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law of the land, the fixed law of the land; and not by the law as a jury may understand it, or choose, from wantonness, or ignorance, or accidental mistake, to interpret it." (*Id.* at p. 1043.) [FN7]

> FN7. "Today the constitutions of three states--Georgia, Indiana, and Maryland--provide that jurors shall judge questions of law as well as fact. In all three states, however, judicial decisions have essentially nullified the constitutional provisions. The unambiguous rule in other American jurisdictions is that questions of law are for the court to decide. Juries must 'take their law' as the trial judge declares it." (Alschuler & Deiss. *A Brief History of the Criminal Jury in the United States* (1994) 61 U.Chi. L.Rev. 867, 911, fns. omitted.)

In *United States v. Powell, supra,* 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461, the high court reaffirmed the rule that verdicts in a criminal prosecution need not be consistent but, at the same time, the court recognized that jurors are obligated to follow the law. Although the court observed that inconsistent verdicts "present a situation where 'error,' in the sense that the jury has not followed the court's instructions, most certainly has occurred," the court held that a new trial is not required because the defendant may have reaped the benefit of jury lenity. (*Id.* at p. 65, 105 S.Ct. 471.) The court explained the rule permitting inconsistent verdicts in criminal cases "as a recognition of the jury's historic function, in criminal trials, as a check against arbitrary or oppressive exercises of power by the Executive Branch." (*Ibid.;* see also *Williams v. Florida* (1970) 399 U.S. 78, 100, 90 S.Ct. 1893, 26 L.Ed.2d 446 ["The purpose of the jury trial ... is to prevent oppression by the Government.... Given this purpose, the essential feature of a jury obviously lies in the interposition between the accused and his accuser of the commonsense judgment of a group of laymen, and in the community participation and shared responsibility that results from that group's determination of guilt or innocence."].) Repeating the court's phrase in *Dunn v. United States, supra,* 284 U.S. 390, 393-394, 52 S.Ct. 189, 76 L.Ed. 356, that such lenity is "an 'assumption of a power which [the jury has] no right to exercise,' " the court concluded in *Powell:* "The fact that the inconsistency *304 may be the result of lenity, coupled with the Government's inability to invoke review, suggests that inconsistent verdicts should not be reviewable." (*United States v. Powell, supra,* 469 U.S. at p. 66, 105 S.Ct. 471.) Later in its opinion, in rejecting the contention that the court should attempt to determine the reason for the inconsistent verdicts in each case, the court stated: "Jurors, of course, take an oath to follow the law as charged, and they are expected to follow it." (*Ibid.*)

In *Standefer v. United States* (1980) 447 U.S. 10, 100 S.Ct. 1999, 64 L.Ed.2d 689, the high court returned to the theme that the procedural disadvantages placed upon the prosecution do not lessen the obligation of jurors to obey the court's instructions, or the expectation that they will do so. The decision in *Standefer* held that a defendant could be convicted of aiding and abetting the commission of a federal offense even though the named principal had been acquitted of that offense. In rejecting the argument that the prosecution, after the named principal was acquitted, should be estopped from asserting that a crime had been committed, the court examined the nature of criminal prosecutions: "First, in a criminal case, the Government is often without the kind of 'full and fair opportunity to litigate' that is a prerequisite of estoppel. Several aspects of our criminal law make this so: the prosecution's discovery rights in criminal cases are limited, both by rules of court and constitutional privileges; it is prohibited from being granted a directed verdict or from obtaining a judgment notwithstanding the verdict no matter how clear the evidence in support of guilt, [citation]; it cannot secure a new trial on the ground that an acquittal was plainly contrary to the weight of the evidence, [citation]; and it cannot secure appellate review where a defendant has been acquitted. [Citation.] [¶] The absence of these remedial procedures in criminal cases permits juries to acquit out of compassion or compromise or because of ' "their assumption of a power which they had no right to exercise, but to which they were disposed through lenity." ' [Citations.] It is of course true that verdicts induced by passion and prejudice are not [illegible]own in civil suits. But in civil cases, post-trial motions and appellate review provide an aggrieved litigant a remedy; in a criminal case the Government has no similar avenue to correct errors. Under contemporary principles of collateral estoppel, this factor strongly militates against giving an acquittal preclusive effect." (*Id.* at pp. 22-23, 100 S.Ct. 1999, fn. omitted.) "This case does no more than manifest the simple, if discomforting, reality that 'different juries may reach different results under any criminal statute. That is one of the consequences we accept under our jury system.'

[Citation.]" (*Id.* at p. 25, 100 S.Ct. 1999.)

California courts long have embraced the position reflected in the numerous United States Supreme Court decisions set out above. Two years before the high court's 1895 decision in *Sparf v. United States, supra,* 156 U.S. 51, 15 S.Ct. 273, 39 L.Ed. 343, this court reached the same conclusion: "Of course, a jury, in rendering a general verdict in a criminal case, necessarily has the naked power to decide all the questions arising on the general issue of not guilty; but it only has the right to find the facts, and apply to them the law as given by the court." (*People v. Lem You* (1893) 97 Cal. 224, 228, 32 P. 11, overruled on another ground in *People v. Kobrin* (1995) 11 Cal.4th 416, 427, fn. 7, 45 Cal.Rptr.2d 895, 903 P.2d 1027.)

This has been the law in California since the enactment in 1872 of section 1126, which states: "In a trial for any offense, questions of law are to be decided by the court, and questions of fact by the jury. ***305** Although the jury has the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the court." (See also Penal Code § 1124 ["The Court must decide all questions of law which arise in the course of a trial."]; Evid.Code, § 310, subd. (a) ["All questions of law ... are to be decided by the court."].) Quoting section 1126, we stated in *In re Stankewitz* (1985) 40 Cal.3d 391, 399, 220 Cal.Rptr. 382, 708 P.2d 1260: "In our system of justice it is the trial court that determines the law to be applied to the facts of the case, and the jury is 'bound ... to receive as law what is laid down as such by the court.' [Citation.] 'Of course, it is a fundamental and historic precept of our judicial system that jurors are restricted solely to the determination of *factual* questions and are bound by the law as given them by the court. They are not allowed either to determine what the law *is* or what the law *should be*.' [Citation.]"

The principle that jurors are required to follow the law also is reflected in the decision in *United States v. Dougherty* (D.C.Cir.1972) 473 F.2d 1113. The court in *Dougherty, supra,* acknowledged the existence of jury nullification, observing that "[t]he pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge." (*Id.* at p. 1130.) The circuit court, however, rejecting the contention that the jury should be instructed that it properly could disregard the court's instructions, noted that the "so-called right of jury nullification ... risks the ultimate logic of anarchy." (*Id.* at p. 1133.) The court stated: "An explicit instruction to a jury [sanctioning nullification] conveys an implied approval that runs the risk of degrading the legal structure requisite for true freedom, for an ordered liberty that protects against anarchy as well as tyranny." (*Id.* at pp. 1136-1137, fns. omitted.)

