OF THE WAY AND NEVER TOOK A STEP
UNLESS ALREADY APPROVED BY PEERS
THROUGH PRECEDENT. THE GREAT PEOPLE
KNEW WHERE THEY WANTED TO GO,
WHETHER ANYONE ELSE AGREED OR NOT,

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AND THEY HOLLED, SHOCK THE BARS OF THE CAGE, AND KEPT GOING 'TIL THEY GOT THERE. WHEN I THINK OF THE RIGHT ATTITUDE, I THINK OF HARD-BITTEN PRIVATE LAWYERS WHO WOULDN'T LET ANYTHING GET BETWEEN THEM AND THEIR CLIENTS, PEOPLE LIKE NEIL KENNELLY AND BILL HAZAR.

I THANK THE PRESENT PUBLIC DEFENDER FOR ALL HE HAS DONE FOR ME. HE HAS BEEN VERY GOOD TO ME THROUGHOUT MY EMPLOYMENT. WHILE IT IS OBVIOUS THAT I TOTALLY DISAGREED WITH THAT DECEMBER TELEPHONE CALL, HE HAS OTHERWISE BEEN HELPFUL AND A REAL FRIEND. HE HIRED ME TWICE, SIGHT UNSEEN; THE FIRST TIME IN 1988 WHEN I WAS WORKING FOR MICRONESIAN LEGAL SERVICES ON YAP ISLAND, MICRONESIA, AND THE SECOND TIME IN 1994 WHEN I WAS LIVING IN THE CITY OF CHITA, ZABAIKALIA (EAST OF LAKE BAIKAL), RUSSIA, TEACHING ENGLISH IN A TEACHER'S COLLEGE.

HOWEVER, WITH A NEW PUBLIC DEFENDER COMES A NEW ADMINISTRATION THAT WILL AFFECT THE CRIMINAL JUSTICE SYSTEM FOR YEARS TO COME.

IT IS TIME TO TAKE A FRESH LOOK AT THE AGENCY. IT IS TIME TO SHAKE UP THE SYSTEM ON BEHALF OF CLIENTS. THAT MAY REQUIRE SHAKING UP THE AGENCY FOR A START. IT MAY REQUIRE SUING THE STATE.

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IF THE LEGISLATURE DOES NOT FULLY FUND. I READ THAT THE MINNESOTA PUBLIC DEFENDER ORGANIZATION WAS AWARDED \$10 MILLION IN COURT. ULTIMATELY IT IS THE RESPONSIBILITY OF THE COURTS TO RECOGNIZE AND ENFORCE THE RIGHTS OF DEFENDANTS TO DUE PROCESS. IF THE COURTS CANNOT RESPECT THIS CONSTITUTIONAL RIGHT, WE CAN HARDLY EXPECT THE LEGISLATURE TO RECOGNIZE AND TO FUND ITS IMPLEMENTATION. AFTER ALL, THE LEGISLATIVE CONSTITUENCY IS LARGER THAN THE MEMBERS OF THE DEFENDANT CLASS.

THE PUBLIC DEFENDER AGENCY NEEDS TO DEFINE LEGAL GOALS, SUCH AS REDEFINING THE VOLUNTARINESS OF A CONFESSION, CRACKING DOWN ON UNJUSTIFIED SEARCH WARRANTS - PUBLICIZING GROSS EXAMPLES - AND AGGRESSIVELY FIGHTING GRAND JURY ABUSES; THE AGENCY SHOULD FIGHT FOR A RIGHT TO POST-GRAND JURY PRELIMINARY HEARINGS, AS I BELIEVE THAT CALIFORNIA PROVIDES. THE AGENCY SHOULD FIGHT TO DISMANTLE PRESUMPTIVE SENTENCING, THAT FARCE OF A SENTENCING SYSTEM, WITH ITS UNEQUAL LIST OF AGGRAVATORS AND MITIGATORS, AND ITS SOPHISTRY WHICH IN ALMOST EVERY CASE WORKS AGAINST THE DEFENDANT. THE PUBLIC DEFENDER AGENCY SHOULD ADOPT STATEWIDE GOALS AND COORDINATION ON

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SUCH ISSUES.

SEE THE POSTSCRIPT REGARDING GRAND JURY ISSUES. I WOULD SAY HERE THAT A COURT STATISTIC SHOWED THAT IN 1995 KOTZEBU^{KOTZEBU} HAD 110 FELONIES, MAKING ^{KOTZEBU} THE HIGHEST CR SECOND HIGHEST TOWN IN THE STATE, OUTSIDE ANCHORAGE, IN TERMS OF FELONIES PER CAPITA. A COUNT IN OUR OFFICE SHOWED THAT HALF OF THOSE FELONIES EVENTUALLY BECAME MISDEMEANORS OR WERE DISMISSED. THINK OF THE BURDEN ON ONE DEFENSE ATTORNEY, WHO WAS SUPPOSED TO LISTEN TO ALL THE HARD-TO-HEAR GRAND JURY TAPES, FAIR HARDER-TO-HEAR POLICE INTERROGATION TAPES, TO READ ALL THE SOMETIMES HARD-TO-READ DISCOVERY, TO INTERVIEW ALL THE CLIENTS, TO TALK TO WITNESSES, TO STRUGGLE FOR BAIL (THE COURT REFUSES TO WRITE STATUTORILY-AUTHORIZED BAIL BONDS, AS 30.100R20; I FILED AN APPEAL ON ONE DURING A MISDEMEANOR CASE), TO DEAL WITH THE INNUMERABLE PROBLEMS, PHONE CALLS, MOTIONS. ALL OF THIS TO FIND HALF OF THE FELONIES REDUCED OR DISMISSED IN THE END. WHO IS PUTTING A STAIN ON THE SYSTEM? THE PROSECUTION. WHO IS TYING UP THE COURT CALENDAR? THE PROSECUTION.

THE U.S. IS AFRAID OF LOOKING AT OTHER COUNTRIES AND POINTING TO HUMAN RIGHTS ABUSES. THE U.S. IS BLIND TO ITS OWN. EVERY TIME A JUDGE TREATS A DEFENDANT.

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AS THOUGH HE IS GUILTY PRIOR TO CONVICTION,
A HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE PREJUDICES A ~~DEFENDANT~~ ^{DEFENDANT} ~~BY~~ ^{BY}
THE JUDGE'S DEMEANOR BEFORE THE JURY,
A HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE TAKES ADVANTAGE OF A LOW
STANDARD OF PROOF, OR OF OTHER DISCRETIONARY
SITUATIONS IN WHICH TRIAL COURTS ARE RARELY
OVERTURNED, TO FAVOR THE PROSECUTION, A
HUMAN RIGHTS ABUSE HAS OCCURRED. EVERY
TIME A JUDGE HIDES BEHIND PRECEDENT, OR
THE LACK OF IT, TO AVOID ACTING ON INJUSTICE
(WHICH MIGHT MAKE HIM UNPOPULAR WITH THE
PROSECUTION AND LAW ENFORCEMENT, FOR
INSTANCE), A HUMAN RIGHTS ABUSE HAS OCCURRED.
EVERY TIME A JUDGE DOES THE POPULAR THING
RATHER THAN THE JUST THING, A HUMAN
RIGHTS ABUSE HAS OCCURRED. IN MY OPINION
~~THE~~ JUDGES GENERALLY LEAD SUCH CIRCUMSPECT
LIVES, AND ARE SO CLOSELY BOUND TO THE
SYSTEM, AND DEVELOP SUCH CLOSE TIES WITH
SUPPORT PERSONNEL, SUCH AS DAs, POLICE,
PROBATION OFFICERS, AND THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES THAT THEY ARE
PERMANENTLY BIASED AGAINST THE DEFENDANT;
THE ONLY QUESTION IS TO WHAT DEGREE. IT SHOULD
NOT BE FORGOTTEN THAT THE FUNDAMENTAL
FEATURE OF OUR COMMON-LAW, ADVERSARIAL
SYSTEM IS THE JURY PROCESS. AND THE JURY
PROCESS, WHICH DATES BACK MANY HUNDREDS...

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OF YEARS, IS A DIRECT RESULT OF THE HISTORICAL PUBLIC DISTRUST OF JUDGES, WHO WERE SEEN AS TOOLS OF THE STATE. IN MY OPINION THEY STILL ARE. THIS IS WHY DEFENDANTS CHOOSE JURY TRIALS OVER JUDGE TRIALS IN NEARLY 100% OF TRIAL CASES. A DEFENDANT GETS ONLY CHANCE, USUALLY HIGHLY RESTRICTED IN SCOPE BY THE COURT, IN WHICH TO DEFEND HIMSELF. TOO OFTEN THE JUDGE GETS IN THE WAY OF A FAIR DEFENSE, INTERVENING AT CRITICAL TECHNICAL JUNCTURES IN THE TRIAL TO TIP THE BALANCE IN FAVOR OF THE STATE. AND THE COURT CAN ALSO DO THIS BY ITS Demeanor BEFORE THE JURY; IN A 1990 KETCHIKAN FELONY TRIAL, I MOVED FOR A MISTRIAL BECAUSE OF THE JUDGE'S SCOWLING Demeanor TOWARD THE DEFENSE IN FRONT OF THE JURY. IN THAT COURT, AS IN OTHERS, THE ATTORNEYS AND DEFENDANT WOULD HOLD HEARINGS IN THE JUDGE'S CHAMBERS WHEN HEARINGS WERE NEEDED OUTSIDE THE PRESENCE OF THE JURY DURING TRIAL. THE JUDGE HAD A LARGE COLLECTION OF PISTOLS MOUNTED ON THE WALL, ^{DIRECTLY} BEHIND HIS CHAIR, REPRESENTING AUTHENTIC REPRODUCTIONS OF PISTOLS USED BY WILD WEST LAWYERS DURING THE 19TH CENTURY.

IN SUMMARY, THE APPOINTMENT OF THE STATE PUBLIC DEFENDER IS A HIGHLY IMPORTANT DECISION THAT WILL AFFECT THE DIRECTION OF THE ADMINISTRATION OF JUSTICE FOR YEARS TO COME. I BELIEVE THAT STRONG, AGGRESSIVE, FARSIGHTED LEADERSHIP IS REQUIRED.

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I DO NOT SUPPORT THE APPOINTMENT OF BARBARA BRINK, DESPITE HER PROFESSIONAL AND UNQUESTIONED DEDICATION TO CLIENTS, BECAUSE I DO NOT BELIEVE THAT SHE IS CAPABLE OF DIRECTING THE TOUGH ACTION NECESSARY IN ORDER TO SHAKE THE JUDICIAL SYSTEM ON BEHALF OF CONSTITUTIONAL DUE PROCESS FOR DEFENDANTS. THE DECEMBER 1995 TELEPHONE CALL THAT SHE AND THE STATE PUBLIC DEFENDER MADE TO ME IN MOTZEBUE IS SIMPLY AN ILLUSTRATION OF AN ACCOMMODATION BY MOST LAWYERS TO THE MILL-LIKE OPERATION THROUGH WHICH DEFENDANTS ARE PROCESSED FROM ONE END OF THE JUDICIAL SYSTEM TO THE OTHER. IT ALSO ILLUSTRATES THE GENERAL ACCOMMODATION TO THE DISTRICT ATTORNEY'S OFFICE WHICH ENABLES RELATIVELY ^{SMOOTH} OPERATION OF THE MILL, TO THE ADVANTAGE OF THE STATE. ALTHOUGH BARBARA BRINK'S APPLICATION WOULD SEEM VERY INAPPROPRIATE TO MOST PEOPLE, ESPECIALLY CONSIDERING HER EXPERIENCE AS DEPUTY PUBLIC DEFENDER IN THE AGENCY, I BELIEVE THAT A DIFFERENT BREED OF CAT NEEDS TO BE BROUGHT INTO THE AGENCY. INSTEAD OF THE USUAL DE-CLAWED, IN-HOUSE CAT, THE AGENCY, THE DEFENDANTS, AND THE JUDICIAL SYSTEM NEED A FIGHTING ALLEYCAT, WHICH IS TO SAY A

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HARD-BITTEN, HIGHLY EXPERIENCED PRIVATE LAWYER WHO HAS NONE OF THE PSYCHOLOGICAL LIMITATIONS ON CONFIDENTIALITY THAT AN ATTORNEY DEVELOPS WHO IS ELEVATED THROUGH THE AGENCY. I DO NOT KNOW WHO THIS PERSON MAY BE, BUT I AM SURE THAT HE/SHE MAY BE FOUND BOTH AMONG ALASKA AND OUT-OF-STATE BAR MEMBERS. IT WOULD BE A CHALLENGE FOR A PRIVATE ATTORNEY WHO IS WILLING TO COME IN, TAKE CHARGE, AND TO FIGHT FOR DEFENDANTS AND ^{FOR} REALIGNMENT OF THE JUDICIAL SYSTEM.

