

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9553

SENATE JUDICIARY

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RE: Public Defender Appointment
NOVEMBER 24, 1996

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, PREDICTING STRIES 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} JUSTICE CAN BE RETAINED AFTER TRIAL WITH SENTENCING LIMITED TO CRYING 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 ^(TO DISAGREE WITH THE JURY) OF THE HIGHER CHARGE. A 1991 9th CIRCUIT FEDERAL APPELLATE CASE CALLS THIS A PERVERSION OF THE JURY SYSTEM. AFTER TRIAL, PROSECUTORS ARE SUBJECT TO THE LOWEST STANDARDS OR PROOF IN REVOCATION HEARINGS - PREPAREDNESS OF THE EVIDENCE. JUDGES USUALLY ACT AS THOUGH ~~THEY~~ ^{THERE} WERE NO STANDARDS 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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BE WILLING TO PERSONALLY CONFRONT 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 UNDERSTANDABLE
A NECESSARY, EFFORT TO CREATE STABLE
WORKING CONDITIONS FOR EMPLOYEES AND
TO PROVIDE ^{LEGAL} SERVICES AS FULLY AS POSSIBLE.
BUT THE PUBLIC DEFENDER AGENCY IS NOT
JUST ANOTHER AGENCY. IT IS FIRST OF ALL
A MECHANISM THAT WAS SET UP TO PROVIDE
CONSTITUTIONALLY-MANDATED REPRESENTATION
TO DEFENDANTS. BECAUSE OF THE CASELOAD,
BECAUSE OF THE LACK OF SUFFICIENT PERSONNEL
AND RESOURCES, AND BECAUSE OF MISTREATMENT
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. ONCE THE PROSECUTION HAS

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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 STANDS A GOOD CHANCE OF GETTING AN ALMOST FREE PROSECUTION BY THREATENING INDICTMENT BY THE GRAND JURY. THE PROSECUTION 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 A DEFENSE ATTORNEY MAY THEN ENCOURAGE A DEFENDANT TO PLEAD OUT EARLY, BEFORE LITTLE IS KNOWN 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-SET 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 BARRROW, KOTzebue,
AND BETHEL TO BE LONGTERM PLACEMENTS
(THOUGH THE BARRROW 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 ~~SEE~~ 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 KATTEBUE.

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 ~~INCLUDED~~
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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*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 4 1/2 MONTHS, HE HAD ONLY 3 1/2 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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* | NOTE: PAGES 15 + 16 ARE BEING
| REWRITTEN TO REMOVE PERSONAL
| REFERENCES TO CLIENTS, TO PROTECT
| THEIR PERSONAL PRIVACY. |

| John Halnes | *

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

John Halverson

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 Holmes

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 BARROW - (ALSO HAD 6 PREVIOUS YEARS IN BARROW WITH ALASKA LEGAL SERVICES) THAT IT WOULD BE A VERY HARD TWO YEARS. (I THINK I HAD EIGHTEEN JURY TRIALS DURING THE YEAR IN BARROW; NOTHING LIKE THAT IN KOTZEBUE.)

I WILL TELL YOU THAT IT IS HARD TO TAKE THE AIR-VE 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 ~~OUT OF FEAR~~ ^{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} ~~WHEN~~ 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, SHACK 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 WON'T LET ANYTHING GET BETWEEN THEM AND THEIR CLIENTS, PEOPLE LIKE NEIL KENNELLY AND BILL HZAR.

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 KATZEBU^{KATZEBU} HAD 110 FELONIES, MAKING ^{KATZEBU} THE HIGHEST OR 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 FOND 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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ALASKA JUDICIAL COUNCIL
RE: PUBLIC DEFENDER APPOINTMENT
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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 ~~THE~~
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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Re: Public Defender Appointment
Alaska Judicial Council
November 24, 1996

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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RE: PUBLIC DEFENDER APPOINTMENT
ALASKA JUDICIAL COUNCIL
NOVEMBER 24, 1976

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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NOVEMBER 24, 1996

HARD-BITTEN, HIGHLY EXPERIENCED PRIVATE LAWYER WHO HAS NONE OF THE PSYCHOLOGICAL LIMITATIONS ON CONFIRMATION 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 ~~THE~~ 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 UNDERSEEN 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 NOW - 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 ACCOMMODATION, 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 ~~ATTORNEYS~~ 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 FUND 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 ~~INDIVIDUAL~~ 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, TUGH, 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 WHO
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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SAFELY "SAHN, LING, LIU, SEE" ("3064" IN CHINESE).
(HANGCHUN IS SEVENTEEN HOURS AHEAD
OF ANCHORAGE).

POSTSCRIPT 2)

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

1) I ONCE HAD A SITUATION^{IN} WHICH I
ASKED^{A.D.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~~ING~~ 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 THIS 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 ^{SEAP} 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-~~PROCEEDING~~ PROCEEDING TAPES AND POLICE INTERROGATION TAPES TO LISTEN TO ON POOR 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 KATZEBU 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. NONE 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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NOVEMBER 24, 1946

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} VII-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 AK. LEGISLATURE
CHAIR, SENATE
JUDICIARY COMMITTEE
John Holmes

December 8, 1995

John M. Holmes,
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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.