Similarly, the court in *United States v. Moylan* (4th Cir.1969) 417 F.2d 1002, 1006, recognized that a jury has "the undisputed power" "to acquit, even if its verdict is contrary to the law as given by the judge and contrary to the evidence," but rejected the argument that the jury should have been instructed that it had the power to acquit even if the defendants clearly were guilty. The court stated: "However, this is not to say that the jury should be encouraged in their 'lawlessness,' and by clearly stating to the jury that they may disregard the law, telling them that they may decide according to their prejudices or consciences (for there is no check to insure that the judgment is based upon conscience rather than prejudice), we would indeed be negating the rule of law in favor of the rule of lawlessness. This should not be allowed." (*Ibid.*; *United States v. Anderson* (7th Cir.1983) 716 F.2d 446, 449-450 [following "the accepted view that, while the 'community conscience' verdict is to be accepted as a natural and at times desirable aberration under our system, it is not to be positively sanctioned by instructions ... which would encourage a jury to acquit 'under any circumstances' regardless of the applicable law or proven facts"]; *United States v. Washington* (D.C.Cir.1983) 705 F.2d 489, 494 ["It cannot be gainsaid that juries can abuse their power and return verdicts contrary to the law and instructions of the court, and thus nullify the criminal law, but courts generally have refused to give such an instruction to the jury.... *A jury has no more 'right' to find a 'guilty' defendant 'not guilty' than it has to find a 'not guilty' defendant 'guilty,' and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. *306 Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power.* " (Italics added.)].)

California courts are in accord. (*People v. Dillon* (1983) 34 Cal.3d 441, 487-488, fn. 39, 194 Cal.Rptr. 390, 668 P.2d 697; *People v. Sanchez, supra,* 58 Cal.App.4th 1435, 1444-1445, 69 Cal.Rptr.2d 16; *People v. Partner* (1986) 180 Cal.App.3d 178, 185-186, 225 Cal.Rptr. 502; *People v. Gottman* (1976) 64 Cal.App.3d 775, 781, 134 Cal.Rptr. 834.) In *People v. Nichols* (1997) 54 Cal.App.4th 21, 62 Cal.Rptr.2d 433, the defendant was convicted of theft or unauthorized use of a vehicle (Veh.Code, § 10851, subd. (a)) and the jury found that he had suffered two prior convictions. During deliberations, the jury asked whether defendant was subject to the three strikes law. (*People v. Nichols, supra,* 54 Cal.App.4th at p. 24, 62 Cal.Rptr.2d 433; see § § 667, subds. (b)-(i), 1170.12.) The court responded that it could not properly answer that question, and reminded the jurors that they could not consider the subject of penalty or punishment. The defendant argued on appeal that the trial court should have told the jury that the defendant was subject to a three strikes sentence, so that the jury could decide whether to exercise its power of jury nullification. The Court of Appeal rejected this argument, observing that the court need not instruct the jury concerning its power to nullify the law and, thus, need not instruct the jury regarding penalty or punishment so as to enable them to exercise that power. (Accord, *State v. McClanahan* (1973) 212 Kan. 208, 510 P.2d 153, 160 ["Although it must be conceded that the jurors in a criminal case have the raw physical power to disregard both the rules of law and the evidence in order to acquit a defendant, it is the proper function and duty of a jury to accept the rules of law given to it in the instructions by the court, apply those rules of law in determining what facts are proven and render a verdict based thereon."]; *Davis v. State* (Miss.1988) 520 So.2d 493, 494-495 [instructing the jury that it "has a paramount right to acquit an accused person for whatever reason" "would in essence direct juries that they could run amuck"].)

Defendant argues, however, that even if a court need not instruct the jury that it has the power to disregard the law, neither should it instruct the jury to the contrary that it may not nullify the law, nor should the court discharge a juror who indicates an intention to disobey the court's instructions because of a disagreement with the law. This view was considered and rejected in *People v. Sanchez, supra,* 58 Cal.App.4th 1435, 69 Cal.Rptr.2d 16.

Sanchez was charged with murder. One of the prosecution's theories was that the alleged crime was first degree felony murder, because the murder was committed during the course of a robbery. During deliberations, the jury sent the court a note asking whether a murder that took place during a robbery automatically was first degree murder, and the court answered, "Yes." The jury also asked, " 'Can we arrive at a verdict where we find the defendant guilty of robbery/2d degree murder?' " (*People v. Sanchez, supra,* 58 Cal.App.4th 1435, 1443, 69 Cal.Rptr.2d 16.) The court answered "no" and explained the concept of felony murder. The court also reminded the jury of its obligation to " 'follow the law even if you disagree with it.' " inviting any juror who was " 'reluctant to follow the law to tell me, and I'll excuse you from jury service because you're not following the law.' " (*Id.* at p. 1444, 69 Cal.Rptr.2d 16.)

On appeal from the resulting judgment of conviction for first degree murder, the defendant maintained the court erred in ***307** instructing the jury that it " 'must find appellant guilty of first degree murder and could not nullify what it considered to be an unjust law ...' and threatening to remove any juror who could not follow the law." (*People v. Sanchez, supra,* 58 Cal.App.4th 1435, 1444, 69 Cal.Rptr.2d 16.) The Court of Appeal recognized that a jury's power to nullify the law is well established, but rejected the defendant's contention, concluding "the trial court was not required to instruct the jurors on their power of nullification and permit them to disregard the law." (*Id.* at p. 1446, 69 Cal.Rptr.2d 16, fn. omitted.)

One justice dissented, reasoning that the trial court erred in instructing the jury, in effect, that it lacked the power to nullify the law, and compounded that error by "threatening to punish any juror who could not follow the law by removing him or her from the panel." (*People v. Sanchez, supra,* 58 Cal.App.4th 1435, 1453, 69 Cal.Rptr.2d 16 (dis. opn. of Johnson, J.).) The dissent agreed that a court should not instruct the jury that it may disregard the law, but concluded that the court's instruction "erroneously told the jurors they did not have the power or right of nullification." (*Id.* at p. 1456, 69 Cal.Rptr.2d 16 (dis. opn. of Johnson, J.).) The dissent suggested that, instead, the court should have reread the standard instruction (CALJIC No. 1.00) that "directs the jury to decide the case based on the

facts and the law as supplied by the court." (*People v. Sanchez, supra,* at p. 1456, 69 Cal.Rptr.2d 16 (dis. opn. of Johnson, J.).)

The majority in *Sanchez,* relying upon this court's decision in *People v. Dillon, supra,* 34 Cal.3d 441, 194 Cal.Rptr. 390, 668 P.2d 697, rejected the dissent's view that the court erred in instructing the jury that it could not find the defendant guilty of second degree murder if it found that the murder was committed during a robbery. The trial court in *Dillon* had instructed the jury that an unlawful killing that occurs during an attempted robbery is first degree murder under the felony-murder rule. During deliberations, the jury sent the court a note asking whether it could return a verdict of second degree murder or manslaughter even if it found the killing occurred during an attempted robbery. In reply, the court reiterated that a killing committed during an attempted robbery is first degree murder. The jury later found the defendant guilty of first degree murder.

Writing separately on the jury nullification issue before the court in *People v. Dillon, supra,* 34 Cal.3d 441, 490, 194 Cal.Rptr. 390, 668 P.2d 697 (conc. opn. of Kaus, J.), Justice Kaus concluded that "when the jury practically begged the court to show it a way by which to avoid a first degree verdict," the court "should have informed the jury of (1) its power to render a verdict more lenient than the facts justify, and (2) its immunity from punishment if it chooses to exercise that power." (*Id.* at p. 491, fn. 2, 194 Cal.Rptr. 390, 668 P.2d 697 (conc. opn. of Kaus, J.).) The majority in *Dillon* disagreed with Justice Kaus's suggestion on this point, however, stating: "[I]t cannot seriously be argued that, when asked by the jurors, a trial judge must advise them: 'I have instructed you on the law applicable to this case. Follow it or ignore it, as you choose.' Such advice may achieve pragmatic justice in isolated instances, but we suggest the more likely result is anarchy." (*Id.* at pp. 487-488, fn. 39, 194 Cal.Rptr. 390, 668 P.2d 697.)