THE STEADY EROSION OF DEFENDANTS' CONSTITUTIONAL RIGHTS AND THE MIS-TREATMENT OF DEFENDANTS AS THEY ARE PROCESSED THROUGH THE SYSTEM IS A CRISIS FOR DEFENDANTS AND FOR THE JUDICIAL SYSTEM, PARTICULARLY IN ALASKA, A STATE OF MINORITY CULTURES AND A HIGH PERCENTAGE OF MINORITY PROSECUTIONS. I WROTE ABOUT THIS IN A NOVEMBER 2, 1995 MEMO TO LAWYERS IN THE PUBLIC DEFENDER AGENCY, DURING OUR 1995 STAFF CONFERENCE. THERE WAS ONLY ONE SUBSEQUENT RESPONSE TO THE MEMO IN THE ENTIRE AGENCY; IT CAME FROM THE SITKA PUBLIC DEFENDER. IN DECEMBER 1995 ALASKA JUDGES BELATEDLY BECAME AWARE THAT ALASKA'S SUBSTANTIAL ETHNIC AND RACIAL MINORITIES MAY NOT

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TREATED FAIRLY WITHIN THE ALASKA JUDICIAL SYSTEM. A PANEL OF JUDGES AND A COURT ADMINISTRATOR ASSEMBLED TO FORM AN ADVISORY COMMITTEE ON FAIRNESS AND ACCESS TO EXAMINE THIS PHENOMENON. ON DECEMBER 8, 1995 I WROTE THE ADVISORY COMMITTEE ON FAIRNESS AND ACCESS CONCERNING THE PROBLEM, AND ENCLOSED A COPY OF MY NOVEMBER 2, 1995 PUBLIC DEFENDER AGENCY MEMO; COPIES WENT TO EACH ~~PA~~ COMMITTEE MEMBER. I HAVE RECEIVED NO RESPONSE FROM THE ADVISORY COMMITTEE ON FAIRNESS AND ACCESS. ENCLOSED ARE COPIES OF BOTH THE NOVEMBER MEMO AND THE DECEMBER LETTER.

THERE IS A ^{LARGER} HISTORICAL PERSPECTIVE TO THE CONTINUING PROCESS OF RESTRICTING DEFENDANTS' CONSTITUTIONAL RIGHTS AND MISTREATING THEM THROUGHOUT THE JUDICIAL PROCESS. EVERY NEGATIVE STEP ALONG THE WAY IS ULTIMATELY TAKEN IN THE NAME OF EFFICIENCY, QUICKLY AND EFFECTIVELY PROSECUTING DEFENDANTS AT THE LOWEST COST POSSIBLE. AS THE SYSTEM EVOLVES ALONG THIS LINE, IT BEGINS TO CHANGE IN CHARACTER FROM A JUDICIALLY-FOCUSED SYSTEM TO AN ADMINISTRATIVE SYSTEM IN WHICH DEFENDANTS ARE PROCESSED AUTOMATICALLY,

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WITH ONLY A CURSORY NOD AT DEFENDANT'S RIGHTS: THAT IS THE DIRECTION OF THE SLIDE. PUBLIC DEFENDERS ARE ALREADY ACCUSTOMED ^{TO THE} DISADVANTAGED AND UNDERDOG STATUS OF DEFENDANTS IN COURT. THE DEFENSE IS PSYCHOLOGICALLY PRIMED FOR FURTHER EROSION OF THE DEFENSE ROLE AND THE STATUS OF DEFENDANTS. SEVERAL DECISIONS FROM NEW THE CRIMINAL JUSTICE SYSTEM COULD BE SACRIFICED ON THE ALTAR OF EFFICIENCY. ONE EXAMPLE OF THE CURRENTLY INEXORABLE DRIFT IN THIS DIRECTION IS THE CALL FOR "REFORM" OF THE JURY SYSTEM. ALMOST ALL SUBSTANTIVE AND PROCEDURAL "REFORMS" TIGHTEN THE SCREWS ON THE DEFENSE.

OUR JUDICIAL SYSTEM IS NOT THE ONLY SYSTEM THAT LOOKS TO EFFICIENCY AS A PRIMARY GOAL. EFFICIENCY IS THE BASIC TENET OF TOTALITARIAN SYSTEMS. STALIN IS SAID TO HAVE DECLARED THAT IT IS BETTER TO CONVICT TEN INNOCENT PEOPLE THAN TO LET A SINGLE GUILTY PERSON ESCAPE. ADMINISTRATIVE, BACK-ROOM METHODS ARE THE ~~THE~~ RULE RATHER THAN THE EXCEPTION AMONG THE WORLD'S POPULATION. IS ALASKA MOVING IN THAT ULTIMATE DIRECTION? WE MIGHT RESENT EVEN BEING ASKED THE QUESTION, BUT HUMAN BEINGS IN EVERY SOCIETY ARE CAPABLE OF GREAT RATIONALIZATION AND ACCOMODATION, AND ACTIONS

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TAKEN, OR NOT TAKEN, TODAY INEVITABLY INFLUENCE THE COURSE OF THE JUDICIAL SYSTEM. CONSIDER THE COURSE INDICATED BY THE VAST NUMBERS OF ANNOTATIONS IN ALASKA DIGEST RATIONALIZING AWAY DEFENDANTS' CLAIMS. NOTHING IS WRITTEN IN STONE CONCERNING THE FUTURE OF OUR JUSTICE SYSTEM, CONSTITUTION OR NO CONSTITUTION. A DEMOCRATIC SYSTEM OF JUSTICE COULD BE FATAALLY COMPROMISED AND SACRIFICED ON THE ALTAR OF EFFICIENCY IN THE NOT-DISTANT FUTURE.

I ONCE TOLD A DISTRICT ATTORNEY THAT I WISHED I HAD TIME TO GO TO ALL OF THE VILLAGES IN THAT PARTICULAR AREA TO EDUCATE THE PEOPLE ^{ON} ~~ABOUT~~ THEIR CONSTITUTIONAL RIGHTS. THE DA REACTED ANGRILY, SAYING THERE WOULD BE 2 OR 3 MORE JUDGES AND 2 OR 3 MORE DAs IN TOWN IF I DID THAT. HIS ANSWER WAS INTERESTING BECAUSE HE WAS OBVIOUSLY COUNTING ON THE IGNORANCE OF (MINORITY-CULTURE) DEFENDANTS TO MAINTAIN HIGH LEVELS OF PROSECUTION OF AN ETHNIC MINORITY AT REDUCED COST. IT WAS ALSO INTERESTING BECAUSE OF THE PERCEPTION THAT THE DA AND THE JUDGE HAD A COMMON GOAL THAT WAS NOT INHIBITED BY IGNORANCE OF MINORITY DEFENDANTS OF THEIR RIGHTS.

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THERE IS NOTHING WRONG WITH THE CONCEPT OF EFFICIENCY. THE INJUSTICE COMES FROM PROMOTING EFFICIENCY AT THE EXPENSE OF DEFENDANTS' CONSTITUTIONAL RIGHTS AND HUMAN DIGNITY. THERE IS A LEGITIMATE WAY TO PROMOTE EFFICIENCY, AND THAT IS TO EXPAND THE SCOPE AND RESOURCES OF BOTH THE JUDICIAL SYSTEM AND OF LAW ENFORCEMENT TO HANDLE CASELOADS IN A MANNER ^{THAT PROTECTS} THE CONSTITUTIONAL RIGHTS AND HUMAN DIGNITY OF DEFENDANTS. IT IS NOT INCONSISTENT WITH DEFENDANTS' RIGHTS TO INCREASE THE NUMBERS OF JUDGES, COURT PERSONNEL, DEFENSE AND PROSECUTION ~~PERSONNEL~~ ATTORNEYS/STAFF, AND POLICE. RELIEVED OF AN OVERWHELMING CRUSH OF CASES, THE PEOPLE ASSOCIATED WITH THE JUDICIAL SYSTEM WILL HAVE TIME IN WHICH TO HONOR THE JUDICIAL PROCESS RATHER THAN BEING CONSTANTLY COMPELLED TO SHORTCUT THE PROCESS AT THE DEFENDANTS' EXPENSE.

OF COURSE THE PROBLEM WITH THIS VISION IS THE COLD REALITY THAT THE LEGISLATURE WOULD NEVER WILLINGLY FIND IT, HAVING OTHER PRIORITIES TO THINK ABOUT. IN FACT, THE LEGISLATURE WAS ACTIVELY CONSIDERING TERMINATING THE SECOND-ATTORNEY POSITION IN THE KOTZEBUE PUBLIC DEFENDER OFFICE THIS YEAR (HELD BY A NEW ATTORNEY

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IN A LOWER-SALARY POSITION). THERE IS ANOTHER ALTERNATIVE, HOWEVER - THE ONLY PRACTICAL ALTERNATIVE. THE ALASKA PUBLIC DEFENDER AGENCY MUST BRING ITS OWN CONSTITUTIONALLY-MANDATED FUNDING REQUIREMENTS TO THE COURTS AND, AS SOON AS POSSIBLE, TO THE APPELLATE COURTS. THE COURTS HAVE ORDERED THE STATE TO PROVIDE CONSTITUTIONALLY-MANDATED RESOURCES TO THE ALASKA PRISON^{SYSTEM}, AND THERE IS NO REASON WHY DEFENDANTS ARE NOT ELIGIBLE FOR SIMILAR NECESSARY RESOURCES PRIOR TO CONVICTION. THIS PROJECT CAN BE MOUNTED IN THE FORM OF A CIVIL LAWSUIT, IN THE CONTEXT OF ~~LEGAL~~ INDIVIDUAL CRIMINAL CASES, AND BY EXTRAORDINARY WRIT. ULTIMATELY IT IS THE COURT THAT MUST ENFORCE DEFENDANTS' CONSTITUTIONAL RIGHTS AND THE HUMAN TREATMENT OF DEFENDANTS. IF THE COURTS WILL NOT DO IT, THE RESULT IS A SORRY COMMENTARY ON THE STATE OF AND THE FUTURE OF THE JUDICIAL SYSTEM, FOR IT IS THE JUDICIAL BRANCH THAT CARRIES THE EXPERIENCE OF THE LAW AND HOLDS THE VISION OF THE LAW FOR THE FUTURE. I BELIEVE THAT THE COURTS CAN BE PERSUADED TO REALIGN IN THE INTERESTS OF JUSTICE AND TO PROVIDE TO ALL DEFENDANTS THE DUE PROCESS

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AND HUMAN DIGNITY THAT JUDGES
AND DISTRICT ATTORNEYS WOULD HOPE
TO SEE FOR THEMSELVES IF THEY OR
SOMEONE CLOSE TO THEM HAD TO
FACE THE CRIMINAL JUDICIAL PROCESS.