Alaska Court System,
Advisory Committee On Fairness And Access
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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.

Alaska Court System
Advisory Committee On Fairness And Access
December 9, 1995
Page Three

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 22 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, SENATE
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, 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 ^{input} 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 reenforced. 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 understandings 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 ~~xxxx~~ 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 change of plan 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 found 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.

Copyright 6/79
John M. Holmes

THOMAS J. MEYER
ATTORNEY AT LAW
NBA BUILDING
217 SECOND STREET SUITE 204
JUNEAU, ALASKA 99801

AREA CODE (907)
TELEPHONE: 586-8666
FAX 586-8059

February 4, 1997

TO: Members of the Alaska State Senate Judiciary Committee

RE: Consideration of appointment of Ms. Barbara Brink as Alaska Public Defender

I am a local attorney and practice primarily criminal defense in state prosecutions. My prior experience as an attorney includes being an aide last year to Rep. Brian Porter and the House Judiciary Committee. From 1988 to 1995, I was an assistant Public Defender for the State of Alaska and ended that part of my career as a supervising attorney in the Juneau office of the Public Defender Agency.

During my employment as a public defender, I had extensive contact with both Mr. John Salemi, who is the former chief of the Public Defender and Ms. Barbara Brink, who is now before your committee for confirmation of her appointment by Governor Knowles. Ms. Brink was the Deputy Public Defender during my service to the agency.

I am writing to express my support for Ms. Brink's confirmation as the Public Defender.

The Alaska Public Defender Agency, pursuant to AS 18.85.100, represents indigent persons who are under formal charges for serious crimes, probation or parole violations, or who are entitled to representation under the Supreme Court Delinquency or Child in Need of Aid Rules, or who are detained for specific physical or mental health commitment proceedings. In other words, the Public Defender represents persons in a wide range of proceedings. The Public Defender must, accordingly, have a wide range of experience.

Ms. Brink, having been a public defender for over 10 years, has the experience required for the head position. Many times a day, Ms. Brink will have to field calls from assistant public defenders who require sound advice and approval of expense on cases. In my contacts with Ms. Brink over several years, it was apparent to me that she had a substantial amount of knowledge, experience and training in the area of criminal defense. She has conducted jury trials at all levels of offenses. A consider her highly qualified to be the Public Defender in terms of her level of experience. When the occasion came that I needed direction, she was a helpful colleague. I would expect her to continue that tradition as the Public Defender.

The Public Defender Agency needs an advocate as its head officer. Based again on my observations of Ms. Brink, I predict that she will reasonably and appropriately assert the needs of the agency to her superior administrative officers and indeed the legislature. As

Letter to Senate Judiciary Committee

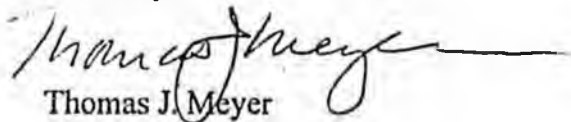
Page two

February 4, 1997

you are likely aware, Ms. Brink has handled many administrative tasks for the agency in her position as a deputy. This prior experience will serve the agency well in terms of consistency of operation and administration.

In both the Alaska and U.S. constitutions is a provision establishing the right to counsel. It is this provision that motivated the Alaska legislature to create the Public Defender Agency almost 20 years ago. With respect to the right to counsel, the Senate Judiciary committee's concerns in the confirmation process are to enforce this right and assure that enforcement of it is carried out in the judiciary. Ms. Brink, I believe, because of her continued faithful service to the agency and high level of experience, will continue the agency's outstanding tradition of ensuring that the right to counsel remains strong and enduring. I ask that the committee give Ms. Brink its support and full consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas J. Meyer", with a long horizontal flourish extending to the right.

Thomas J. Meyer

ALASKA STATE LEGISLATURE

Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis



State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

MEMORANDUM

TO: Senator Taylor, Chairman
Senator Pearce, Vice Chairman
Senator Miller
Senator Parnell
Senator Ellis

FROM: Laura Chase, Committee Aide *LC*

DATE: February 3, 1997

RE: Phone Call in Support of Barbara Brink Confirmation

Ms. Mauri Long, president of the Trial Lawyers Association, telephoned to voice her support of Ms. Brink's confirmation.

Ms. Long worked with Barbara Brink when they were both employed by the Public Defender's office. Ms. Long stated that she thinks highly of Ms. Brink's professional capabilities and knows her on a personal level as well. She asked that you "not hesitate" to telephone her if you would like a personal recommendation. Her telephone number is (907) 277-5400.