People v. Fernandez (1994) 26 Cal.App.4th 710, 714, 31 Cal.Rptr.2d 677, involved circumstances similar to those in *Sanchez, supra,* and reached the same conclusion. In *Fernandez,* jurors informed the court that they had found the defendant *308 guilty of the charged offense, but asked whether they could return a verdict of guilty of a lesser offense. The court answered in the negative. The Court of Appeal affirmed the resulting judgment of conviction of the charged offense, stating: " 'A juror's duty "includes the obligation to follow the instructions of the court...." ' [Citations.] ... [T]o give every juror the option of disregarding with impunity any law personally judged to be morally untenable is akin to telling all drivers to drive as fast as they think appropriate without posting a limit as a point of departure. It risks, if not chaos, at least caprice." (*Id.* at p. 715, 31 Cal.Rptr.2d 677.)

Similarly, the court in *United States v. Krzyske* (6th Cir.1988) 836 F.2d 1013, 1021, upheld a jury instruction that stated "[t]here is no such thing as valid jury nullification." The defendant in *Krzyske* was a tax protestor who was prosecuted for failing to file tax returns. The trial court permitted the defendant to use the term "jury nullification" during argument, prompting the jury, during its deliberations, to ask the court to define that term. The court responded: "There is no such thing as valid jury nullification. Your obligation is to follow the instructions of the Court as to the law given to you. You would violate your oath and the law if you willfully brought in a verdict contrary to the law given you in this case." The court of appeals affirmed the resulting judgment of conviction. [FN8]

FN8. Notwithstanding our discussion of the foregoing cases, we express no view on whether, or under what circumstances, a trial court may or must instruct a jury specifically that it has no *power* to render a verdict contrary to the law or the facts before it; that question not being presented in this case.

As suggested by the majority in *People v. Sanchez, supra,* 58 Cal.App.4th 1435, 69 Cal.Rptr.2d 16, it is important not to encourage or glorify the jury's power to disregard the law. While that power has, on some occasions, achieved just results, it also has led to verdicts based upon bigotry and racism. [FN9] A jury that disregards the law and, instead, reaches a verdict based upon the personal views and beliefs of the jurors violates one of our nation's most basic precepts: that we are "a government of laws and not men." (*Reynolds v. Sims* (1964) 377 U.S. 533, 568, 84 S.Ct. 1362, 12 L.Ed.2d 506.)

FN9. Jury nullification includes "acquittals by all-white, southern juries of white defendants who killed, assaulted, or harassed civil rights activists or African Americans generally." (Brown. *Jury Nullification Within the Rule of Law* (1997) 81

> Minn. L.Rev. 1149, 1191.) As one federal circuit court has observed: "[A]lthough the early history of our country includes the occasional Zenger trial or acquittals in fugitive slave cases, more recent history presents numerous and notorious examples of jurors nullifying--cases that reveal the destructive potential of a practice Professor Randall Kennedy of the Harvard Law School has rightly termed a 'sabotage of justice.' [Citation.] Consider, for example, the two hung juries in the 1964 trials of Byron De La Beckwith in Mississippi for the murder of NAACP field secretary Medgar Evers, or the 1955 acquittal of J.W. Millam and Roy Bryant for the murder of fourteen-year-old Emmett Till, [citation]--shameful examples of how nullification has been used to sanction murder and lynching." (*United States v. Thomas* (2d Cir.1997) 116 F.3d 606, 616, fn. 9.)

The only case cited by the parties or that we have found that has addressed the specific issue raised in the present case--i.e., whether a trial court may remove a juror who discloses, during jury deliberations, that he or she will not apply the law as instructed by the court--is *United States v. Thomas, supra,* 116 F.3d 606, involving a prosecution for violation of federal narcotics laws. In *Thomas,* pursuant to the provisions of rule 23(b) of the Federal Rules of Criminal Procedure (18 ***309** U.S.C.) permitting the court to dismiss a juror for "just cause" and have a verdict returned by the remaining 11 jurors, a juror was dismissed during deliberations. The court of appeals held--"that as an obvious violation of a juror's oath and duty--a refusal to apply the law as set forth by the court constitutes grounds for dismissal under Rule 23(b)." (*United States v. Thomas, supra,* 116 F.3d at p. 608.) Restating "some basic principles regarding the character of our jury system," the court of appeals concluded: "Nullification is, by definition, a violation of a juror's oath to apply the law as instructed by the court.... We categorically reject the idea that, in a society committed to the rule of law, jury nullification is desirable or that courts may permit it to occur when it is within their authority to prevent." (*Ibid.*)

The court in *Thomas* added: " 'A jury has no more "*right*" to find a "guilty" defendant "not guilty" than it has to find a "not guilty" defendant "guilty," and the fact that the former cannot be corrected by a court, while the latter can be, does not create a right out of the power to misapply the law. Such verdicts are lawless, a denial of due process and constitute an exercise of erroneously seized power.' [Citation.]" (*United States v. Thomas, supra,* 116 F.3d 606, 615-616.) Although the court in *Thomas* ultimately concluded that the trial court in that case had erred in dismissing the juror in question, because the record suggested that the juror's views may well have been motivated by doubts about the defendant's guilt rather than by an intent to nullify the law, [FN10] the *Thomas* opinion left no doubt that when the record does establish that a deliberating juror is unwilling to apply the law as instructed by the court, "a juror's purposeful disregard of the law as set forth in the court's instruction may constitute just cause for that juror's removal under Rule 23(b)." (*Id.* at p. 625.)

> FN10. On the third day of deliberations in *Thomas,* the district court received a note from a juror stating that, due to Juror No. 5's "predisposed disposition," the jury was unable to reach a verdict. The court interviewed each juror individually. Several jurors stated that Juror No. 5 had disrupted deliberations by "hollering" at his fellow jurors and calling them racists. Two jurors stated that Juror No. 5 had come close to striking a fellow juror. One juror recounted that Juror No. 5 had "pretended to vomit in the bathroom while other jurors were eating lunch outside the bathroom door." (*United States v. Thomas, supra,* 116 F.3d 606, 611.) But one juror said the friction among the jurors had been "pretty well ironed out," and another asserted that some jurors were "picking on" Juror No. 5. (*Ibid.*) Some jurors stated that Juror No. 5 favored acquittal because defendants were "his people," and others stated that Juror No. 5 expressed the view that drug dealing was commonplace and that defendant had engaged in drug dealing out of economic necessity. But other jurors recalled that Juror No. 5 had stated that the prosecution's evidence was insufficient or unreliable. In his interview, Juror No. 5 did not state anything suggesting that he was refusing to follow the law. On the contrary, he stated he needed " 'substantive evidence' establishing guilt 'beyond a reasonable doubt' in order to convict." (*Ibid.*) The district court discharged Juror No. 5, finding that he was refusing to convict " 'because of preconceived, fixed, culturai, economic, [or] social ... reasons that are totally improper and impermissible.' " (*Id.* at

p. 612.) The court of appeals in *Thomas* held that the district court abused its discretion in discharging Juror No. 5, stating: "On this record, we cannot say that it is beyond doubt that Juror No. 5's position during deliberations was the result of his defiant unwillingness to apply the law, as opposed to his reservations about the sufficiency of the Government's case against the defendants." (*Id.* at p. 624.)

[11] Finally, defendant repeatedly asserts, in several different ways, that the juror removed in the present case did not evidence an intention to nullify the law, because he did not express a disagreement *310 with the law prohibiting statutory rape in all applications. Rather, defendant asserts, the removed juror simply concluded the law should not be applied in this case. We need not address whether this purported distinction would make a difference, because we do not agree with defendant's interpretation of the record.