AS STATED ABOVE, I KNOW THAT THERE
IS A HARD-BITTEN, DRYED, TOUGH, AND EXPERIENCED
PRIVATE LAWYER OUT THERE, EITHER IN ALASKA
OR IN ANOTHER U.S. STATE, WHO WOULD
RELISH THE CHALLENGE OF FIGHTING FOR
THE RIGHTS OF ALASKA DEFENDANTS AND
TO REALIGN THE ALASKA JUDICIAL SYSTEM.
FREE OF PREVIOUS TIES TO THE ALASKA
PUBLIC DEFENDER AGENCY, THIS PERSON
WOULD ALSO BE FREE TO MOUNT A
STRONG CAMPAIGN ON BEHALF OF
DEFENDANTS AND THEIR RIGHTS.

SINCERELY,
JOHN M. HOLMES
JOHN M. HOLMES,
ATTORNEY AT LAW

POSTSCRIPT 1)

IF YOU HAVE QUESTIONS ABOUT THIS
LETTER, YOU CAN WRITE ME AT THE ENCLOSED
ADDRESS IN THE CITY OF CHANGCHUN, CHINA.
I CAN BE CONTACTED BY PHONE C/O A
NEIGHBOR IN THE NEXT ROOM AT:
TEL. No. (DIRECT): 011-86-431-595-3201, EXT. 3064.
IF A CHINESE SPEAKER ANSWERS, SLOWLY

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SAY "SAHN, LING, LIU, SEE" ("3064" IN CHINESE).
(HANGKUN IS SEVENTEEN HOURS AHEAD
OF ANCHORAGE).

POSTSCRIPT 2)

HERE ARE TWO EXAMPLES THAT ILLUSTRATE
PROBLEMS WITH THE GRAND JURY SYSTEM.

1) I ^{A.P.G.} ONCE HAD A SITUATION ^{IN} WHICH I
ASKED ^A WHETHER WE WOULD BE HAVING A
PRELIMINARY HEARING THAT WAS SCHEDULED
IN THE CASE FOR LATER THAT AFTERNOON.
HE SAID NO, THAT THE DEFENDANT HAD BEEN
INDICTED EARLIER THAT DAY. I THEN STEPPED
INTO THE CLERK'S OFFICE TO MAKE A PHONE
CALL. A MINUTE OR TWO LATER THE DA
STUCK HIS HEAD INTO THE CLERK'S OFFICE AND
SAID THAT WE REALLY NEEDED TO TALK BECAUSE
THE CASE SHOULD HAVE A MISDEMEANOR DISPOSITION;
HE HAD JUST INDICTED HER ON A (CLASS-C
FELONY) EARLIER THAT DAY.

THE UNUSUAL THING WAS THAT THE DA
WAS STARTING NEGOTIATION WHILE THE CASE
WAS STILL TECHNICALLY BEFORE THE GRAND JURY,
BECAUSE NO RETURN HAD BEEN MADE TO
THE COURT ON THE INDICTMENT, THE JUDGE
BEING OUT OF TOWN UNTIL THE FOLLOWING
WEEK. WHILE HE HAD PRESENTED THE CASE
TO THE GRAND JURY AS A FELONY, AND WAS
GOING TO PRESENT ~~A~~ A FELONY INDICTMENT

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TO THE JUDGE, HE WAS PRESENTING THE CASE TO ME AS A MISDEMEANOR AT THE SAME TIME. HOWEVER, BY PROSECUTING THE CASE AS A FELONY, THAT MEANT THAT THE PUBLIC DEFENDER OFFICE HAD TO TREAT THE CASE AS A FELONY, LISTENING TO THE GRAND JURY TAPE AND TRANSCRIBING NOTES, DEALING WITH THE DISCOVERY ON A FELONY, POSSIBLY DRAFTING MOTIONS, AND DEALING WITH PRETRIAL RELEASE ON A FELONY BASIS.

THE FOLLOWING TUESDAY, WHEN THE JUDGE HAD RETURNED TO COURT, I ATTENDED THE OPEN COURT SESSION WHEN THE DA AND GRAND JURY FOREPERSON MADE THEIR RETURNS. AFTER THE GRAND JURY FOREPERSON HAD MADE HER RETURN IN THIS CASE, I STEPPED UP TO THE BAR FROM THE AUDIENCE SECTION. I SAID THAT I ALREADY REPRESENTED THE DEFENDANT IN THIS CASE. I SAID THAT THE DA HAD PRESENTED THE CASE ^{AS A FELONY} TO THE GRAND JURY, THAT THE DA HAD THEN TOLD ME THAT IT SHOULD BE A MISDEMEANOR (THE DA OBJECTED THAT HE HAD ONLY SAID THAT IT SHOULD HAVE A MISDEMEANOR DISPOSITION - SAME THING), AND THAT THE CASE WAS NOW BEING PRESENTED TO THE COURT AS A FELONY. I REQUESTED THAT THE COURT ASK THE GRAND JURY FOREPERSON IF SHE WANTED TO TAKE THE CASE BACK TO THE GRAND JURY FOR RECONSIDERATION. THE JUDGE PAUSED, GAVE ME A HARD GLARE, AND SAID THAT THIS WAS AN

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ABUSE OF THE GRAND JURY SYSTEM.

I SEE THIS AS AN ILLUSTRATION OF HOW THE PROSECUTION CAN USE THE GRAND JURY SYSTEM AS A STRATEGIC TOOL TO RATCHET-UP THE PRESSURE UPON THE PUBLIC DEFENDER AGENCY TO DEFEND FELONIES WHEN THE STATE IS ONLY CONTEMPLATING A MISDEMEANOR CONVICTION. THAT DA ^{SAYS} THAT HE WOULD TAKE ABOUT ONE OF THE CASES TO THE GRAND JURY EVERY OTHER GRAND JURY SESSION (ABOUT 1 CASE PER MONTH) JUST TO SEE IF THE GRAND JURY WOULD INDICT ON IT. THIS IS HARDLY SPORTING SINCE, AS THEY SAY IN NEW YORK, A PROSECUTOR CAN GET A GRAND JURY "TO INDICT A HAM SANDWICH". THE GRAND JURY IS TOTALLY RELIANT UPON THE DA IN THE SECRECY OF GRAND JURY ROOM. THERE IS NO DEFENSE ATTORNEY, NO JUDGE. THE GRAND JURY MUST LOOK TO THE DA FOR ALL LEGAL ADVICE AND FOR THE PRESENTATION OF EVIDENCE. THE GRAND JURY FOLLOWS THE DA'S ADVICE, AND INDICTS, NEARLY 100% OF THE TIME.

MEANWHILE THE PUBLIC DEFENDER HAS A WHOLE BOX OF FELONY GRAND JURY-~~PROSECUTOR~~ PROCEEDING TAPES AND POLICE INTERROGATION TAPES TO LISTEN TO ON PCAR EQUIPMENT AND TO ANALYZE, AS WELL AS MOUNTAINS OF WRITTEN DISCOVERY, AND

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ALL OF THE OTHER WORK ASSOCIATED WITH FELONIES. ALL OF THIS IS SUPPOSED TO BE ACCOMPLISHED WITHIN DEADLINES. THE DEFENSE IS BLAMED FOR DELAY, BUT IT IS THE STATE WHICH HAS CREATED THE LOGJAM, FOR ABOUT HALF OF THESE CASES WILL BE DISPOSED OF AS Misdemeanors, AND SOME WILL BE DISMISSED. THIS IS A DESTRUCTIVE PROCESS THAT UNBALANCES THE JUDICIAL SYSTEM. IT ALSO UNNECESSARILY BURDENS THE JURY SYSTEM, PARTICULARLY IN SMALLER REGIONAL CENTERS THAT HAVE A LIMITED JURY POOL.

2) IN KATZEBUE THE DA BROUGHT ABOUT 13 ALCOHOL/DRUG CASES BEFORE THE GRAND JURY IN JULY 1995 AND ABOUT 21 CASES BEFORE THE GRAND JURY IN SEPTEMBER 1995. THESE CASES WERE THE RESULT OF TWO ALCOHOL/DRUG BUSTS. THESE WERE ALL SEPARATE, INDIVIDUAL CASES. NOUN WAS SUBJECT TO JOINDER.

THE PROBLEM WAS THAT THE DA INDICTED ALL 13 IN A SINGLE GRAND JURY HEARING; THE GRAND JURY WAS TOLD TO DELIBERATE ON ALL 13 AT ONCE. THE SAME THING HAPPENED WHEN THE 21 WERE INDICTED. THERE WAS A SINGLE HEARING, AND THE GRAND JURY WAS TOLD TO DELIBERATE ON ALL 21 AT ONCE.

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THE UNDERCOVER AND OTHER POLICE OFFICERS SIMPLY TESTIFIED ABOUT ONE DEFENDANT AFTER ANOTHER IN EACH OF THE TWO (JULY AND SEPTEMBER) HEARINGS. THERE IS A UNITED STATES AND ALASKA CONSTITUTIONAL RIGHT TO A FAIR AND IMPARTIAL GRAND JURY. SOMEHOW THE STATE EXPECTED THE GRAND JURY TO KEEP 13 INDIVIDUALS, AND 13 SETS OF TESTIMONY (TOTALLY CONFUSING BECAUSE DIFFERENT, ~~THE~~ WITNESSES TESTIFIED ABOUT DIFFERENT PEOPLE), SEPARATE; THEY WERE SUPPOSED TO SOMEHOW DISREGARD THE OTHER 12 ~~THE~~ DEFENDANTS IN THE FIRST HEARING, AND THE OTHER 20 DEFENDANTS IN THE SECOND HEARING, IN DELIBERATING ON THE FATE OF EACH INDIVIDUAL. IN EACH OF THE TWO HEARINGS ALL DEFENDANTS WERE INDICTED, EN-MASSE, AS THOUGH TAKING PLACE IN A COUNTRY THAT PERMITTED GROUP PROSECUTIONS.

I WROTE AN ^{INITIAL} 11-PAGE DRAFT OF A MOTION TO DISMISS THE INDICTMENT ON CONSTITUTIONAL GROUNDS. THE INDIVIDUAL CASES WERE DISTRIBUTED BETWEEN OUR ANCHORAGE AND FAIRBANKS OFFICES, AND ATTORNEYS IN THESE OFFICES RESEARCHED AND DRAFTED MOTIONS TO DISMISS, WHICH WERE FILED AND GRANTED IN THOSE CASES WHICH HAD NOT ACCEPTED REDUCTIONS OF CHARGES FROM FELONIES TO MISDEMEANORS. ~~THESE~~

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(SOME OF THESE CASES WENT TO CONFLICT COUNSEL.) THE DA REINDICTED SEVERAL WHO DID NOT ACCEPT OFFERS.

THE INVESTMENT IN TIME, ANALYSIS, RESEARCH, AND CLIENT CONTACTS CAN SCARCELY BE OVERSTATED. THE ANCHORAGE AND FAIRBANKS PUBLIC DEFENDER OFFICES CARRIED THE ENTIRE LOAD FOR MONTHS. IF THE GOAL WAS MISDEMEANOR PROSECUTION IN MOST CASES, THIS COULD HAVE BEEN DONE FAR MORE EASILY BY PROSECUTING THOSE CASES AS MISDEMEANORS IN THE BEGINNING.

INDICTING THE DEFENDANTS EN-MASSE ADDED A WHOLE NEW LEVEL OF COMPLEXITY TO THE (TOTAL OF) 34 CASES. NOT ONLY WAS SUCH AN INDICTMENT PROCESS UNCONSTITUTIONAL, BUT THE PRECEDENT SET BY IT THREATENED TO UNDERMINE THE GRAND JURY SYSTEM ITSELF IF THE PROCEDURE WERE NOT LEGALLY CONDEMNED. THIS WAS ONE EXCEPTION TO THE RULE THAT COURTS EXCUSE GRAND JURY DEFECTS. THIS VIOLATION OF THE UNITED STATES AND ALASKA CONSTITUTIONS WAS TOO GROSS EVEN FOR THE COURT.