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

January 30, 1997

M E M O R A N D U M

TO: Senator Taylor, Chair
Judiciary Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Miller has referred the following name for legislative confirmation to your committee for a hearing, recommendation and report:

Alaska Public Defender
Barbara Brink - Anchorage
Appointed: 01/24/97

Resume attached

NQ/hv

BARBARA K. BRINK

810 W. 16th Ave. Anchorage, Alaska 99501
(907) 258-4666; Barbara_Brink@Admin.state.ak.us

EXPERIENCE

The Alaska Public Defender Agency
Acting Director September 1996 - present.

Administer state agency of 13 offices with 108 employees who provide legal services in over 17,000 cases per year. Duties include personnel oversight, preparation of annual budget in coordination with Department of Administration, testimony before the legislature on substantive and procedural criminal bills, service on various boards, task forces and committees that deal with criminal justice issues.

Deputy Public Defender October 1988 - September 1996.

Assisted director in all phases of administration as well provide direct attorney services in all types of cases as needed in urban and rural courts.

Assistant Public Defender August 1982 - October 1988.

Started service as an appellate lawyer, have worked as misdemeanor trial lawyer, felony trial lawyer, appellate supervisor, felony intake lawyer and investigator. Have handled every type of case at every level including delinquency, CINA and involuntary civil commitments.

The Supreme Court of the State of Alaska

Law clerk to Justice Roger Connor August 1981 - July 1982.

Researched and drafted bench memoranda prior to oral argument, summarizing and evaluating litigant arguments. Drafted and edited opinions.

Contra Costa County Public Defender Agency

Law clerk June 1980 - July 1981.

Initial client interviews re' financial eligibility and case information. Researched and drafted pleadings, argued motions in court and conducted criminal non-jury trial.

EDUCATION

J.D. 1981 Hastings College of the Law-University of California
Jessup International Moot Court Competition Team
Public Interest Law Association

B.A. 1978 The University of Chicago
with honors Maroon Key Honor Society - Dean's List Four Years
Gertrude Dudley Scholar
Order of the C - varsity volleyball, basketball, softball

PROFESSIONAL

Alaska Bar Association State Bar of California National Association of
Criminal Defense Lawyers National Legal Aid and Defenders Association Alaska
Academy of Trial Lawyers California Public Defenders Association Southern Poverty Law
Center Northwest Women's Law Center

PERSONAL

Anchorage Women's Hockey League Anchorage Sports Association

ALASKA STATE LEGISLATURE



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Senate Judiciary Committee

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RECEIVED FEB 3 1997

Philip M. Pallenberg
718 5th Street
Juneau, Alaska 99801
home (907) 586-1180 work (907) 465-4911

February 3, 1997

Senator Robin Taylor
Chairman,
Senate Judiciary Committee

RE: Appointment of Barbara Brink as Public Defender

Dear Senator Taylor:

I am writing to give my unqualified support for the confirmation of Barbara Brink as Public Defender.

I am the supervising attorney for the Juneau office of the Public Defender Agency. I have been a lawyer since 1983, and have been with the Public Defender Agency since 1990 (with the exception of a short time that I was back in private practice in Juneau). I have supervised both the Kodiak and Juneau public defender offices. During this time, I have developed a very high regard for Barb as an advocate and an administrator.

Barb is, to my knowledge, universally well liked and respected in the agency. She is a zealous advocate for her clients, and is dedicated to the mission of this agency. She is one of the most capable lawyers I know. I think she is the ideal person for the job of Public Defender.

For most of the time that I have known Barb, she has been Deputy Director of this agency. Her predecessor was very much a "hands off" manager. During the months that Barb has been Acting Director, I have seen a noticeable -- and beneficial, in my opinion -- tightening up of management. I think that, with Barb as Director, there will be a continued improvement in the administrative functioning of this agency.

As compared with any other similar organizations, this agency has a uniquely high morale on the part of its staff. This is essential if this agency is to continue to perform its constitutionally required function. The job of an Assistant

February 3, 1997

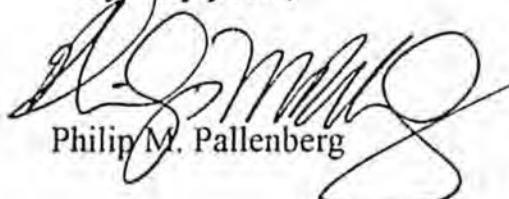
Public Defender is a very difficult one, which must be performed in high volume with very limited resources. I think the strong and fair leadership which Barb has exercised both as Deputy Director and Acting Director has a great deal to do with the high morale of the lawyers in this agency.

The job of Public Defender is a vital counterweight to ensure that the criminal justice system operates fairly. As the Legislature responds to political demands to resolve perceived problems with the criminal justice system, it is particularly important that the Public Defender Agency continue to provide effective representation to indigent people accused of crimes. This is the only way to ensure that the system operates fairly, as well as effectively, and to ensure that innocent people are not convicted along with the guilty.

The Public Defender should be a strong and effective advocate for the mission of this agency. I do not think this is a matter of politics or ideology. Barb Brink will fulfill this responsibility.