Referring to a note from the jury foreperson, the court asked Juror No. 10 whether it was true that he refused to hear any discussions regarding unlawful sexual intercourse because he "believ[ed] the law to be wrong." Juror No. 10 replied: "Pretty much, yes." The court asked whether the juror was "governed" by defense counsel's statement during argument that "[a] jury may, at times, afford a higher justice by refusing to enforce harsh laws." Again, Juror No. 10 answered, "Yes." The court then asked the juror whether he was "willing to abide by the requirements of your oath?" The juror answered: "I simply cannot see staining a man, a young man, for the rest of his life for what I believe to be a wrong reason." This prompted a brief discussion that ended with the juror stating: "And I'm willing to follow all the rules and regulations on the entire rest of the charges, but on that particular charge, I just feel duty-bound to object." The court then summarized by stating: "So you're not willing then to follow your oath?," to which the juror answered: "That is correct."

In the present case there is ample evidence in the record to support the trial court's finding that Juror No. 10 was unable to perform his duties as a juror. The juror stated that he objected to the law concerning unlawful sexual intercourse and expressly confirmed that he was unwilling to abide by his oath to follow the court's instructions. The juror's inability to perform his duties thus appears in the record "as a demonstrable reality." (*People v. Marshall, supra,* 13 Cal.4th 799, 843, 55 Cal.Rptr.2d 347, 919 P.2d 1280.) The trial court acted properly in excusing Juror No. 10 on this basis.

IV

Jury nullification raises issues that go to the heart of our constitutional form of government. These issues sometimes arise when defendants, as a matter of conscience, choose to violate laws as a means of protest, or to violate laws they view as unjust. Such cases cause us to examine the meaning of the cherished right to trial by jury.

It is striking that the debate over juror nullification remains vigorous after more than a hundred years. [FN11] But it is equally significant that, during this time, no published authority has restricted a trial court's authority to discharge a juror when the record demonstrates that the juror is unable or unwilling to follow the court's instructions.

FN11. See Conrad, Jury Nullification: The Evolution of a Doctrine (1998); Biskupic, *In Jury Rooms, Form of Civil Protest Grows,* Wash. Post (Feb. 8, 1999) page A1; *The Power of Juries,* Orange County Register (Sept. 8, 1997) page 6; Scheflin & Kelso, *Point Counter Point: Is it Ever Proper for Juries to Ignore or Reinterpret the Law?* (Mar., 1999) Cal. Bar J., pages 14-15, 18.

"Championing a jury's refusal to apply the law as instructed is inconsistent with the very notion of the rule of law. As the young Abraham Lincoln said in a related context, 'let me not be understood as saying there are no bad laws, or that grievances may not arise for the redress of which no legal provisions have been made. I mean to say no such thing. But I do mean to say that although bad laws, if they exist, should be repealed as soon as possible, still, while they continue in force, for *311 the sake of example, they should be religiously observed.' " (*Ballard v. Uribe, supra,* 41 Cal.3d 564, 600, 224 Cal.Rptr. 664, 715 P.2d 624 (conc. & dis. opn. of Bird, C.J.).)

Encouraging a jury to nullify a law it finds unjust or to act as the "conscience of the community" by disregarding the court's instructions may sound lofty, but such unchecked and unreviewable power

can lead to verdicts based upon bigotry and racism. [FN12] Jurors who do not feel bound to follow the law can act capriciously, to the detriment of the accused. In addition to refusing to follow laws they view as unjust, such jurors could choose to disregard instructions mandated by the Legislature not to read media accounts of the trial, not to discuss the case with others, or not to conduct their own investigation by visiting the crime scene. (§ 1122.) The jury might feel free to ignore the presumption of innocence or find the defendant guilty even though some jurors harbor a reasonable doubt. (§§ 1096, 1096a; Evid.Code, § § 502, 520.) A jury might disregard an instruction not to draw an inference from the exercise of a privilege (Evid.Code, § 913) and assume the defendant must be guilty if he or she chooses not to testify. In a capital case, a juror could vote to impose the death penalty without considering mitigating evidence. (Pen.Code, § 190.3) Some jurors might decide not to view a defendant's confession with caution or not require corroboration of the testimony of an accomplice. (*People* v. *Carpenter* (1997) 15 Cal.4th 312, 392, 63 Cal.Rptr.2d 1, 935 P.2d 708; *People* v. *Beagle* (1972) 6 Cal.3d 441, 455, 99 Cal.Rptr. 313, 492 P.2d 1; Pen.Code, § 1111.) A jury even might even determine that deliberations are too difficult and decide the defendant's guilt by the flip of a coin. (Pen.Code. § 1181, subd. (4) [verdict may not be decided by lot].)

FN12. See *ante,* 106 Cal.Rptr.2d p. 308, 21 P.3d p. 1220, footnote 8.

These are just a few of the many instructions required by the Legislature that a juror might choose to ignore if encouraged to nullify the law. (See also §§ 1120 [juror must declare "any personal knowledge respecting a fact in controversy in a cause"], 1127a, subd. (b) ["testimony of an in-custody informant should be viewed with caution and close scrutiny"], 1127b [jury is not bound to accept the testimony of an expert witness], 1127c [a defendant's flight after the commission of a crime "is not sufficient in itself to establish his guilt"], 1127f [testimony of a child], 1128 [jury deliberations]; Evid.Code, §§ 457 [jury must accept facts that have been judicially noticed], 1101 [character evidence], 96 [felony for a juror to agree to render a certain verdict or receive information out of court].)

[12] Jury nullification is contrary to our ideal of equal justice for all and permits both the prosecution's case and the defendant's fate to depend upon the whims of a particular jury, rather than upon the equal application of settled rules of law. As one commentator has noted: "When jurors enter a verdict in contravention of what the law authorizes and requires, they subvert the rule of law and subject citizens--defendants, witnesses, victims, and everyone affected by criminal justice administration-- to power based on the subjective predilections of twelve individuals. They affect the rule of men, not law." (Brown, *Jury Nullification Within the Rule of Law, supra,* 81 Minn. L.Rev. at pp. 1150-1151, fn. omitted.) A nullifying jury is essentially a lawless jury.

[13][14] We reaffirm, therefore, the basic rule that jurors are required to determine the facts and render a verdict in *312 accordance with the court's instructions on the law. A juror who is unable or unwilling to do so is "unable to perform his [or her] duty" as a juror (§ 1089) and may be discharged.

V

The judgment of the Court of Appeal is affirmed.

MOSK, J., KENNARD, J., BAXTER, J., WERDEGAR, J., CHIN, J., and BROWN, J., concur.

CONCURRING OPINION BY KENNARD, J.

I agree with the majority that a juror in a criminal case who votes to convict or acquit based on the juror's own moral views rather than on applicable principles of law should be discharged. I write separately, however, to sound a note of caution about the manner in which a trial court should investigate an allegation of such misconduct.

When a deliberating jury tells the trial court that one of its members refuses to obey the court's instructions on the law, the court faces a delicate and difficult task, because its "duty to dismiss jurors for misconduct comes into conflict with a duty that is equally, if not more, important--safeguarding the secrecy of jury deliberations." (*U.S.* v. *Thomas* (2d Cir.1997) 116 F.3d 606, 618.) A juror who votes to convict or acquit for reasons that violate the trial court's instructions on the law commits misconduct. Yet the trial court cannot probe the juror's

motivations for fear of compromising the secrecy of the jury's deliberations. (*U.S. v. Brown* (D.C.Cir.1987) 823 F.2d 591, 596.) To permit trial judges "to conduct intrusive inquiries into ... the reasoning behind a juror's view of the case, or the particulars of a juror's (likely imperfect) understanding or interpretation of the law as stated by the judge" (*U.S. v. Thomas, supra,* 116 F.3d at p. 620) would violate the secrecy of jury deliberations, a cornerstone of this nation's jurisprudence, and it would "invite trial judges to second-guess and influence the work of the jury" (*ibid*).