—H—

John M. Holmes

1-15-97
COPY TO CHAIR, AK.
LEGISLATIVE HOUSE
JUDICIARY COMMITTEE.
Sub-Holmes

December 8, 1995

John M. Holmes,
Attorney at Large
C/O P.O. Box 276
Kotzebue, Alaska 99752
Tel: C/O 442-3736 (Work)

Hon. Jay Rabinowitz, Justice,
Alaska Supreme Court, and Chair,
Advisory Committee On Fairness And Justice

Hon. Larry Card, Superior Court Judge
Hon. Dale Curda, Superior Court Judge
Hon. Mary Greene, Superior Court Judge
Hon. Larry Zervos, Superior Court Judge
Hon. Roy Madsen, Superior Court Judge (Ret.)
Ms. Stephanie Cole, Deputy Director, Alaska Court System

Dear Members of the Advisory Committee On Fairness And Access:

Recently I noticed an article in the Anchorage Daily News on the Advisory Committee On Fairness And Access, which has been formed to "examine the experiences of ethnic and racial minorities within the state court system".

The Public Defender Agency had its annual staff conference at the beginning of November and spent much of its time on the same subject. Since there was not much formal discussion built into the schedule, I typed up my own informal comments one night during the conference. Enclosed is a copy of the memo. You will see at once that it is just a collection of ideas strung together in what might pass for a first draft, but I pass them on since they relate to the subject addressed by the Advisory Committee. They represent one person's opinion; no one has given the nod to mount the soapbox on a broader scale.

I titled the comments "A Colonial System" because I truly believe that the Alaska criminal court system is colonial in nature in the rural areas I have seen. Prosecution and sentencing are regionalized in the regional centers. I don't believe that local communities generally handle their own minor local prosecutions or have significant input into prosecution and sentencing policy that affects them. Since the people who do make these kinds of policy decisions are not from the local communities, and are not Alaska Natives, there is a colonial aspect to the system.

Alaska is a village state. Alaska has some 500 villages and many differing languages and traditional cultures that have been rooted here for thousands of years. There are some 226 different federally-recognized tribal governments in the state. The city of Anchorage would hardly qualify as a suburb in many of the cities around the world, and Juneau would not even be worth mentioning in terms of population. Yet the people who formulate regional prosecution and sentencing policy are rarely people who come from the region. Rather they are people who at one point or another immigrated from the Lower 48 and who bring along attitudes and priorities (including legal fads) originating from elsewhere. These may be imposed without input from local communities.

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Often the penalties are draconian. (Ever notice that there are more aggravators than mitigators in AS 12.55.155? Ever try to mitigate a sentence?)

There is a mystique about being an "Alaskan" for most people who have drifted north - uninvited - from Outside. At some mystical point people come to consider themselves "real Alaskans". It is the immigrants who move into the vast majority of decision-making positions in the state and who define and implement the public goals. Yet these people may not always be speaking for the village populations, populations that have been here forever, who have no need to establish their identity as Alaskans, and who may have somewhat different outlooks and goals than most Outsiders who have immigrated.

The point of this letter is not to imply that local communities are not in favor of effective law enforcement. I cannot speak for the communities, but I assume that each community wants good law enforcement. And it may be that, given their say, the villages would want even stricter enforcement than is now provided at the regional level. The point of this letter is to suggest that there should be real local input into prosecution and sentencing policy. After all, Anchorage juveniles are now beginning to participate in the juvenile justice system through youth trials and sentencing; if the kids can participate in the system, there is no reason why rural communities cannot participate also. Yet what I have seen is a movement away from the rural village communities. Not only are villages excluded from jury service in the regional centers, but in this part of the state the prosecution has actively tried to disqualify Criminal Rule 18 Additional (village) Trial Sites on the ground that they do not have court facilities, restaurants, and hotels (and flush toilets). If the facilities are good enough for the people who live there, they should be good enough for the court system also, unless of course we are talking about a colonial system; if it's a colonial system that we are talking about, then we can hardly expect a plane-full of court officials to land in a village and to conduct a trial under 'such conditions'.

American democracy has immortalized local government, going back to village town hall meetings in the early years of the colonies. We can imagine what Britain must have thought of the sophistication of those local efforts back in the 1600s and 1700s. The British must have thought of those colonists as real backward bumpkins. But we recognize something different and applaud it. In fact we teach each generation of children to celebrate a criminal act, the Boston Tea Party, as a righteous protest against taxation without representation, a restriction on local commerce. If Taxation Without Representation justifies such a reaction, how should people feel about Incarceration Without Representation, in which a much larger -statewide- entity prosecutes and sentences without significant input on the policies by the regional village communities.

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All of this is speaking only very generally of course, to touch on the issue. This is only one opinion, and I am one of those who came north from somewhere else. People from the villages may or may not agree with the premise. Better to ask them. There are certainly many people from the Alaska Native communities who would be available to serve with the Advisory Committee On Fairness And Access.

Sincerely,

John M. Holmes

John M. Holmes

ANCH. DAILY NEWS, TUES 21 NOV. 95

Court creates fairness panel

The Alaska Supreme Court has created an advisory committee on fairness and access. Court officials said the panel was set up to examine the experiences of ethnic and racial minorities within the state court system. Alaska Supreme Court Justice Jay Rabinowitz will chair the new committee. Also named to the panel are Anchorage Superior Court Judge Larry Card, Fairbanks Superior Court Judge Mary Greene, Sitka Superior Court Judge Larry Zervos, Bethel Superior Court Judge Dale Curda, retired Kodiak Superior Court Judge Roy Madsen and Stephanie Cole, the court system's deputy director. The court said it wants the committee to turn up whatever inequities it can find along with minority perceptions about the court system. It also wants the panel to recommend changes in court procedures and policies. A recent survey by the Alaska Public Interest Research Group said Natives lack representation on juries across the state, particularly in rural Alaska.

1-15-97
COPY TO AK. LEGISLATURE,
CHAIR. HOUSE JUDICIARY
COMMITTEE John Holmes

November 2, 1995

John M. Holmes,
Kotzebue P.D. Office

A COLONIAL SYSTEM

Comments On The Alaska Criminal Court System

Our annual staff conference has had several very interesting presentations ^{on} minorities and the criminal court system in Alaska. There has not been time for general discussion of the topics. The themes have been running through my head for some time now, for years in fact, and I would like to set out some ideas on the subject. This memo has not been researched or organized in any formal way; it is simply written like a letter.

The subject of the memo is critical in nature. That is not meant as a criticism of individuals in general. The great majority of people working in the criminal court system are hard-working, dedicated, sensitive people who put in very long hours trying to keep from being buried in work and trying to do the best that they can for their communities. However the system still comes up way short; that is no secret to anyone, least of all the people who labor within it.

Most of us in the criminal court system are non-Natives (meaning here non-minority people in general). Most of us grew up somewhere else, in the Lower-48. Imagine how our relatives, friends, neighbors, and other persons in our original home communities would feel if a "foreign" group of people were installed to run our courts, police, schools, hospitals, other agencies, and most of our businesses.. What if the "foreigners" were better organized than most of us, more punctual, more goal-oriented than most of us. What if they enthusiastically introduced advanced

technology and what they thought of as good ideas. And, what if these "foreigners" were of a different race and easily recognizable on the streets, in the stores, and in their offices? What would be the reaction of our townspeople?

The reaction would be one of being extremely pissed-off. A bitter resentment, a brooding anger would develop at all levels of the community. People would resent the friendly smiles, the helpful suggestions, the material assistance of these outsiders who had taken control in areas of life that we had handled in the past and could continue to handle in the future. We would think, "What right do they have to come in here?", "Who do they think they are?". Ultimately some in the community would consider some good-old American vigilante/militia action.

Incidentally, there are plenty of groups that could fill that hypothetical role, one of which is the Japanese.

The reaction would inevitably be negative and destructive in our communities. It would corrode the psyche of the community. We would know that we were denied power over our own lives, and we could not stand to live under that cloud, even if the entire administration were exercised in a paternal, missionary-like way, for our own good. We couldn't stand it because we, after all, are the people who value above all else the right to live freely.

I guess we have to ask Native people how they feel under similar circumstances. Certainly they have had a history of living freely too. They have been tied to their land for thousands of years rather than for only a few generations. The land is not wasted, or wasteland to them. It is interesting that we non-Natives generally think that communal land, held for

subsistence purposes is unused and wasted if it is not farmed, or mined, or otherwise developed. We have a blind spot because, on the other hand, we do not think that privately-owned land that has been set-aside indefinitely is wasted; we respect the 'Keep-Out' sign. But our tradition prevents us from giving the same respect to communally-held land. As to the reaction of Native people to similar circumstances described above, maybe we got an idea of that in the presentations we have heard at the conference.

In my opinion the Alaska criminal court system is a colonial system as it operates in the rural areas in which I have worked, including the North Slope Borough, the Northwest Arctic Borough, the Fort Yukon-area villages north of Fairbanks, and the Ketchikan-area villages. The system is an imposed system. To my knowledge, no Native village formally requested that it impose its centralized system of operation over the community. It is a third wave of control that has swept over the villages in the past century. The first, the missions, altered the worldview of people. The second, the schools, broke the local languages. And the third, the criminal courts, is determined to jail people until they conform. All three waves were well-meaning, but what is the result for the local communities. The purpose of this memo is not to suggest that the villages do not want law enforcement, but instead to suggest ^{that} local input from city and IRA councils, and whatever other organizations and groups available, would not hurt. People in rural Alaska communities probably have the same interest in self-determination that people in other communities have. We can find out by listening to them.

Insofar as the courts themselves are concerned, the Native community is hardly represented at all in the regional centers, except as clerks. I do not know of any Native serving as an Alaska Supreme Court justice, as a Court of Appeals judge, or as a Superior Court judge. I do not know of a Native who serves as a Magistrate in any of the regional centers, where almost all trials are conducted. There are Native Magistrates in villages. However, in the Northwest Arctic Borough region the village magistrates do not do trials ^(WITH ONE EXCEPTION) and all - or nearly all - misdemeanors are heard in Kotzebue rather than in the villages. In the Northwest Arctic Borough there is resistance from the district attorney's office to having trials at the designated trial sites in the villages, though a non-jury trial was held some months ago. The state has filed motions to change venue to Kotzebue on at least two occasions, on the ground that the village did not have adequate facilities for a misdemeanor trial, unlike metropolitan Kotzebue.

It seems that there is a historical process at work which is vacating Natives from the regional magistrate positions rather trying to fill those slots with local personnel. Sadie Neakok, an Inupiaq, was the law in Barrow for many years until her retirement from the Barrow Magistrate position in 1978 or 1979. Charlotte Brower, also an Inupiaq, then held the position for about two years. However, since then, for about the last fifteen years, no Alaska Native has held the position so far as I know, despite the fact that there has been a non-Native Superior Court judge in Barrow since 1982.

A non-Native left the Kotzebue Magistrate position about three

years ago. An Inupiaq former-Kotzebue Magistrate then applied for the position. He had held the same Kotzebue Magistrate position for some eight years during the early 1980s period. He was not hired three years ago, however; a non-Native was hired into the job. In about January of this year, 1995, the Kotzebue Magistrate position opened up again. The Inupiaq former-magistrate again applied for the position. Once again he was not hired; a non-Native was hired into the job. Apparently the Superior Court wanted to hire a law-trained person who could assist with research. However, with eight years of experience, the local applicant was not like a new-hire.