I would urge you and, through you, the members of the Judiciary committee to act favorably on this appointment. If you have questions or would like to discuss any issues relating to this appointment, I would be delighted to meet with you or testify before the committee.

Very truly yours,



Philip M. Pallenberg

CONFIRM.:

D. BROWN

COMM. ON

JUDICIAL

CONDUCT



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

February 13, 1997

MEMORANDUM

TO: Senator Taylor, Chair
Judiciary Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Miller has referred the following names for legislative confirmation to your committee for a hearing, recommendation and report:

Commission on Judicial Conduct

Dianne I. Brown - Anchorage
Appointed: 09/11/96 Expires: 12/31/98

Violent Crimes Compensation Board

Louann Cutler - Anchorage
Appointed: 01/02/97 Expires: 12/15/99

Leslie D. Wheeler - Wasilla
Appointed: 05/15/96 Expires: 12/15/98

Alaska Workers' Compensation Board

Valerie K. Baffone - Anchorage
Appointed: 11/08/96 Expires: 07/01/97

John Giuchici - Fairbanks
Appointed: 10/10/91 Reappointed: 07/15/93, 06/25/96 Expires: 07/01/99

Steve Hagedorn - Anchorage
Appointed: 08/19/91 Reappointed: 07/01/93, 06/25/96 Expires: 07/01/99

Harriet M. Lawlor - Anchorage
Appointed: 07/20/95 Reappointed: 06/25/96 Expires: 07/01/99

Shawn Pierre - Chugiak
Appointed: 11/08/96 Expires: 07/01/97

NQ:hv
Resumes attached

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

March 14, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

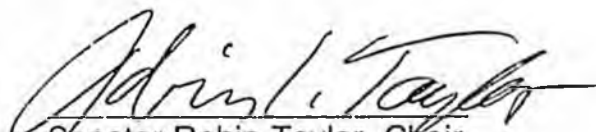
Dear President Miller:

In accordance with AS 39.05.080, the Senate Judiciary Committee reviewed the qualifications of the following and recommends the appointment be forwarded to a joint session for consideration:

Commission on Judicial Conduct
Dianne I. Brown-- Anchorage

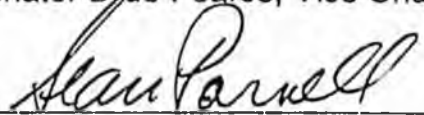
There were no stated objections to the named individual. However, this does not reflect an intent by any of the members to vote for or against the appointment during any further sessions.

Respectfully,




Senator Robin Taylor, Chair

Senator Drue Pearce, Vice Chair



Senator Sean Parnell

Senator Mike Miller



Senator Johnny Ellis

RLT/lc

Commission on Judicial Conduct

DIANNE INGLIMA BROWN
11484 Discovery Heights Circle
Anchorage, Alaska 99515
(907) 344-6491 (home)
(907) 269-5694 (work)

EDUCATIONUndergraduate:

University of Alaska, Fairbanks; Fairbanks, Alaska (1965-1967)

Professional: (Training)

Dept. of Public Safety Academy, Sitka, Alaska (1978, 1992)
D.E.A. Drug School, Stockton, Calif. (1981)
Uniformed Investigator School, Juneau, Alaska (1984)
Interview/Sexual Assault School, Ketchikan, Alaska (1985)
Supervision and Mid-Management Schools, Juneau, Alaska (1985, 1986, 1987); Seward, Alaska (1990); Anchorage (1992)
Progressive Accident Investigation School, Palmer, Alaska (1989)
Field Training Officer Program, Sitka, Alaska (1990)
Advanced Criminal Investigation Training, Anchorage, Alaska (1992)
Reid Technique of Interviewing and Interrogation, Anchorage, Alaska (1992, 1993)
New York State Police Homicide Seminar, Albany, New York (1992)
Methods of Instruction, Sitka, Alaska (1993)
Dale Carnegie, Anchorage, Alaska (1993)
Investigation and Prosecution of Sexual Assault Crimes, Anchorage, Alaska (1993)
Southern Police Institute, 92nd Administrative Officers Course, Louisville, Kentucky (1994)

EMPLOYMENT HISTORY

Sept. 1995 - Present

First Sergeant, Alaska State Troopers.
Currently assigned to the Statewide Criminal Investigations Unit as commander. Duties include supervision and management of the Major Crimes Section, the White Collar Crime Section, the Environmental Crimes Section and Special Investigations for the State of Alaska.

1994 - 1995

First Sergeant, Alaska State Troopers.
In February 1994, became first female first sergeant in history of Alaska State Troopers. Assigned to the Director's Office as an administrative supervisor. Duties included management of the Commercial Vehicle Enforcement Program, Rural Housing, Vehicle Procurement Coordinator, and Statewide Training Coordinator.