In *People v. Cleveland* (2001) 25 Cal.4th 466, 106 Cal.Rptr.2d 313, 21 P.3d 1225, a companion to this case, this court highlights the dangers of intruding upon the jury's deliberative process: "Jurors may be particularly reluctant to express themselves freely in the jury room if their mental processes are subject to immediate judicial scrutiny. The very act of questioning deliberating jurors about the content of their deliberations could affect those deliberations. The danger is increased if the attorneys for the parties are permitted to question individual jurors in the midst of deliberations." (*Id.*, at 106 Cal.Rptr.2d 321, 21 P.3d at 1231.)

Thus, in questioning a juror to determine whether the juror is refusing to follow the trial court's instructions on the law, as alleged by other jurors, a trial court should conduct only a very limited inquiry. The court should caution the juror that it does *not* want to know whether the juror is voting to convict or acquit the defendant, or the reasons for that vote. The court should then state that it wants to know *only* whether the juror is willing to abide by the juror's oath to decide the case " 'according only to the evidence presented ... and ... the instructions of the court' " (Code Civ. Proc., § 232, subd. (b)), to which the juror is to respond only with either "yes" or "no."

If the juror's answer is "yes," the trial court should simply order the entire jury to resume deliberations. If the answer is "no," the court should discharge the juror in question. If the juror's answer is equivocal, the trial court may have to inquire *313 further. In doing so, however, the court should be mindful of these words of warning: "Where the duty and authority to prevent defiant disregard of the law or evidence comes into conflict with the principle of secret jury deliberations, we are compelled to err in favor of the lesser of two evils--protecting the secrecy of jury deliberations at the expense of possibly allowing irresponsible juror activity." (*U.S. v. Thomas, supra,* 116 F.3d at p. 623.)

In this case, the trial court's questioning of Juror No. 10, quoted in full by the majority (see maj. opn., *ante,* 106 Cal.Rptr.2d at 298-299, 21 P.3d at pp. 1212-1213), went beyond the limited inquiry described above. Rather than asking only whether Juror No. 10 was willing to follow the court's instructions on the law, the court asked questions that were likely to--and did--reveal whether Juror No. 10 was of the view that defendant should be convicted or acquitted of the crime of unlawful sexual intercourse, and the reasons for that view. This unnecessarily broad inquiry may well have infringed upon the secrecy of the jury's deliberations.

Because defendant did not raise this issue in his petition for review, the majority expresses no views on the propriety of the trial court's line of questions. Thus, the majority opinion should not be read as expressing approval of the trial court's overly broad inquiry of Juror No. 10. With that caveat, I concur in the majority opinion.

CONCURRING OPINION BY WERDEGAR, J.

I concur entirely in the majority's decision to affirm the judgment of the Court of Appeal. As I explain more fully in my concurring opinion in *People v. Cleveland* (2001) 25 Cal.4th 466, ----, 106 Cal.Rptr.2d 313, 330- 331, 21 P.3d 1239, although we review for abuse of discretion a trial court's determination that good cause exists to discharge a juror, "a stronger evidentiary showing than mere substantial evidence is required to support a trial court's decision to discharge a sitting juror." (*Id.*, 106 Cal.Rptr.2d at 330, 21 P.3d at 1239 (conc. opn. of Werdegar, J.).) Instead, a juror's refusal or inability to deliberate or, as here, a juror's inability or unwillingness to perform the duties of a juror (Pen.Code, § 1089), must appear to a demonstrable reality before he or she may be discharged.

Because I agree the evidence shows to a demonstrable reality that Juror No. 10 was unable or unwilling to perform his duties as a juror due to his stated refusal to follow the law, I concur in the majority's opinion.

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary / House
Committee Name

Committee on HB463 Role of Juries
Bill / Subject

Dated 4-18-02

Teleconferenced 4/3/02

See Attached

SIGNED: John S. Bradley
Testifier

citizen
Representing

2004 Steese Hwy
Address / Phone Number

Fairbanks, AK 99712

A yes Vote for HB 463 restores Liberty

Restore liberty & justice by jury!

Without the power to decide what facts, law and evidence are applicable, **JURIES** cannot be a protection to the accused. If people acting in the name of government are permitted by **JURORS** to dictate any law whatever, they can also unfairly dictate what evidence is admissible or inadmissible and thereby prevent the **WHOLE TRUTH** from being considered. Thus if government can manipulate and control both the law and evidence, the issue of fact becomes virtually irrelevant. In reality, true **JUSTICE** would be denied leaving us with a trial by government and not a trial by **JURY!**

The JURY judges the Spirit, Motive and Intent of both the law and the Accused, whereas the prosecutor only represents the letter of the law.

Therein lies the opportunity for the accomplishment of "LIBERTY and JUSTICE for ALL."

Unchecked power is the foundation of tyranny. It is the **JUROR'S** duty to use the **JURY ROOM** as a vehicle to stem the tide of oppression and tyranny: To prevent bloodshed by peacefully removing power from those who have abused it. The **JURY** is the primary vehicle for the peaceable restoration of **LIBERTY, POWER AND HONOR TO "WE THE PEOPLE!"**

Absolute power corrupts absolutly
HB 463 restores a check on those who abuse power. I trust the legislatures good conscience will prevail for the whole community. Not the special interests please.

Sincerely, John S. Brading
2004 Steese, Hwy
Fairbanks, Ak
99712

Subject: [Fwd: DO LIVE IN A DEMOCRACY OR REPUBLIC?]
Date: Mon, 08 Apr 2002 13:24:16 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: DO LIVE IN A DEMOCRACY OR REPUBLIC?
Date: Sat, 29 Sep 1956 23:18:21 -1000
From: "Frank W. Turney" <fturney@mosquitonet.com>
Organization: JuryRights.com
To: Scott Calder <thecalder@hotmail.com>, Shane Longbine <Shane_Longbine@legis.state.al
Rynnieva Moss <akpolitics@mosquitonet.com>, Robert Boko <bobtou@gci.net>,
Rita Hymes <dorih@gci.net>,
"Representative_Norman_Rokeberg@legis.state.ak.us" <Representative_Norman_Rokebe
Paul Zimmerman <plj120288@hotmail.com>, Mary Jane Owens <cwarrior@ptialaska.net:
Margaret Dennis <mdennis@gci.net>, KEANE CRAWFORD <keanecrawford@hotmail.c
Jodi Olmstead <JLynnak@hotmail.com>, JIM RICE & LOUISE <ricer@mosquitonet.com
Jeff Bowman <jbowman@jeffbowman.com>, Harry Niehaus <Niehaus_Harry@hotmail.cc
Gene George <areporter@warrentonmo.com>, "Hank/Linda Wright (E-mail)" <hwright@g
Ed Myers <mr-ed@gci.net>, Charles Rollins Jr <chuck@charlesrollins.com>, Dirk <ruffle
Bob Newland <newland@rapidcity.com>, Brian Fox <brianfox@mosquitonet.com>, AL <
Adam Bijan <a2@ak.net>

Those of you who use the word democracy...Do ycu really know what
you're talking
about or asking for?...I coulnt help but notice some of the E-mail that
i recieve is filled
with that word..Like you belong to some kind of club.....
Read a little bit of history..James Madison the Father of the
U.S.Consitution explains
"In the Federalist Papers,he wrote.."Democracy is the most vile form of
government"
Next time you use that word...Please let me know what the "Hell you're
taking about"
Are we supose to be under a Constitution Republic?..thanks,Frank Turney