It is understandable that the Superior Court could use the skills of a law-trained magistrate. However, it was arguably far more important that the community have the benefit of a local magistrate who had grown up in the community, raised a family there, knew the region intimately, and was part of the community and the local Native culture. The magistrate has more contact with the community than the superior court judge, since there are far more misdemeanor cases than felonies. The magistrate also handles initial matters in felonies, acts as a master in Child In Need Of Aid and juvenile proceedings, and has a variety of other duties that bring him into contact with the community. Having a local magistrate can help local people feel that the legal system is their system. It can serve as a role model to attract other Native people into the legal system. All of that is lost when the local applicant is not hired, and the colonial nature of the criminal court system is reinforced. Having a local magistrate does not mean that law enforcement would relax, and become lax. It could become more

strict. The point is that a local person, who knew the people and local mores very well, would be making those decisions.

The state charges out an incredible number of misdemeanors and felonies, many of which could be handled by diversion. If the state looked toward village councils for direction on cases, many cases might be handled differently; in some instances cases might be handled more severely. The point is that there would be local input.

Probably every extended family in the villages has someone going to jail, in jail, or getting out of jail, or on probation or parole. Every family is probably familiar with conditions of release and third-party custody. It is as though the whole region is tied up in the court system one way or another. The villages themselves have no role in the process except to the extent that individuals take on the role of defendants, third-party custodians, and witnesses. It is as though the villages are under some form emergency rule. This is not to deny that there are problems, or to suggest that there should not be prosecutions, but rather *to* have local input into charging policy and sentencing policy. To do so would diminish the colonial aspect of the criminal court system.

Jail is the sentence of choice. What is the effect on the village of having its young men sit in Nome at the Anvil Mountain Correctional Center, doing nothing constructive there. To be sure, jail is a necessary punishment in many cases, but in so many, and for so long? How do we, the non-Native workers in the court system, know that jail is the appropriate disposition in the vast majority of the cases. Shouldn't there be formal

local input into sentencing policy? If there were, the colonial aspect of the criminal court system would be diminished.

I think that there are things that everyone in the system knows but do not acknowledge. I think that everyone knows that people in the villages feel threatened by law enforcement to a degree far beyond the normal apprehension that is discounted in the cases. People feel threatened, feel they have no choice but to cooperate, and then end up getting entangled in questions that under the law can be framed in lies. Either the system is fair or it is not. A trooper mentioned just the other day that he doesn't have to pull any tricks because the clients are so "cooperative". Officially the law does not recognize that there is a problem. There is no direct authority to support the argument that people's rights are being violated. But if we do not consistently holler about it, nobody will. And if we do holler consistently, the court system may eventually feel compelled to acknowledge the obvious. Miranda established a right to notice prior to interrogation. It was a limited right under Miranda, and Miranda has been progressively eroded ever since, but there comes a point where reality has to be acknowledged. If we do not raise it, it never will be raised.

The defense is the shock absorber of the criminal court system. The state can usually wait to file a case until it is prepared to do it. The defense is bracketed in by time deadlines. Where there are about 150 cases at any one time, it is impossible to give real attention to most of the cases. Most misdemeanors get minimal attention. This is news to no one. But the question is what we do about it. Is this the natural state of things or is

this the condition we accept as the natural state of things?
I think that it is the natural state of things, insofar as
we have experienced. But it does not have to. It shouldn't be.
Our clients know that they do not always receive due process,
in the sense of having sufficient access to their attorney or
preparation for their cases. If they can sense it, why can't the
rest of the system. This too is something that everybody in
the system knows but does not acknowledge.

The question is to whom we owe our ultimate loyalty. Is it
to the client or to the system? If it is to the client, we hold
out for him. If it is to the system, we have unwritten under-
standings with district attorneys as to how far we will take a
case, so that both we and the DA can get home at a decent time.
If it is to the system, the DA knows that we will plead the man
out and we plead him out.

I think that our loyalty has to remain with the client. This
introduces a level of uncertainty in the relationship between the
district attorney and the defense lawyer, but it is worth it to
the client. However it also increases the work for the defense
since many more cases head toward trial. This also tends to clog
up the calendar.

How much attention should a client get? In the rural areas
he needs more than may always be necessary in the urban areas.
He needs time to talk things over. He needs more time than we
have. There comes a point where we do not give enough time to
the client, or enough time to preparation, and where we are
ready to plead out of vulnerability; then we have arrived at the
point where the client is not getting effective assistance of counsel.

At that point something has to be done to save the case for the client.

The 22 alcohol and drug cases overloaded the Kotzebue office. I filed the notice of ineffective assistance of counsel on the cases to place the problem before the court. However, as I mentioned in the hearing on the matter, it would not have been necessary to do so if I had requested assistance from our central office earlier; that is my personal responsibility.

I think that the court system has to be confronted with the fact that clients are often not receiving due process or their right to counsel because they are rushed through the system under current (and former) caseloads and deadlines. If the defense does not put a brake on the process, no one will. The state and the court have identical interests insofar as each is vitally concerned with processing cases. A smooth system is what they need, and every effort is made to keep the defense in the program. But the defense does not necessarily have the same interest, and where the caseload and time pressures put the defense at a strategic disadvantage, something has to be done. What is done in each case depends upon circumstances.

But we have to do something. Otherwise our rural clients ~~face~~ face disadvantages all the way down the line, from their initial contact with the police - where the police are free to dominate them, to bail - where the clients have the disadvantage of little access to money, to contact with their attorney, which is often minimal, to negotiations - if the lawyer allows himself to be placed at a disadvantage (which I normally avoid), to trial - where the defense is challenged to complete investigation, motions,

and trial preparation. The criminal court system has to know that the problem is everybody's problem. The situation will be relieved only if it is seen as a threat to the system.

In addition there is another factor that deserves some consideration. I do not know public defender working conditions around the program in any detail, but I think I have some feeling for them after working in several of the offices. In my opinion the lawyers in the rural offices carry an extra load because they cannot shift work among several lawyers, must absorb everything that comes down the pike (except motions on the 22 alcohol and drug felonies), and need to give extra attention to the residents of the smaller communities. In addition they tend to get more personally involved in clients' problems. Many hours are spent over time in conversations with clients who are worried, depressed, and occasionally thinking about suicide. There is no one else to do it, and it cannot be brushed off, especially the depression and talk of suicide. (Referrals and warnings to jail personnel are also made.) In a small community the ~~xxxxxxx~~ lawyer is liable to bump into a current client any time he takes a walk down the street. There is very little insulation from work, especially when the court makes pretrial release such a challenge in so many of the cases. There is no mechanism in ~~xxx~~ the program to deal with this. Maybe that is why Linda Green, the Kotzebue secretary, counted eight lawyers passing through the Kotzebue in the 4-1/2 years before I arrived. *Heidi Erickson has 20 charges of plea scheduled early this week.* When you think of it, there is a problem when the clients do not get the attention to the cases that they deserve and the lawyers around the program have overwhelming caseloads. None of

this is new. And it exists across the country.

The criminal law is central to the organization of a society. How it is enforced determines the character of the society. One benefit of the criminal law is the resulting decrease in revenge and retaliation on the streets when the state becomes the prosecuting party rather than the victim himself, or his friends, relatives, or neighbors. To the extent that there are adequate police, prosecutors, defense lawyers, and judges, the well-being of the community can be enhanced. To the extent that these resources are missing, the community suffers and Constitutional rights are violated.

What more can be done for our clients? What more should be done for them? What do they have a right to receive under the U.S. and Alaska Constitutions in terms of adequate representation? There is no hard and fast answer. But the more we push it, the better the chances that our clients' representation will improve.

John Holmes

JUST CHUCK ME IN THE OLD CHUKCHI

I was down and out in Fairbanks, in the unemployment line,
When a Doctor of Consultancy stepped up and spoke his mind; (he said)
So you're of late from the '48, a stateside refugee,
Well there's still hope on the great North Slope
And the shores of the Chukchi Sea.

As he advised I dredged my mind and found some talent there,
Lying neglected and unexpected, a certain talkative flair;
So I printed cards and letterhead, in grand hyperbole,
And I placed my hope in the great North Slope
And the shores of the Chukchi Sea.

Subsistence is the field in which I find I do excel;
I hunt and trap consultant fees, and do it pretty well.
No more bumming cigarettes, I'm fixed financially,
For I placed my hope in the great North Slope
And the shores of the Chukchi Sea.

So dry those tears you refugee, and join the planning game;
Consult your way to solvency, move on to wealth and fame.
Look beyond that handicap of mediocrity,
And place your hope in the great North Slope
And the shores of the Chukchi Sea.

Oh...when my contract's done, and my luck has run,
And the Slope's downhill for me,
Then my only hope is to head on North,
So chuck me in the Old Chukchi;
Yes, chuck me in the Old Chukchi,
Just chuck me in the Old Chukchi,
For my only hope is to head on North,
So...chuck me in the Old Chukchi.

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John M. Holmes

FROM: RESULTS OF THE EVALUATION
OF APPLICANTS FOR AK. PUB. DEFENDER

Complete Booklet available in the
Committee Room.

**SURVEY OF THE ALASKA BAR ASSOCIATION:
EVALUATION OF APPLICANTS FOR THE
ALASKA PUBLIC DEFENDER**

EXECUTIVE SUMMARY

This report contains the results of a recent survey of the Alaska Bar Association. Bar members evaluated three applicants for Alaska Public Defender on six traits: professional competence, integrity, administrative skills, temperament, suitability of candidate's experience for the vacancy and overall professional performance. Attorneys used a five-point scale to rate each trait. Applicant mean ratings have been presented numerically, and in five descriptive categories: "Excellent" (4.0-5.0); "Good" (3.5-3.9); "Acceptable" (3.0-3.4); "Below Acceptable" (2.5-2.9); and "Poor" (0-2.4).

Table 1 summarizes the overall ratings by respondents who based their ratings on direct professional experience with the applicants.

Applicant Barbara K. Brink received ratings in the "excellent" range on all six items. Ms. Brink was evaluated by 245 respondents on the basis of direct professional experience, with the following results: professional competence (4.4), integrity (4.2), administrative skills (4.2), temperament (4.2), suitability of experience (4.4), and overall professional performance (4.3). These were the highest ratings given to any of the applicants on all six items.

Applicants Sidney Kay Billingslea and Cynthia L. Strout each received ratings in the "excellent" range on two of the six items, and ratings in the "good" range on the remaining items. Applicant Billingslea received "excellent" ratings on the professional competence (4.1) and integrity (4.0) items, and ratings in the "good" range on the administrative skills (3.5), temperament (3.6), suitability of experience (3.8), and overall professional performance (3.9) items. Ms. Billingslea was evaluated by 220 respondents on the basis of direct professional experience.

Applicant Strout also received "excellent" ratings on the professional competence (4.1) and integrity (4.1) items, and ratings in the "good" range on the administrative skills (3.6), temperament (3.9), suitability of experience (3.7), and overall

professional performance (3.9) items. Ms. Strout was evaluated by 194 respondents on the basis of direct professional experience.

DESCRIPTIVE RATINGS AND SYMBOLS

This report contains detailed breakdowns of each candidate's scores on the six individual scales: Professional Competence, Integrity, Administrative Skills, Temperament, Suitability of Experience, and Overall Professional Performance. The survey instrument defines each trait, and specifies the meaning of each number on the five-point scale (see Appendix I for a copy of the actual survey form). Unless otherwise noted, mean ratings are tabulated only from replies by respondents based on direct professional experience with the applicant. The responses each applicant received on the five scales (each with a range from 1 (poor) to 5 (excellent)) were summarized into arithmetic means. The means fit into the following descriptive ratings which appear in Tables 4 through 10:

Mean Score	Symbol	Range Description
4.0-5.0	+++	Excellent
3.5-3.9	++	Good
3.0-3.4	+	Acceptable
2.5-2.9	-	Below Acceptable
1.0-2.4	--	Poor

Statistically significant group differences often arise between mean ratings whose difference is less than one-half a point. Caution must be used in interpreting relatively small differences in mean ratings between the applicants. Another caution is that some of the respondent groups used in the detailed analysis for each applicant are quite small. Those with fewer than ten members cannot be considered reliable for analysis, but their results appear for completeness.