Other:

Judicial Conduct Commission - appointed by Governor Steve Cowper
November 1990

REFERENCES

Arthur A. English, former Commissioner, Department of Public Safety
(907) 274-7922

John Murphy, U.S. Marshall, Department of Justice (907) 271-5154

John B. Salemi, Public Defender, State of Alaska (907) 264-4400

Cammy Oechsli, Assistant Attorney General, State of Alaska
(907) 269-5100

Laurie Otto, Deputy Attorney General, Criminal Division, State of
Alaska (907) 465-3428

Additional references furnished upon request.

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

Commission on Judicial Conduct

DIANNE INGLIMA BROWN
 11484 Discovery Heights Circle
 Anchorage, Alaska 99515
 (907) 344-6491 (home)
 (907) 269-5694 (work)

EDUCATIONUndergraduate:

University of Alaska, Fairbanks; Fairbanks, Alaska (1965-1967)

Professional: (Training)

Dept. of Public Safety Academy, Sitka, Alaska (1978, 1992)
 D.E.A. Drug School, Stockton, Calif. (1981)
 Uniformed Investigator School, Juneau, Alaska (1984)
 Interview/Sexual Assault School, Ketchikan, Alaska (1985)
 Supervision and Mid-Management Schools, Juneau, Alaska (1985, 1986, 1987); Seward, Alaska (1990); Anchorage (1992)
 Progressive Accident Investigation School, Palmer, Alaska (1989)
 Field Training Officer Program, Sitka, Alaska (1990)
 Advanced Criminal Investigation Training, Anchorage, Alaska (1992)
 Reid Technique of Interviewing and Interrogation, Anchorage, Alaska (1992, 1993)
 New York State Police Homicide Seminar, Albany, New York (1992)
 Methods of Instruction, Sitka, Alaska (1993)
 Dale Carnegie, Anchorage, Alaska (1993)
 Investigation and Prosecution of Sexual Assault Crimes, Anchorage, Alaska (1993)
 Southern Police Institute, 92nd Administrative Officers Course, Louisville, Kentucky (1994)

EMPLOYMENT HISTORY

Sept. 1995 - Present

First Sergeant, Alaska State Troopers.
 Currently assigned to the Statewide Criminal Investigations Unit as commander. Duties include supervision and management of the Major Crimes Section, the White Collar Crime Section, the Environmental Crimes Section and Special Investigations for the State of Alaska.

1994 - 1995

First Sergeant, Alaska State Troopers.
 In February 1994, became first female first sergeant in history of Alaska State Troopers. Assigned to the Director's Office as an administrative supervisor. Duties included management of the Commercial Vehicle Enforcement Program, Rural Housing, Vehicle Procurement Coordinator, and Statewide Training Coordinator.

(Employment history continued)

1990 - 1994

Sergeant, Alaska State Troopers.

In July 1990, became first female sergeant in history of Alaska State Troopers. Originally assigned to patrol division as Patrol Supervisor. Twice selected to supervise the field training program for new State Trooper Recruits. In November 1991, reassigned to Statewide Criminal Investigations/Major Crimes Section as supervisor. Duties included the supervision and oversight of homicide, sexual assault/sexual abuse, robberies, and other violent crime investigations.

1985 - 1990

Corporal, Alaska State Troopers.

In 1985 became first female corporal in history of Alaska State Troopers, and became a patrol supervisor. In October 1988 I was transferred to a bush assignment as post supervisor of the Talkeetna Post. Duties included supervision and control of four-person post responsible for enforcement and patrol of a large rural area extending from Denali National Park on the north, Willow on the south, Skwentna on the west and the Talkeetna Mountains on the east.

1977 - 1984

Alaska State Trooper, Department of Public Safety, State of Alaska.

Judicial services, patrol, and commercial vehicle enforcement assigned to Anchorage Detachment from 1977 through 1981. Transferred in 1981 to Metro Narcotics as part of Anchorage Police Department/Alaska State Troopers narcotic enforcement unit. In 1982 transferred to Juneau Detachment and was initially assigned as patrol officer. Duties later included assignment to investigative unit where I was responsible for sexual assault/sexual abuse investigations.

Personal:

Married. I am a third-generation Alaskan, born February 4, 1948, raised in the Seldovia/Homer area of the Kenai Peninsula.

Professional Organizations:

Fraternal Order of the Alaska State Troopers

Other:

Judicial Conduct Commission - appointed by Governor Steve Cowper
November 1990

REFERENCES

Arthur A. English, former Commissioner, Department of Public Safety
(907) 274-7922

John Murphy, U.S. Marshall, Department of Justice (907) 271-5154

John B. Salemi, Public Defender, State of Alaska (907) 264-4400

Cammy Oechsli, Assistant Attorney General, State of Alaska
(907) 269-5100

Laurie Otto, Deputy Attorney General, Criminal Division, State of
Alaska (907) 465-3428

Additional references furnished upon request.

CONFIRM.:

D. CALL

BRD. OF

GOV. OF AK.