---

Subject: CONVICITION NULLIFIED AFTER STUN-BELT'ABUSE'
Date: Sat, 29 Sep 1956 23:23:25 -1000
From: "Frank W. Turney" <fturney@mosquitonet.com>
Organization: JuryRights.com
To: Shane Longbine <Shane_Longbine@legis.state.ak.us>, Scott Calder <thecalder@hotmail.c
Rynnieva Moss <akpolitics@mosquitonet.com>, Robert Boko <bobtou@gci.net>,
Rita Hymes <dorih@gci.net>,
"Representative_Norman_Rokeberg@legis.state.ak.us" <Representative_Norman_Rokebe
Michael Kellner <mkellner@intlweb.com>, Mary Jane Owens <cwarrior@ptialaska.net>,
Margaret Dennis <mdennis@gci.net>, KEANE CRAWFORD <keanecrawford@hotmail.c
Larry Becraft <becraft@hiwaay.net>, Jodi Olmstead <JLynnak@hotmail.com>,
JIM RICE & LOUISE <ricer@mosquitonet.com>, Jeff Bowman <jbowman@jeffbowman.
Harry Niehaus <Niehaus_Harry@hotmail.com>, "Hank/Linda Wright (E-mail)" <hwright@
Gene George <areporter@warrentonmo.com>, Ed Myers <mr-ed@gci.net>, Dirk <ruffle@
Charles Rollins Jr <chuck@charlesrollins.com>, Brian Fox <brianfox@mosquitonet.com>
Bob Newland <newland@rapidcity.com>, Betty Rollins <wayfarer@mosquitonet.com>,
AL <freehemp@ak.net>, Adam Bijan <a2@ak.net>, "'Jon Roland'" <jon.roland@constitut

Conviction nullified after stun-belt 'abuse'
By Frank J. Murray
THE WASHINGTON TIMES
http://www.washingtontimes.com/national/20020408-298620.htm

A federal appeals court has nullified a bank robber's conviction and 105-year sentence because a trial judge let U.S. marshals strap a 50,000-volt stun belt on him.

"Use of a stun belt as a security device at trial imposes substantial burdens upon a defendant's constitutional rights," said the 3-0 decision, which establishes the first legal standards for courtroom use of the restraint device. U.S. courts and prisons have used stun belts to deter escapes since 1991.

"The district court abused its discretion in ordering [Jeffery S.] Durham to wear the belt," the 11th U.S. Circuit Court of Appeals said Friday in ordering a new trial for Durham. If the court's ruling stands, it would take 105 years off the 132*-year sentence Durham is serving, including for other robberies, at a federal "supermax" prison in Florence, Colo.

Durham never was shocked by his belt, but the Atlanta-based appeals court accepted his claim that fears of accidental triggering distracted him from helping his attorney at the trial, and that prosecutors failed to show that didn't affect the verdict.

The $800 belts — universally called StunTechs for their original brand name — are concealed by a shirt or jacket and avoid the need for handcuffs or shackles that may prejudice jurors. Fear of an electric jolt inhibits a prisoner who is violent or an escape risk.

A prisoner who attacks someone or attempts to flee can be disabled by electrical shock, triggered by a radio control held by a nearby officer.

"StunTechs have been worn 60,000 times but only activated intentionally 37 times, and there were nine accidental activations prior to us putting a guard over the switch seven years ago," said Dennis Kaufman, whose company sold about 1,800 waist belts and now markets a smaller, less bulky version that fits an arm or a leg.

The belts are used routinely by governments in the United States and abroad. They administer a temporarily disabling eight-second surge of electricity that stops men in their tracks or knocks them down, causing brief pain and muscular weakness that can last 45 minutes.

Amnesty International labels the belts "torture devices," and the U.N. Committee Against Torture said in May 2000 that U.S. use of stun belts on prisoners may violate a Geneva Convention against torture.

Mr. Kaufman argues the temporary discomfort caused by the stun belts may save a criminal's life and protect those around him.

"If you can control somebody from a distance and it's nonlethal, what better way is there? We're protecting everybody, including the defendant in court. It's really a no-brainer," Mr. Kaufman said in an interview.

Mr. Kaufman said defibrillators that shock a heart back into rhythm produce 400 joules of energy, while StunTech produces 0.35 joules.

"StunTech puts out four milliamps, not enough to light a small Christmas tree bulb," he said.

U.S. Marshals Service spokesman Drew Wade said StunTechs are used in virtually all 95 federal court districts.

"We've never had an accident," Mr. Wade said.

Mr. Kaufman said stun belts are used in 30 of the 50 state prison systems and have been sold to the federal Bureau of Prisons.

Mr. Wade said most districts own one or two stun belts. In Washington, D.C., he said, six were used during last year's three-month capital-murder trial of Tommy Edelin and his "1-5 Crew." U.S. District Judge Royce Lamberth let marshals use the belts in the interest of "maintaining a secure courtroom."

The 11th Circuit opinion written by Circuit Judge Charles R. Wilson was joined by Judges Rosemary Barkett, who like Judge Wilson is a Clinton appointee, and by Judge Gerald B. Tjoflat, a Nixon appointee.

By declaring that stun belts infringe on a defendant's constitutional rights, the appeals court imposed a court duty to scrutinize each case, saying trial judges must consider facts on the record to justify each use of a belt, weigh alternatives to electroshock security, and decide how the belt should operate.

Durham still was serving 27* years for a bank robbery to which he pleaded guilty. The court said Durham and his accomplices got away with almost $500,000 in a series of robberies.

Liberty's Educational Advocacy Forum
http://freedomlaw.com
promotes "action that raises the cost of State violence for its perpetrators ... lay(ing) the basis for institutional change." [Noam Chomsky]

ProPerProSe Self Help Clinic and Sovereign Law Library
http://properprose.co

Subject: WORTH READING...HIGH COURT...Juries vs Judges
Date: Sat, 29 Sep 1956 23:36:31 -1000
From: "Frank W. Turney" <fturney@mosquitonet.com>
Organization: JuryRights.com
To: swampy <swampy@ptialaska.net>,
Shane Longbine <Shane_Longbine@legis.state.ak.us>,
Scott Calder <thecalder@hotmail.com>,
Rynnieva Moss <akpolitics@mosquitonet.com>, Robert Boko <bobtou@gci.net>,
Rita Hymes <dorih@gci.net>,
"Representative_Norman_Rokeberg@legis.state.ak.us" <Representative_Norman_Rokebe
Mary Jane Owens <cwarrior@ptialaska.net>, Margaret Dennis <mdennis@gci.net>,
Larry Becraft <becraft@hiwaay.net>,
KEANE CRAWFORD <keanecrawford@hotmail.com>,
JIM RICE & LOUISE <ricer@mosquitonet.com>,
Jodi Olmstead <JLynnak@hotmail.com>, Jeff Bowman <jbowman@jeffbowman.com>,
Harry Niehaus <Niehaus_Harry@hotmail.com>,
"Hank/Linda Wright (E-mail)" <hwright@gci.net>,
Gene George <areporter@warrentonmo.com>, Ed Myers <mr-ed@gci.net>,
Dirk <ruffle@att.net>, Charles Rollins Jr <chuck@charlesrollins.com>,
Bob Newland <newland@rapidcity.com>, AL <freehemp@ak.net>,
Adam Bijan <a2@ak.net>, "'Jon Roland'" <jon.roland@constitution.org>,
" planetrail@webtv.net" <planetrail@webtv.net>

High Court Heads Deep Into Sentencing Thicket
The National Law Journal
April 8, 2002

In Apprendi v. New Jersey a deeply divided U.S. Supreme Court ruled that

juries, and not judges, must determine the facts that increase many criminal sentences. It was predicted the ruling would unleash a wave of defense challenges. And so it has. On April 15, the Court will hear arguments in one of those challenges, U.S. v. Cotton, a case that could allow Apprendi to be applied retroactively.
Visit the U.S. Supreme Court Monitor
http://www.law.com/us_supreme_ct/

Subject: [Fwd: Keep up the good works]
Date: Fri, 05 Apr 2002 14:30:53 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobreg @legis.state.ak.us

Subject: Keep up the good works
Date: Fri, 05 Apr 2002 13:16:03 -0900
From: Adam Bijan <a2@ak.net>
To: Representative_Norman_Rokeberg@legis.state.ak.us

Representative_Norman_Rokeberg

Looks like you are moving along very well on the House Bill #463, "Role Of The Jury". **Please do, whatever needs to be done** in order to have this House Bill #463 voted on, passed and moved to the Senate, soon. You have my full support, let it become a good law!