TABLE 4:

MEAN ITEM SCORES FOR ALASKA PUBLIC DEFENDER CANDIDATES

(Ratings From Respondents With Direct Professional Experience)

<u>Candidate</u>	<u>Professional Competence</u>		<u>Integrity</u>	
	Average Score	Range	Average Score	Range
Billingslea	4.1	+++	4.0	+++
Brink	4.4	+++	4.2	+++
Strout	4.1	+++	4.1	+++

<u>Candidate</u>	<u>Administrative Skills</u>		<u>Temperament</u>	
	Average Score	Range	Average Score	Range
Billingslea	3.5	++	3.6	++
Brink	4.2	+++	4.2	+++
Strout	3.6	++	3.9	++

<u>Candidate</u>	<u>Suitability of Experience</u>		<u>Overall Professional Performance</u>	
	Average Score	Range	Average Score	Range
Billingslea	3.8	++	3.9	++
Brink	4.4	+++	4.3	+++
Strout	3.7	++	3.9	++

TABLE 5

PERCENTILE DISTRIBUTION OF CANDIDATE SCORES ON THE
OVERALL PROFESSIONAL PERFORMANCE SCALE, ALASKA PUBLIC DEFENDER

(Ratings From Respondents With Direct Professional Experience)

<u>Candidate</u>	<u>1.0</u>	<u>2.0</u>	<u>3.0</u>	<u>4.0</u>	<u>5.0</u>
Billingslea	2.3	4.7	26.6	37.4	29.0
Brink	2.1	5.3	11.9	25.1	55.6
Strout	2.6	6.2	24.9	32.1	34.2

14

<u>Candidate</u>	<u>Mean</u>	<u>Median</u>	<u>Mode</u>	<u>SD</u>	<u>N</u>	<u>Range</u>
Billingslea	3.9	4.0	4.0	.97	214	++
Brink	4.3	5.0	5.0	1.00	243	+++
Strout	3.9	4.0	5.0	1.03	193	++

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



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State of Alaska

TABLE 5

PERCENTILE DISTRIBUTION OF CANDIDATE SCORES ON THE
OVERALL PROFESSIONAL PERFORMANCE SCALE, ALASKA PUBLIC DEFENDER

(Ratings From Respondents With Direct Professional Experience)

<u>Candidate</u>	<u>1.0</u>	<u>2.0</u>	<u>3.0</u>	<u>4.0</u>	<u>5.0</u>
Billingslea	2.3	4.7	26.6	37.4	29.0
Brink	2.1	5.3	11.9	25.1	55.6
Strout	2.6	6.2	24.9	32.1	34.2

14

<u>Candidate</u>	<u>Mean</u>	<u>Median</u>	<u>Mode</u>	<u>SD</u>	<u>N</u>	<u>Range</u>
Billingslea	3.9	4.0	4.0	.97	214	++
Brink	4.3	5.0	5.0	1.00	243	+++
Strout	3.9	4.0	5.0	1.03	193	++

Sidney Kay Billingslea

Between 189 and 219 respondents rated Ms. Billingslea on the basis of direct professional experience. These respondents gave a mean rating in the "excellent" range on the professional competence (4.1) and integrity (4.0) items, and ratings in the "good" range on administrative skills (3.5), temperament (3.6), suitability of experience (3.8), and overall professional performance (3.9). Respondents who based their ratings on direct professional experience with the applicant tended to give higher ratings on the professional competence, integrity, and overall professional performance items than did those who based their ratings on the applicant's reputation or those who had other personal contacts.

BASIS FOR EVALUATION	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
	[p<.05]		[p<.05]								[p<.05]	
NO ANSWER	4.7	3	3.0	3	3.0	3	2.3	3	3.3	3	3.5	4
DIRECT PROFESSIONAL	4.1	219	4.0	214	3.5	189	3.6	218	3.8	215	3.9	214
OTHER PERSONAL	3.9	38	3.9	36	3.6	25	3.4	38	3.6	35	3.6	36
REPUTATION	3.8	74	3.7	72	3.3	65	3.5	72	3.6	72	3.6	74
<u>DIRECT EXPERIENCE</u>												
SUB SAMPLE:	4.1	219	4.0	214	3.5	189	3.6	218	3.8	215	3.9	214
<u>TYPE OF PRACTICE</u>												
NO ANSWER	3.5	13	3.4	12	2.9	9	3.5	13	3.3	12	3.3	12
PRIVATE												
SOLO	4.1	44	4.2	43	3.6	40	3.8	44	3.8	43	3.9	43
OFFICE 2-5	4.1	42	4.1	43	3.6	39	3.8	43	3.9	43	3.9	42
OFFICE 6+	4.3	19	4.4	18	3.7	15	3.8	19	3.9	19	4.1	18
PRIVATE CORPORATE	4.5	2	5.0	1	5.0	1	4.5	2	5.0	1	5.0	1
JUDGE OR JUD. OFCR	4.4	28	4.1	28	3.6	22	3.7	27	3.9	28	4.0	28
GOVERNMENT	3.9	63	3.9	61	3.3	56	3.4	62	3.6	61	3.7	62
PUBLIC SERVICE	4.3	3	4.3	3	4.3	3	3.7	3	4.0	3	4.3	3
OTHER	4.6	5	4.0	5	3.8	4	3.6	5	4.0	5	4.4	5
<u>YEARS OF PRACTICE</u>												
<u>IN ALASKA</u>												
NO ANSWER	3.8	20	3.6	18	3.4	14	3.8	20	3.5	18	3.6	17
0 TO 5	4.4	19	4.1	19	3.8	17	3.8	19	4.1	19	4.1	19
6 TO 10	4.2	51	4.0	49	3.6	46	3.6	51	3.7	50	3.9	50
11 TO 15	4.1	39	4.0	38	3.3	35	3.4	39	3.6	39	3.9	39
16 +	4.0	90	4.1	90	3.5	77	3.7	89	3.8	89	3.8	89
<u>GENDER</u>												
NO ANSWER	3.8	16	3.7	15	3.3	12	3.5	16	3.3	15	3.5	15
MALE	4.2	125	4.2	124	3.6	110	3.7	124	3.9	123	3.9	123
FEMALE	4.1	78	3.9	75	3.4	67	3.6	78	3.7	77	3.8	76
<u>CASES HANDLED</u>												
NO ANSWER	3.6	12	3.5	11	3.1	8	3.6	12	3.4	11	3.5	11
PROSECUTION	3.8	17	3.8	16	3.5	15	3.6	16	3.7	16	3.7	17
MAINLY CRIMINAL	4.1	45	4.0	44	3.3	42	3.4	45	3.5	45	3.7	45
MIXED	4.1	79	4.1	79	3.6	68	3.7	78	3.9	78	4.0	79
MAINLY CIVIL	4.2	62	4.1	61	3.6	54	3.7	63	3.9	62	3.9	59
OTHER	4.5	4	4.7	3	4.0	2	4.0	4	4.3	3	4.3	3
<u>LOCATION OF PRACTICE</u>												
NO ANSWER	3.6	12	3.5	11	3.1	8	3.6	12	3.4	11	3.5	11
FIRST DISTRICT	4.0	14	4.2	14	3.4	10	3.7	14	4.1	14	4.1	14
SECOND DISTRICT	4.0	2	3.5	2	3.5	2	4.0	2	4.0	2	4.0	2
THIRD DISTRICT	4.1	181	4.1	177	3.5	160	3.6	180	3.7	179	3.9	177
FOURTH DISTRICT	4.0	8	4.0	8	3.3	7	3.4	8	3.7	7	3.8	8
OUT-OF-ALASKA	5.0	2	5.0	2	5.0	2	4.5	2	4.5	2	4.5	2
<u>AMOUNT OF EXPERIENCE</u>												
NO ANSWER	3.8	32	3.8	31	3.6	27	3.7	31	3.7	31	3.7	32
SUBSTANTIAL	4.2	111	4.1	111	3.4	102	3.6	111	3.7	110	3.9	110
MODERATE	4.2	47	4.1	46	3.5	40	3.7	46	3.9	47	4.0	47
LIMITED	4.0	29	4.1	26	3.5	20	3.7	30	3.9	27	3.8	25

Ms. Brink was evaluated by 226-243 respondents who had direct professional experience with the applicant. These respondents gave mean ratings in the "excellent" range on all six items: professional competence (4.4), integrity (4.2), administrative skills (4.2), temperament (4.2), suitability of experience (4.4), and overall professional performance (4.3). Of these respondents, those who have a private practice in an office with six or more attorneys tended to rate the applicant lower on the temperament item than did those with other types of practice. Respondents with less than six years of practice in Alaska tended to give lower ratings on the integrity item than did those with six or more years of practice. Female respondents tended to give higher ratings on the professional competence and suitability of experience items than did the male respondents. Respondents who handle prosecution cases tended to rate the applicant lower on all six items than did those who handle other types of cases. Respondents who indicated that they had a limited amount of direct professional experience with the applicant tended to give lower ratings on the professional competence, administrative skills, temperament, suitability of experience, and overall professional performance items than did those with higher levels of experience. Respondents who based their evaluations on the applicant's reputation tended to give lower ratings on the professional competence, administrative skills, suitability of experience, and overall professional performance items than did those who based their ratings on direct professional experience or other personal contacts.

BASIS FOR EVALUATION	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
<u>BASIS FOR EVALUATION</u>	[p<.0001]											
NO ANSWER	4.3	15	4.0	15	3.6	14	3.8	15	4.1	15	4.1	15
DIRECT PROFESSIONAL	4.4	243	4.2	242	4.2	226	4.2	243	4.4	243	4.3	243
OTHER PERSONAL	4.5	22	4.4	22	4.6	16	4.3	22	4.6	22	4.5	22
REPUTATION	4.0	70	3.9	70	3.8	67	3.9	70	3.9	71	3.9	70
<u>DIRECT EXPERIENCE</u>	[p<.01]											
SUB SAMPLE:	4.4	243	4.2	242	4.2	226	4.2	243	4.4	243	4.3	243
<u>TYPE OF PRACTICE</u>	[p<.05]											
NO ANSWER	4.2	12	4.1	12	4.1	12	3.9	12	4.2	12	4.1	12
PRIVATE												
SOLO	4.4	42	4.2	42	4.1	38	4.1	42	4.2	42	4.1	42
OFFICE 2-5	4.7	38	4.6	38	4.4	36	4.6	38	4.5	38	4.5	38
OFFICE 6+	4.2	18	4.2	18	3.8	17	3.7	18	4.2	18	4.0	18
PRIVATE CORPORATE	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1	5.0	1
JUDGE OR JUD. OFCR	4.6	32	4.4	32	4.4	29	4.3	32	4.5	32	4.3	32
GOVERNMENT	4.3	84	4.1	83	4.1	78	4.0	84	4.3	84	4.2	84
PUBLIC SERVICE	4.5	11	4.4	11	4.7	10	4.5	11	4.8	11	4.5	11
OTHER	5.0	5	4.6	5	4.8	5	5.0	5	5.0	5	5.0	5
<u>YEARS OF PRACTICE</u>	[p<.05]											
IN ALASKA												
NO ANSWER	4.2	16	4.2	16	4.2	16	4.1	16	4.3	16	4.2	16
0 TO 5	4.1	34	3.7	34	4.0	32	3.9	34	4.1	34	3.9	34
6 TO 10	4.6	49	4.3	49	4.3	49	4.2	49	4.5	49	4.4	49
11 TO 15	4.6	52	4.5	52	4.3	48	4.3	52	4.5	52	4.5	52
16 +	4.4	92	4.3	91	4.2	81	4.2	92	4.3	92	4.2	92
<u>GENDER</u>	[p<.05]											
NO ANSWER	4.3	14	4.2	14	4.1	14	4.0	14	4.2	14	4.1	14
MALE	4.3	134	4.2	133	4.1	122	4.1	134	4.3	134	4.2	134
FEMALE	4.6	95	4.4	95	4.4	90	4.3	95	4.5	95	4.4	95
<u>CASES HANDLED</u>	[p<.0001]											
NO ANSWER	4.2	12	4.1	12	4.1	12	3.9	12	4.2	12	4.1	12
PROSECUTION	3.8	25	3.0	24	3.3	22	3.0	25	3.5	25	3.4	25
MAINLY CRIMINAL	4.7	60	4.5	60	4.5	58	4.5	60	4.6	60	4.6	60
MIXED	4.5	69	4.4	69	4.3	67	4.2	69	4.4	69	4.3	69
MAINLY CIVIL	4.4	75	4.3	75	4.2	65	4.3	75	4.5	75	4.3	75
OTHER	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2	5.0	2
<u>LOCATION OF PRACTICE</u>	[p<.0001]											
NO ANSWER	3.9	12	3.8	12	3.9	12	3.8	12	3.9	12	3.8	12
FIRST DISTRICT	4.4	20	4.3	20	4.2	17	4.4	20	4.5	20	4.4	20
SECOND DISTRICT	4.7	3	5.0	3	5.0	3	4.7	3	5.0	3	5.0	3
THIRD DISTRICT	4.4	188	4.3	187	4.2	175	4.2	188	4.4	188	4.3	188
FOURTH DISTRICT	4.6	18	4.3	18	4.3	18	4.3	18	4.6	18	4.4	18
OUT-OF-ALASKA	4.5	2	3.0	2	5.0	1	4.5	2	4.5	2	4.5	2
<u>AMOUNT OF EXPERIENCE</u>	[p<.001]											
NO ANSWER	4.3	31	4.2	30	4.0	31	4.1	31	4.1	31	4.1	31
SUBSTANTIAL	4.5	145	4.3	145	4.4	141	4.3	145	4.5	145	4.4	145
MODERATE	4.4	47	4.3	47	3.9	39	4.0	47	4.3	47	4.2	47
LIMITED	3.7	20	3.7	20	3.6	15	3.7	20	3.9	20	3.8	20