BAR



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 95801-1182
(907) 465-3701
FAX: 465-2832

February 26, 1997

MEMORANDUM

TO: Senator Taylor, Chair
Judiciary Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

SUBJECT: Governor's Confirmations

Pursuant to AS 39.05.080, President Miller has referred the following name for legislative confirmation to your committee for a hearing, recommendation and report:

Board of Governors of the Alaska Bar
Debra L. Call - Anchorage
Appointed: 02/20/97 Expires: 06/30/99

NQ:hv
Resume attached

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

March 14, 1997

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

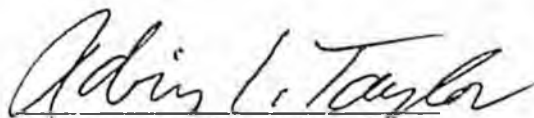
Dear President Miller:

In accordance with AS 39.05.080, the Senate Judiciary Committee reviewed the qualifications of the following and recommends the appointment be forwarded to a joint session for consideration:

Board of Governors of the Alaska Bar
Debra L. Call-- Anchorage

There were no stated objections to the named individual. However, this does not reflect an intent by any of the members to vote for or against the appointment during any further sessions.

Respectfully,

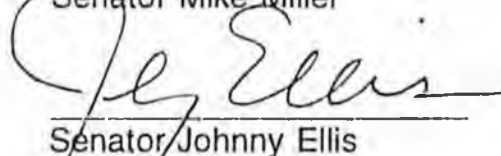

Senator Robin Taylor, Chair

Senator Drue Pearce, Vice Chair



Senator Sean Parnell

Senator Mike Miller



Senator Johnny Ellis

RLT/lc

DEBRA L. CALL

12342 West Prince of Peace
Eagle River, AK 99577-7539
907-696-5786 (residence)
907-274-8638 (business)

EDUCATION

Masters of Business Administration, Marketing, Washington State University, 1986.

Bachelor of Arts, Business Administration, Marketing, Eastern Washington University, 1981, Dean's List.

High School Diploma with Honors, Chugiak High School, Eagle River, AK,.

PROFESSIONAL HISTORY

5/95 to present **Manager, Human Resources, Cook Inlet Region, Inc.**

Promoted to work for the parent company, CIRI, to plan and implement policies related to all phases of corporate human resource activities within 70 employee parent company and work with 500+ employee subsidiary operations. Represents the company on state employment & training councils and boards and continues to build a cooperative referral network among ANCSA corporations in regards to human resource development activities.

12/91 to 5/95 **Employment and Training Program Director**
Peak Alaska Ventures, Inc., wholly owned subsidiary of CIRI

Directed the development, implementation and maintenance of an Alaska Native training and placement program which successfully resulted in an increase of Native hire from 2% in 1992 to over 13% in 1994 within a 500+ employee oilfield support service company. Coordinated Native hire opportunities with various oilfield employers, Peak Oilfield Service Company project managers, Native corporations and the jobseeker to build consensus and compliance toward meeting ARCO/Contractor Native hire goals. Established a computerized skills database and referral network for qualified Alaska Natives within a non-profit social service organization.

6/87 to 9/91 **Executive Vice President**
Vice President, Administration
Business Analyst
Community Enterprise Development Corporation of Alaska

Directed the operations of a non-profit, Alaska rural and urban membership organization providing enterprise development technical assistance and financing through joint venture public and private funded programs serving villages throughout rural Alaska. Worked closely with state and federal agencies to provide comprehensive economic development and job creation projects for rural Alaska and in particular, Alaska Native communities.

9/86 to 6/87

College Instructor
Washington State University

Developed curriculum and taught classes in small business management to senior business undergraduate students as Instructor and Director of the Small Business Institute. Concurrently, developed curriculum and taught general education required classes in Native American Cultural/Historical Studies for classes of 100 freshman undergraduate students.

9/85 to 6/86

Market Analyst
Washington State University

As a graduate student, worked part-time for the Continuing Education Department developing and implementing a marketing survey to determine the management training needs of Seattle business people. Used results of completed survey to develop a strategic marketing plan focusing on program design and promotion.

1981 to 1984

Business Development Planner
Special Projects Coordinator
Cook Inlet Native Association

Applied marketing skills to research business opportunities for a non-profit, social service organization serving Alaska Natives residing in the Cook Inlet area. Supervised the preparations for the 1984 Annual Membership Meeting and produced the 1982, 1983 and 1984 Annual Reports.

1978 to 1981

Photojournalist
Eastern Washington University

As a student, worked part-time photographing college sports and academic activities for the local media and university publications. Knowledgeable and skilled in photojournalism, communications, graphics design, typesetting and the production of brochures and publications.

1976 to 1977

Administrative Assistant (d-2 Bill & ANILCA)
Alaska Federal/State Land Use Planning Commission

1974 to 1976

Administrative Assistant
Anchorage Chamber of Commerce

Represented the Better Business Bureau and marketed Chamber membership to the Anchorage business community.

PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

University of Alaska - Anchorage Citizens' Advisory Council Member, 1991 to present

Alaska Academic Decathlon, Board of Directors, 1989 to present.