Keep up the good works, thank you, Adam

Subject: [Fwd: FW: "The Role Of The Jury" - HB463]
Date: Fri, 05 Apr 2002 12:29:15 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: FW: "The Role Of The Jury" - HB463
Date: Fri, 05 Apr 2002 10:16:41 -0900
From: Brian Fox <brianfox@mosquitonet.com>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>
CC: <Representative_Scott_Ogan@legis.state.ak.us>

Just want to pass this on to you too. Brian Fox

From: Brian Fox <brianfox@mosquitonet.com>
Date: Tue, 02 Apr 2002 09:35:48 -0900
To: <Representative_John_Coghill@legis.state.ak.us>
Subject: "The Role Of The Jury" - HB463

Dear Representative Coghill;

This is to inform you of my support of your bill HB463 regarding jurys and jurors. It is very important that the balance of power in a courtroom or in the court system at large for that matter - be a balance of power.

Alaska has the distinction of having one of the worst legal systems in the United States, with citizens having almost zero recourse to the law in ANY type of situation. Any act by the legislature or a legislator to return power to the citizens, including a jury - is appreciated and very much needed.

Let us right the wrongs and balance the inequities.

Sincerely, Brian Fox

Subject: HB463
Date: Fri, 15 Mar 2002 19:55:55 -0900
From: "Mary Jane Owens" <cwarrior@ptialaska.net>
To: <Fairbanks_LIO@legis.state.ak.us>
CC: "John Coghill" <Fairbanks.LIO@legis.state.ak.us>

3 Cheers!!!!
At last we have a possibility to regain a right recognized for over 700 years by our forebearers, and guarenteed to us as U.S. citizens for over 200 years, and with it a means to begin restoring some sort of check-and-balance system for citizen controll of our own government. I certainly hope there will be no dessentors, nit-pickers, etc to slow done or derail this effort at the restoration of our basic right to self government, and that you will be able to sheppard it, post haste, into law.

I congradulate Mr Turney on the emergence of his ten year effort into fact, and thank you for your action toward getting this long overdue legislation rolling. Even once passed, the battle will be to get Dept. of Law and our justice system to recognise and accept it. And the Dept of Public Safety to recognize the authority of any consistant public voice, including legislated law.

You may have noticed that the Dept. of Public Safety and the Dept. of Law excercise, in actual fact, a virtual veto power over laws passed by the Legislature. You may have also noticed what seems to be a steady erosion of means to hold these agencies and their employees accountable to the law, for their actions, their ethics, or lack of them. This has allowed them a degree of capriciousness quite out of keeping with our constitutional intent and the rights defined there.

Please do not allow concerns for the efficiency of processing of citizens into felons, derail this bill and further interfere with our individual rights, or our rights to self government. We definately need voting power over the exercise of police powers, State as well as Federal, as currently used.

Good laws do us little good in reality if the powers of the State Police and Law Dept. can use them or ignore them according to their own agendas, whims, and desires, or those of State officials, without accountability or check.

Your efforts are vastly appreciated,

Mary Jane Owens
325 7th Ave
Fairbanks, Ak 99701
451-0899

Subject: [Fwd: HB 463]
Date: Wed, 10 Apr 2002 14:56:06 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB 463
Date: Wed, 10 Apr 2002 13:01:14 -0700
From: "David Brody" <brody@wsu.edu>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Representative Rokeberg: Thank you for letting me testify before the judiciary committee last week regarding HB 463 (informed Juries). As a disinterested party who frankly sees some flaws in the bill, I am uncomfortable participating in a mail campaign in support of the bill. I do however, think it does involve an important issue and should become law in an amended form. Rather than urge your support for the bill, I simply want to offer my expertise on the topic and let you know that I am available to speak with yourself and other members of the committee about questions or concerns you may have, whether such discussions be formal or informal.

Sincerely,

David C. Brody, JD, PhD
Assistant Professor and Coordinator
Criminal Justice Program
Washington State University Spokane
668 N. Riverpoint Blvd.
Spokane, WA 99202-1662
509 358-7952
fax 509 358-7900

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winmail.dat	**Name:** winmail.dat **Type:** application/ms-tnef **Encoding:** base64

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB463 **bill/subject**, **dated** 4/3/02.

I support House Bill 463. Our State Laws should line up with the great principle of trial by jury in our federal constitution. Article 3, section 2.

Trial by jury means exactly that, no restraints, resrictions, or impediments to the conscience of each juror. The decision of a particular juror should include judging the Law as well as the facts.

Sincerely, Patrick Dalton

Signed: Patrick Dalton
Testifier

Representing (Optional)

P.O. Box 1913, Delta Jct., AK 99737
Address

None
Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name on **committee on** HB 463 **bill/subject**, **dated** 4/3/02.

I support HB 432 & it is long overdue / I served for 3 months on grand jury duty & was shocked at the way the jury was selected.

Few people who are not paid to be off of work can afford to serve on jury duty. Government and state workers are anxious to serve because they get paid their regular salary while serving on jury duty and miss their regular jobs. This is not a jury of my peers and is not for most people.

I was the secretary of our jury pool & brought F.I.J.A. information to my fellow jurors. I was met with hostility and frequently my vote would go one way & theirs the other because I just got the laws.

The judicial system is to be part of our three system of checks & balances. It needs to be kept in check.

Signed: Stacey Dalton

Testifier

Representing (Optional)

P.O. Box 1413 . Delta Jct. AK 99737

Address

Phone No.

faxed 12:05p
4-3-02

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 463, dated 4-3-02
bill # / subject

We, the People, must have the ultimate check and balance on our government or we do not have government by and for the people. If we the people cannot control the laws of our own country, we have no liberty, but have reverted back to government by and for the king and the king's men. Tyranny by 500 is no better than tyranny by 1. James Madison addressed this in the *Federalist Papers* in the 1780's and it is very self-evident. A fully informed jury was the backbone of our republic until the early part of the 1900's. Slaves were turned free by jury nullification. A jury that refused to convict on the grounds of religious liberty freed William Penn. The Peter Zinger jury refused to convict for sedition to protect freedom of speech and the press. I will enclose some quotes from our history:

"The jury has a right to judge both law and fact in controversy."
John Jay, First Chief Justice U.S. Supreme Court, 1789.