Cynthia L. Strout

Between 175 and 194 respondents rated Ms. Strout on the basis of direct professional experience. These respondents gave a mean rating in the "excellent" range on the professional competence (4.1) and integrity (4.1) items, and ratings in the "good" range on administrative skills (3.6), temperament (3.9), suitability of experience (3.7), and overall professional performance (3.9). Of these respondents, those who have a government practice tended to rate the applicant lower on all six items than did those with other types of practice. Female respondents tended to rate the applicant higher on the professional competence item than did the male respondents. Respondents who handle prosecution cases tended to rate the applicant lower on the professional competence, integrity, suitability of experience, and overall professional performance items than did those who handle other types of cases.

	PROFESSIONAL COMPETENCE		INTEGRITY		ADMINISTRATIVE SKILLS		TEMPERAMENT		SUITABILITY of EXPERIENCE		OVERALL PROFESSIONAL PERFORMANCE	
	mean	n	mean	n	mean	n	mean	n	mean	n	mean	n
<u>BASIS FOR EVALUATION</u>												
NO ANSWER	4.5	6	4.5	6	3.6	5	3.8	6	4.2	6	4.3	6
DIRECT PROFESSIONAL	4.1	194	4.1	192	3.6	175	3.9	194	3.7	192	3.9	193
OTHER PERSONAL	4.1	16	4.5	16	3.8	12	4.1	17	3.7	16	4.1	16
REPUTATION	3.9	47	3.9	47	3.6	41	3.9	46	3.7	48	3.8	47
<u>DIRECT EXPERIENCE</u>												
SUB SAMPLE:	4.1	194	4.1	192	3.6	175	3.9	194	3.7	192	3.9	193
<u>TYPE OF PRACTICE</u>												
	[p<.01]		[p<.01]		[p<.01]		[p<.05]		[p<.01]		[p<.01]	
NO ANSWER	3.7	7	3.7	6	2.8	4	3.0	7	3.5	6	3.5	6
PRIVATE												
SOLO	4.4	41	4.4	41	4.0	38	4.2	41	4.1	41	4.3	41
OFFICE 2-5	4.0	27	4.1	27	3.6	25	4.0	27	3.7	27	3.7	27
OFFICE 6+	4.4	14	4.4	14	3.9	14	4.1	14	4.1	14	4.4	14
PRIVATE CORPORATE	--	0	--	0	--	0	--	0	--	0	--	0
JUDGE OR JUD. OFCR	4.4	29	4.4	29	3.9	25	4.2	29	4.1	29	4.2	29
GOVERNMENT	3.8	67	3.7	66	3.2	64	3.7	67	3.3	66	3.5	67
PUBLIC SERVICE	4.0	4	4.3	4	3.0	3	4.0	4	3.3	4	3.8	4
OTHER	4.2	5	4.2	5	3.0	2	3.8	5	4.0	5	4.0	5
<u>YEARS OF PRACTICE</u>												
<u>IN ALASKA</u>												
NO ANSWER	4.0	11	4.1	10	3.8	8	3.7	11	4.1	10	3.9	10
0 TO 5	4.2	13	4.2	13	4.0	12	4.1	13	3.8	13	4.2	13
6 TO 10	4.2	33	4.0	33	3.4	33	3.3	33	3.5	33	3.8	33
11 TO 15	4.0	47	3.8	47	3.4	43	3.8	47	3.6	47	3.7	47
16 +	4.2	90	4.2	89	3.6	79	4.1	90	3.8	89	4.0	90
<u>GENDER</u>												
	[p<.05]											
NO ANSWER	4.0	8	4.1	7	3.8	5	3.8	8	4.1	7	4.0	7
MALE	4.0	113	4.1	112	3.5	104	3.9	113	3.7	112	3.8	113
FEMALE	4.3	73	4.1	73	3.6	66	4.0	73	3.7	73	4.0	73
<u>CASES HANDLED</u>												
	[p<.05]		[p<.01]						[p<.05]		[p<.05]	
NO ANSWER	4.0	7	4.2	6	3.8	4	3.6	7	4.2	6	4.0	6
PROSECUTION	3.7	23	3.4	22	3.1	21	3.4	23	3.1	22	3.3	23
MAINLY CRIMINAL	4.3	45	4.2	45	3.5	42	4.0	45	3.6	45	4.0	45
MIXED	4.2	58	4.3	58	3.7	53	4.1	58	3.9	58	4.1	58
MAINLY CIVIL	4.1	59	4.1	59	3.7	53	3.9	59	3.8	59	3.9	59
OTHER	4.5	2	4.0	2	3.0	2	4.5	2	4.5	2	4.5	2
<u>LOCATION OF PRACTICE</u>												
NO ANSWER	3.7	7	3.8	6	3.3	4	3.3	7	3.8	6	3.7	6
FIRST DISTRICT	4.4	8	4.6	8	4.1	7	4.6	8	4.4	8	4.4	8
SECOND DISTRICT	4.0	3	3.7	3	3.7	3	4.0	3	3.3	3	3.7	3
THIRD DISTRICT	4.1	169	4.1	168	3.6	154	3.9	169	3.7	168	3.9	169
FOURTH DISTRICT	3.7	6	3.8	6	3.0	6	3.7	6	3.2	6	3.3	6
OUT-OF-ALASKA	4.0	1	4.0	1	3.0	1	4.0	1	4.0	1	4.0	1
<u>AMOUNT OF EXPERIENCE</u>												
NO ANSWER	4.0	26	3.8	26	3.3	23	3.5	26	3.5	26	3.5	26
SUBSTANTIAL	4.2	103	4.2	103	3.6	99	4.0	103	3.9	103	4.0	103
MODERATE	4.0	43	4.0	42	3.4	37	3.9	43	3.5	42	3.7	42
LIMITED	4.1	22	4.2	21	3.8	16	4.0	22	3.8	21	4.0	22

November 29, 1996

UNSOLICITED REFERENCE

RECEIVED

DEC 4 1996

Alaska Judicial Council
1029 W. Third Avenue, Suite 201
Anchorage, Alaska 99501-1981

AK Judicial Council

Re: Candidacy of Barbara Brink for
Director, Alaska Public Defender Agency

Dear Council Members:

I am writing this unsolicited letter of reference in support of the candidacy of Barbara Brink for the position of the Director of the Alaska Public Defender Agency. As an Assistant Public Defender for almost twelve years, I am fortunate to be acquainted with almost all of the applicants for the position. In my opinion, Barb is the most qualified applicant for the job.

I have known Barb in a professional and personal capacity for almost a decade. During that time, both of us have been practicing criminal law at the Public Defender Agency. While both of us started as trial lawyers, Barb has been the Deputy Public Defender in charge of the Anchorage office for a number of years, and I have been the supervisor of the appellate section for the past four years. Based on my direct working experience with Barb and my observation of her trial skills, I can fairly state that she is one of the most outstanding criminal defense lawyers I have ever known. Her courtroom presence is always appropriate. She is a tenacious litigator who understands the importance of delivering quality legal services to her client. As deputy director, she has consistently monitored the staff lawyers to ensure that every attorney in the office provides that same quality of service.

In addition to being a highly regarded trial lawyer, Barb has a keen analytic mind and an excellent command of the law. As an appellate lawyer, I frequently feel the need to discuss complex legal issues with other attorneys in the office. My first choice for a sounding board is always Barb. She quickly grasps the legal issues I'm pondering and focuses in on the issue. She has excellent and temperate judgement. I always leave her office knowing more about the law than when I came in the door. I know that every attorney in the office shares my view that she is a great resource for any legal problem that arises.

Barb is also a very good administrator. Given the nature and temperament of criminal defense attorneys in general, and public defenders in particular, being the deputy director can be a thankless task. Barb has a very innovative approach to systemic problems and fair treatment of all lawyers affected by administrative decisions. She includes people in the decision-making process in an effort to achieve consensus--a trait shared

by all those who understand the importance of management issues. In addition, Barb is known throughout the agency for her ability to work with the most difficult clients and lawyers--a skill that will serve her well as director of this office.

Finally, I can't write a letter of support for Barb without mentioning her commitment to work on behalf of Alaska's indigent citizens. She is truly the hardest working lawyer in the office. She can be found in the office any time of the day or night, weekends as well as during the work week. More than once she has worked all night in order to complete pleadings in a case. Many times these cases were not originally assigned to her--she simply pitched in to help when she saw the need was there. As the appellate supervisor, I have on many occasions come across Barb's legal pleadings in an appellate record. I can categorically state that her work is exceptional.

I realize that in making its recommendations to Governor Knowles, the Judicial Council members will be guided by many factors. If those factors include a proven ability to administer a large group of fairly egocentric lawyers, the proven ability to expertly assume a job in the office, and a demonstrated commitment to the able representation of Alaska's impoverished citizens in an efficient and professional manner, you cannot do better in that regard than appointing Barb Brink.

Sincerely yours,



Margi A. Mock

MM:sh

BOGLE & GATES P.L.L.C.

A Professional Limited Liability Company

LAW OFFICES

Kevin T. Fitzgerald

1031 West 4th Avenue, Suite 600
Anchorage, Alaska 99501

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Telex Int'l: 98-1751
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Direct Dial: (907) 257-7870

Seattle
Bellevue
Portland
Tacoma
Vancouver, B.C.
Washington, D.C.