Alaska State Chamber of Commerce, Board of Directors, Chair of Education Committee,
1995 to present.

United Way, Board of Directors, 1996 to present.

AWAIC, Board member 1/94 to present.

Alaska Native Justice Center, Board member, 1/94 to present.

Chair, Alaska's People Board of Directors, 4/95 to present

PAST PROFESSIONAL ASSOCIATIONS AND ACTIVITIES

Alaska Job Training Council, Chairperson, Governor appointee, 1992 to 1995

National State Job Training Coordinating Chairs Council, Executive Committee and Board member, 1992 to 1995.

Member, Anchorage East Rotary, 1990 to 1994

Commissioner, Cook Inlet Housing Authority, 1987 to 1994.

Member, Board of Directors, Cook Inlet Housing Development Corporation, 1987 to 1992.

Advisor, CITC Junior Achievement project, 1990 to 1991.

President, Howard Rock Foundation, 1989 to 1991.

Co-Chair, Western Region, National Congress for Community Economic Development, 1987 to 1991.

Member, Board of Directors, Cook Inlet Region, Inc., 1989 to 1990.

Member, CIRI Foundation Board of Directors, 1985 to 1988.

Delegate, Alaska Native Leadership Project, 1984 to 1985.

Represented to United Nations Working Group on Indigenous Peoples at Geneva Switzerland, 1985.

Named Woman of the Year in Business, WSU Women's Center, 1985.

References Available on Request

CONFIRM.:

D. COOK

SELECT

COMM. ON

LEG. ETHICS

ALASKA STATE LEGISLATURE



Sen. Robin Taylor, Chair
Sen. Drue Pearce, Vice Chair
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis

State Capitol
Juneau, AK 99801-1182
(907) 465-3717
Fax: (907) 465-3922

Senate Judiciary Committee

REPORT ON CONFIRMATION OF APPOINTMENTS

February 11, 1998

The Honorable Mike Miller
President of the Senate
State Capitol
Juneau, Alaska 99801-1182

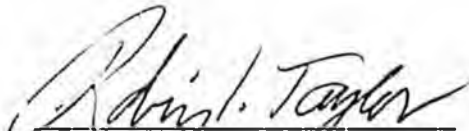
Dear President Miller:

In accordance with AS24.60.130, the Senate Judiciary Committee reviewed the following with regard to confirmation of the appointments of the Chief Justice

Select Committee on Legislative Ethics Dennis E. Cook--Fairbanks

There were no stated objections to the named individual. However, this does not reflect an intent by any of the members to vote for or against the appointment during any further sessions.

Respectfully,

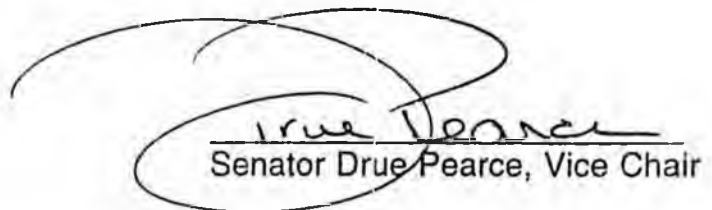


Senator Robin Taylor, Chair



Senator Mike Miller

Senator Johnny Ellis



Senator Drue Pearce, Vice Chair

Senator Sean Parnell



Attorneys at Law

COOK SCHUHMAN & GROSECLOSE, INC.

714 Fourth Avenue, Suite 200 • Post Office Box 70810 • Fairbanks, Alaska 99707-0810 • 907 / 452-1855 • Fax 907 / 452-8154
 Tok (907) 883-5459 • Delta Junction (907) 895-4139 • Toll Free Number 800-550-1855 (Alaska Only)
 Email csg@alaskalaw.com • www.alaskalaw.com

DENNIS E. "SKIP" COOK

Home Address: 431 Birch Hill Road
 Fairbanks, Alaska 99712
 (907) 456-6994

Business Address: Cook Schuhmann & Groseclose, Inc.
 714 Fourth Avenue, Suite 200
 P. O. Box 70810
 Fairbanks, Alaska 99707-0810
 (907) 452-1855 - FAX (907) 452-8154

PERSONAL

Date of Birth: February 8, 1940
Place of Birth: Fairbanks, Alaska
Marital Status: Married to Olga B. Cook
Children: Tyler Cook, Born April 16, 1964
 Bret D. Cook, Born July 19, 1966
 Dana B. Cook, Born May 3, 1968
 Zachary B. Cook, Born June 15, 1972
 Katherine M. Cook, Born January 31, 1976
 Eliza N. Cook, Born July 10, 1980
 Whitney D. Cook, Born May 1, 1984

EDUCATION

1962 Graduated with a Bachelor of Science in Economics, Politics and Engineering from Massachusetts Institute of Technology

1963 Received Master of Arts in Political Science from Northwestern University

1970 Received Juris Doctor Degree from Willamette University

 Dennis E. "Skip" Cook
 Barbara L. Schuhmann
 Robert B. Groseclose

 Jo A. Kuchle
 Zane D. Wilson
 Bret D. Cook

 Michael C. Kramer
Of Counsel
 Grace Berg Schaible

EMPLOYMENT

- 5/70 - Present **COOK SCHUHMAN & GROSECLOSE, INC.,**
and its predecessors, P. O. Box 70810,
Fairbanks, Alaska 99707-0810 (907) 452-1855
Became a partner in 1972. Practice concentrates on personal
injury, workers' compensation defense, domestic
relations and commercial law.
- 8/69-5/70 Alaskan Adventures, Minneapolis, MN, worked in
Salem, OR as western states distributor of movie
"This is My Alaska"
- 1968-69 Horton, Geib & O'Rourke, Salem, Oregon, licensed
securities dealer
- 1967-68 State of Oregon, state police, part-time clerk
- 2/65 - 8/67 Alaska 67 Centennial Exposition (commemorating the
U. S. purchase of Alaska from Russia), General Manager
- 10/63 - 1/65 State of Alaska, Office of the Governor, Local Affairs Agency,
Juneau, Alaska, Assistant Director and Director
- 5/63 - 9/63 State of Alaska, Election Director for organizational election of
Fairbanks North Star Borough

**PROFESSIONAL
ASSOCIATIONS**

The American Bar Association, Alaska Bar Association,
Tanana Valley Bar Association

**PUBLIC SERVICE
POSITION**

Tanana Valley State Fair Association -
Director 1971-1985; President 1976-1985

Church of Jesus Christ of Latter-day Saints -
Bishop, 1970 - 1974; District President 1977 - 1979;
Stake President 1979-1989; Regional Representative
1992 - 1995; Scoutmaster 1995 - Present

Rotary Club of Fairbanks - 1977 - Present;
Director 1986-1990; Secretary 1991; President
1993-1994; District 5010 Rotary Youth Leadership
Conference Co-Chair 1995-1997

Midnight Sun Council, Boy Scouts of America -
Merit Badge Counselor 1970 - Present; Executive
Board 1989 - Present; Executive Committee 1993 -
Present; President 1998; Silver Beaver Award 1997



OFFICIAL BUSINESS

Alaska State Legislature
Senate
Office of the Secretary

STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-3701
FAX: 465-2832

January 27, 1998

M E M O R A N D U M

TO: Senator Taylor, Chair
Judiciary Committee

FROM: Nancy Quinto *NQ*
Secretary of the Senate

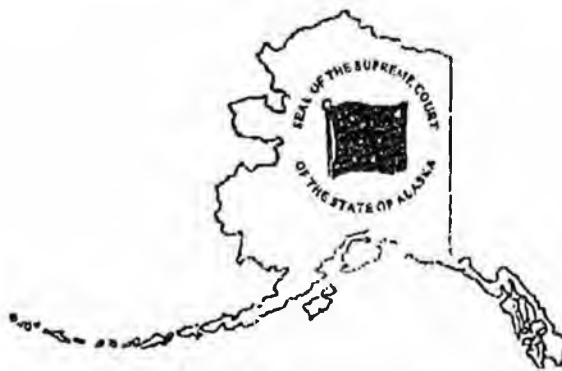
SUBJECT: Governor's Confirmations

President Miller has referred the following appointments for legislative confirmation to your committee for a hearing, recommendation and report:

Select Committee on Legislative Ethics
Ed Granger - Anchorage - Reappointment
Dennis E. Cook - Fairbanks - Appointment

Attachment

NQ/hv



WARREN W. MATTHEWS
CHIEF JUSTICE

Alaska Supreme Court

303 K STREET
ANCHORAGE, ALASKA
99501-2083

(907) 264-0818
FAX (907) 264-0878

December 3, 1997

The Honorable Gail Phillips
Speaker of the House
716 West Fourth Avenue, Suite 620
Anchorage, AK 99501-2133

The Honorable Mike Miller
President of the Senate
716 West Fourth Avenue, Suite 500
Anchorage, AK 99501-2133

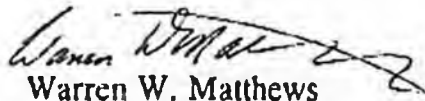
Dear Speaker Phillips and President Miller:

I have reappointed Ed Granger and appointed Dennis Cook to serve full terms on the Select Committee on Legislative Ethics. Their addresses and phone numbers are listed below.

Ed Granger
931 Lighthouse Court
Anchorage, AK 99515
phone: (907) 345-6462
fax: (907) 345-4226

Dennis E. Cook
Cook, Schuhmann & Groseclose
714 4th Avenue, Suite 200
Fairbanks, AK 99701-4470
phone: (907) 452-1855
fax: (907) 452-8154

Very truly yours,


Warren W. Matthews
Chief Justice

cc: Ed Granger
Dennis E. Cook
Susan Barnett, Staff, Select Committee on Legislative Ethics

WWM/sbp