RECEIVED

NOV 26 1996

AK Judicial Council

November 25, 1996

Alaska Judicial Council
1029 W. Third Avenue
Suite 201
Anchorage, Alaska 99501

UNSOLICITED REFERENCE

Dear Members of the Alaska Judicial Council:

This is a letter of support for Barbara Brink. During my nearly eight years as a prosecutor I occasionally found myself opposite a case with Ms. Brink. On those occasions I was frequently impressed with her professional competence and performance. I always thought that Ms. Brink did a tremendous job zealously representing her clients. Over the years I have also found Ms. Brink to be a "straight shooter."

I understand that Ms. Brink received quite low scores from the prosecutors who responded to the bar poll. This surprises me since I felt that my view of Ms. Brink's abilities and integrity were shared by my colleagues. I am concerned that some of my former colleagues have confused Ms. Brink's advocacy with her integrity. I feel that frequently prosecutors and defense attorneys develop an "us against them" mentality. Unfortunately, this siege mentality prevents attorneys in the respective agencies from having anything good to say about each other.

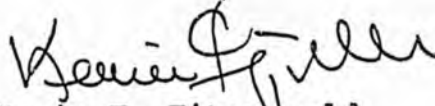
For my own part, I believe Ms. Brink possesses both the character and competence required in a position as important as public defender. As a result, I support her candidacy for that position.

Alaska Judicial Council
November 25, 1996
Page 2

If you have any questions of me please do not hesitate
to contact me.

Very truly yours,

BOGLE & GATES P.L.L.C.


Kevin T. Fitzgerald

BOGLE & GATES P.L.L.C.

Donna J. McCready
733 West Fourth Avenue
No. 668
Anchorage, Alaska 99501

November 18, 1996

Judicial Council
Suite 201
1029 W. 3rd Avenue
Anchorage, Alaska 99501-1981

UNSOLICITED REFERENCE

RECEIVED
NOV 26 1996
AK Judicial Council

Dear Members of the Judicial Council,

I am pleased to write a letter on behalf of Barb Brink in support of her being named to succeed John Salemi as the Public Defender.

I have known Ms. Brink for approximately six years professionally. I worked for the Public Defender Agency as an intern in Anchorage in 1990 and then as a staff attorney in Juneau from January, 1992, through August, 1994. As a staff attorney at the Office of Public Advocacy in Anchorage for the past two years, I have continued to have professional and personal dealings with Ms. Brink.

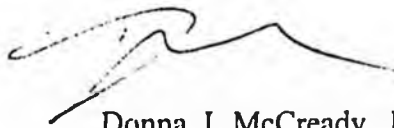
Ms. Brink exemplifies the best qualities of the legal profession. She is an excellent and committed advocate while maintaining the highest level of integrity.

Nonetheless, I could not support Ms. Brink simply because I believed her to be an excellent attorney. I believe Ms. Brink to be uniquely qualified for the position of the Public Defender because, in addition to being an impressive advocate, she has excellent administrative, organizational and interpersonal skills. I know this because I worked with Ms. Brink personally at the Public Defender Agency and I know of her reputation.

Finally, because I consider Ms. Brink to have the highest ethics I believe that she will instill respect and confidence in the position of the Public Defender and in the Agency as a whole.

Thank you for this opportunity to express my support for Barb Brink. Please call me if you have any questions.

Sincerely,



Donna J. McCready, Esq.

November 19, 1996

William Cotton, Executive Director
Alaska Judicial Council
1029 West 3rd Avenue, Suite 201
Anchorage, Alaska 99501

UNSOLICITED REFERENCE

RECEIVED

NOV 22 1996

AK Judicial Council

Re: Barbara Brink

Dear Mr. Cotton:

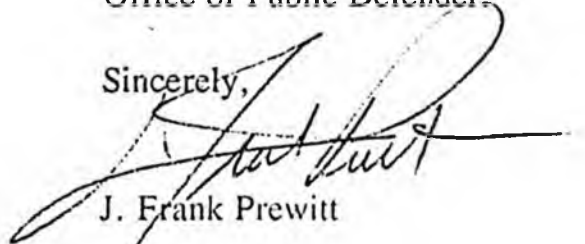
I understand that Barbara Brink is seeking appointment as Public Defender for the State of Alaska.

During the Sheffield, Cowper and Hickel administrations, I had occasion to work with Ms. Brink on Sentencing Commission issues, as opposing counsel, and as a public administrator. Being on the opposite sides of emotionally charged or highly controversial issues places one in a unique position to offer opinions concerning the intelligence, character, and competence of opposing counsel. I can say without hesitation that Barbara Brink excels in each respect.

As a trial lawyer she is organized, articulate, and formidable; as a negotiator she is balanced, persuasive, and prepared; and as an advocate she tenaciously promotes public policies that are tempered by compassion, reason, and fairness.

The people of Alaska would be well served by Ms. Brink's appointment to the Office of Public Defender.

Sincerely,


J. Frank Prewitt

Joseph B. Austin
5201 Secluded Circle
Anchorage, Alaska 99516
Phone (907) 345-3806

December 9, 1996

UNSOLICITED REFERENCE

Alaska Judicial Council
1029 W. Third Ave, Suite 201
Anchorage, AK 99501

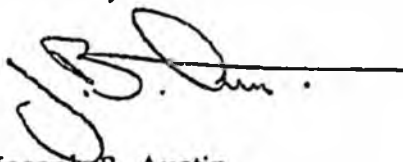
I'm writing you this letter in support of Ms. Barbara Brink, for the Alaska Public Defender position in Anchorage.

I'm a retired Anchorage police officer who was on the opposing side in a number of cases where Ms. Brink represented the defendant. I found her to be honest, ethical, hard working, and fair, while remaining a strong advocate for her clients. She was also prepared and well organized on the cases I was involved in.

I can recall blistering cross examinations by Ms. Brink but don't recall ever hearing anyone question her integrity.

In my opinion she would be an excellent choice to head the Alaska Public Defender agency.

Sincerely,



Joseph B. Austin
Sergeant, APD (Retired)

RECEIVED

NOV 6 1996

AK Judicial Council

Thomas J. Meyer
Attorney at Law
NBA Building
217 Second Street, Suite 204
Juneau, AK 99801

(907) 586-8666

(907) 586-8059 FAX

November 4, 1996

Alaska Judicial Council
1029 W. 3rd Ave.
Suite 201
Anchorage, AK 99501

UNSOLICITED REFERENCE

Dear Members of the Council:

I am writing in reference to your evaluation of the candidates for the Public Defender Agency director vacancy and in particular, Ms. Barbara Brink.

By way of introduction, I am in private practice. I primarily defend people charged with all levels of State offenses. I am also presently a contract defense attorney for the Office of Public Advocacy which is headed by Mr. Brant McGee. Previously, I was an assistant Public Defender for seven years and supervised the Juneau office of the agency. This past session, I was counsel for the Alaska House of Representatives Judiciary Committee. Earlier in my career, I was a Superior Court law clerk for Judge Duane K. Craske in Sitka.

During my seven years with the Public Defender Agency, Ms. Brink was the Deputy Public Defender. I had a substantial amount of contact with her, ranging from advice on issues in cases to getting her approval of expenditures for hiring expert witnesses. I also had personal contact on social occasions. My most recent contacts occurred when she testified before the Judiciary Committee on bills of concern to the agency.

Given the role and status of the Public Defender Agency in our state's government, it is clear that it needs a strong advocate for its interests. Because Ms. Brink is familiar with the agency administratively and in some measure, politically, she has built-in experience and an advantage over the other candidates.

Is Ms. Brink qualified for the position? Her substantial experience as an assistant Public Defender prepares her well for decisions on major issues in cases on which her advice will be sought by assistant Public Defenders. Ms. Brink, in my experience, also has very good personnel relations--an important qualification for the chief officer of an agency. Furthermore, her administrative experience gives her important perspective on the agency's history and where it must go in the future. She already knows about budget

Letter to Alaska Judicial Council

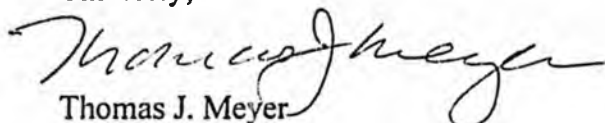
Page two

November 4, 1996

issues and how to balance the budget with the agency's overall goal of representing indigent people zealously. In conclusion, Ms. Brink should best be able to continue the agency's tradition of providing excellent legal services notwithstanding a shrinking budget. But most important, she is a true believer in the defense function and adherence to Alaska's constitution.

Ms. Brink has a very good head on her shoulders. Please refer her to the Governor for appointment. If I can be of any further assistance, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. Meyer".

Thomas J. Meyer

Public Defender Applicant
Counsel Questionnaire

Barbara K. Brink

RECEIVED
OCT 21 1996
AK Judicial Council

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

Ms. Brink is a highly competent attorney. She demonstrated a thorough grasp of legal issues & facts. She ~~fight~~ fights hard for her clients, but does not stoop to unfair or questionable tactics. She has the ~~an~~ intellectual ability to head the agency. She has shown over the past several years that she would ~~not~~ continue to make ~~an~~ a good supervising attorney.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

She has good temperament. She can be forceful when necessary, but she ~~not~~ would also be humble enough to not misuse the power of the office.

(Over) →

Public Defender Applicant
Counsel Questionnaire

RECEIVED

OCT 14 1986

AK Judicial Council

Barbara K. Brink

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

I have utmost respect for Barb's intellectual abilities and believe that she is well-suited for this position. My experience with Barb, on this and other cases, is that she quickly grasps the important issues, weeds through the intricacies, and then proceeds to do very thorough legal research and drafting before coming up with a final product. I trust Barb's judgment and skills more than any lawyer I know, Barb is sought out for advice -- on legal questions, strategy and ethics -- significantly more often than any other lawyer in the agency statewide.

I believe that Barb is one of the best lawyers in the state - in all aspects of criminal defense work. Her legal analysis and motion work in Whitaker resulted in a just and legally sound sentence, without spending years in appellate practice.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

I believe that Barb's interest in this position has nothing to do with power, prestige or money. Instead, it reflects her career-long dedication to this agency and its work. As deputy, Barb has demonstrated the highest standards and skills in managing the Anchorage office and in ensuring proper representation of our clients. As public defender, she would bring a personal familiarity with every function of this agency since she consistently steps up to the plate whenever a need arises -- from clerical duties to every lawyers' duties. She is a wise, strong and supportive leader, by example and by her direction

(Over) →

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Rev. 6/98

Central Microfilm Services
Department of Education
State of Alaska

Public Defender Applicant
Counsel Questionnaire

Barbara K. Brink

RECEIVED
OCT 21 1996
AK Judicial Council

1. Please rate the attorney's competence as an attorney. Does he or she have the intellectual ability to head the public defender agency? Did the attorney demonstrate a thorough grasp of legal issues and facts presented in the case?

Ms. Brink is a highly competent attorney. She demonstrated a thorough grasp of legal issues & facts. She ~~fight~~ fights hard for her clients, but does not stoop to unfair or questionable tactics. She has the ~~is~~ intellectual ability to head the agency. She has shown over the past several years that she would ~~like~~ continue to make ~~an~~ a good supervising attorney.

2. How would you characterize the attorney's temperament? How well will the attorney, if appointed, balance the need to be forceful enough to run the public defender agency effectively, but humble enough not to misuse the power of the office?

She has good temperament. She can be forceful when necessary, but she ~~will~~ would also be humble enough to not misuse the power of the office.

3. Did the attorney work conscientiously on the case? Were pleadings filed timely and were deadlines met?

yes to all

4. Please give us your general comments on the attorney, and assess what type of public defender he or she would make.

I think Ms. Brink is the best candidate for the job. She has experience both as a trial attorney & as a supervising attorney, & I think she has proven that she would do an excellent job as head of the agency

MARU ANNE HENRY
Print Name (Optional)

Your comments, whether or not you give your name, will not be shown to the applicant. However, a general summary of all comments received will be shared.



Please check this box only if you want your comments (and name if provided) sent to the Governor. We cannot guarantee your confidentiality if you check this box.