"The jury has the power to bring a verdict in the teeth of both law and fact."
Oliver Wendell Holmes, U.S. Supreme Court, 1902

"The law itself is on trial quite as much as the cause which is to be decided."
Harlan Stone, Twelfth Chief Justice, U.S. Supreme Court, 1941

"The pages of history shine on instances of the jury's exercise of its prerogative to disregard instructions of the judge...." *U.S. v. Dougherty, 474 F 2nd 1113, 1139, (1972)*

Signed: Seymour Mills
Testifier

Self
Representing (optional)

PO Box 51 Sterling, AK 99672
Address

262-9289
Phone number

faxed 12:05pm 4-3-02

I have supported and promoted the power of the jury for many years because without it we are at the mercy of a select few that can lord it over us with no recourse. At one time it was a capital crime to kill one of the king's deer. The only reason such a heinous law existed was because no one had any way to change it. The king and his barons and lords ruled supreme. Under the republican form of government, we are guaranteed by Article 4, Section 4 of the Constitution of the United States that we the people are to have control of our government and are to be the ultimate check and balance. There have been numerous attempts to suspend or ignore numerous articles of our Bill of Rights, and we the people must do everything in our power to prevent this. A fully informed jury is one of the best protections.

Signed: Seymour Mills
Testifier

Self
Representing (optional)

PO Box 51 Sterling, AK 99672
Address

262-9289
Phone number

Subject: Bill 463- [redacted]
Date: Thu, 21 Mar 2002 18:28:30 -0800
From: "Pete and Brandy Jacobsen" <jacobsen@gci.net>
To: <Representative_John_Coghill@legis.state.ak.us>

Dear Representative Coghill:

Today I received a call from your assistant, Ms. Rynnieva Moss. She asked if you could use my letter regarding the State of Alaska vs. [redacted] as evidence in support of Bill 463 (?) regarding jury nullification. I gave my permission. This letter is to qualify that permission. Or, more accurately, to clarify why I gave permission for that letter to be used.

My permission to give use of that letter does not imply my support for the bill under consideration. My understanding of the bill is that it will provide a statutory basis for jury nullification, including jury instructions that the appropriateness of application of the law be considered and not just the black-and-white issues of whether or not a statute has been violated. I am well aware of the issue of jury nullification, and have become even more aware of it since serving on that jury last May. I have mixed feelings on the concept. My feelings on this bill- as I understand it- are somewhere between neutrality and ambivalence. I have deep respect for the law and feel that the bill could weaken enforcement of laws; in contrast, it can also reduce the possibility of being abused by the law- which I assume is the intent of this bill.

Likewise, my permission for use of the letter does not imply that the verdict rendered in May would have been any different if this bill was law at that time. However, if the jury rules included instructions on appropriateness of applying the law and jury nullification, I can say that such rules would have been carefully considered and may have resulted in a not-guilty verdict.

Although not willing to support the bill (or oppose it, for that matter) and not offering an opinion that the verdict would have been different, I understand that my letter is quite relevant to the debate and therefore am allowing its use. As I said when I wrote you in July, these are issues for the legislature to decide. I am glad to see the system at work. I will have nothing to say to the press or anyone else beyond what I have stated here, and therefore ask that you recognize that my helpfulness for this bill is limited and request that my privacy be respected to the greatest extent possible.

I will offer to do one more thing, however, and you or your aide can contact me at the appropriate time if conditions warrant. If the bill passes, and, as Ms. Moss implied, [redacted]' case is a driving force behind the passage of the law, it would seem to me that [redacted] should consider seeking a pardon. I would be willing to write Governor Knowles (or Ulmer or Murkowski) a letter regarding such a pardon, stating the same thing I mentioned above: if the law had been in effect in May of 2001, there would have been a distinct possibility of a not-guilty verdict.

Regards, Pete Jacobsen

FULLY INFORMED JURY ASSOCIATION

February 21, 2002

The Honorable Norman Rokeberg
House Judiciary Committee
Room 118
State Capitol Building
Juneau, AK

Dear Representative Rokeberg:

The Fully Informed Jury Association is a national, non-profit, 501 (c)3 educational organization dedicated to informing citizens of their responsibilities when they serve in a jury trial. FIJA's goal is to promote respect for the law and criminal justice system by informing people of their important role as trial jurors.

The founding fathers established the right to trial by jury of one's peers and mentioned it in the constitution several times because they knew it was fundamental to a self-governing people. The framers wisdom of placing the power to judge the application of the law and to use conscience when bringing in a verdict has been proven time and time again. It is no less important today than when jurors refused to find defendants guilty of breaches of the Fugitive Slave Act.

Although FIJA doesn't endorse proposed legislation, we recognize that HB 463 acknowledges a jury's rights, powers, and duties in bringing in a general verdict. This will pay immeasurable dividends for the State of Alaska. More of its citizens will come away from their experiences in court satisfied that the system actually delivers justice. It also will be an important tool for legislators to recognize trends in public opinion.

Finally, as 12-year veteran of the Oklahoma House Of Representatives, I understand the importance of your role and the decisions you must make. If I can be of any further assistance to you or your colleges, please feel free to contact me.

Sincerely,

Charles Key

Charles Key

In regards to HB 463 Role of the Jury

"What judges don't tell the Juries"

"At the time of the adoption of the Constitution, the jury's role as defense against political oppression was unquestioned in American jurisprudence. This nation survived until the 1850's, when prosecutions under the Fugitive Slave Act were largely unsuccessful because juries refused to convict."

"Then judges began to erode the institution of free juries, leading to the absurd compromise that is the current state of the law. While our courts uniformly state juries have the power to return a verdict of not guilty whatever the facts, they routinely tell the jurors the opposite."

"Further, the courts will not allow the defendants or their counsel to inform the jurors of their true power. A lawyer who made . . . Hamilton's argument would face professional discipline and charges of contempt of court."

"By what logic should juries have the power to acquit a defendant but no right to know about that power? The court decisions that have suppressed the notion of jury nullification cannot resolve this paradox."

"More than logic has suffered. As originally conceived, juries were to be a kind of safety valve, a way to soften the bureaucratic rigidity of the judicial system by introducing the common sense of the community. If they are to function effectively as the 'conscience of the community,' jurors must be told that they have the power and the right to say no to a prosecution in order to achieve a greater good. To cut jurors off from this information is to undermine one of our most important institutions."

"Perhaps the community should educate itself. Then citizens called for jury duty could teach the judges a needed lesson in civics."

The Minneapolis Star and Tribune, Nov 13, 1984

Submitted by: John Brading
2004 Steese Hwy
Fairbanks, AK 99712

Subject: [Fwd: HB463]
Date: Mon, 29 Apr 2002 08:05:32 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB463
Date: Mon, 29 Apr 2002 07:50:21 -0800
From: Brian Fox <brianfox@mosquitonet.com>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Please support this bill. Because of extreme imbalances in Alaska in favor of the government, which itself has run amok, any bill that restores or protects power in the people's hands, in this case a jury, is vital.

The court and "justice" system in Alaska is a joke. It needs to be changed. Thank you for your attention to this matter.

Sincerely, Brian Fox

HB 472

CS FOR HOUSE BILL NO. 472(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, McGuire, Meyer

A BILL

FOR AN ACT ENTITLED

"An Act relating to certain persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

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

*** Section 1.** AS 08.76.010 is repealed and reenacted to read:

Sec. 08.76.010. Records and verification of identity. (a) A person who is a pawnbroker or a secondhand dealer shall maintain a record for at least one year of an item purchased or acquired by the person as a pawnbroker or secondhand dealer if the item

(1) has a serial number;

(2) has a resale value of $75 or more; or

(3) is presented in a lot of 10 or more similar items, except for books, in a seven-day period by one individual.

(b) The record required by (a) of this section must contain the following information, which the pawnbroker or secondhand dealer shall record at the time of

each purchase or acquisition:

(1) the date of the purchase or acquisition;

(2) the name of the person conducting the purchase or acquisition;

(3) the name and address of the customer and a physical description of the customer, including age, height, weight, race, color of hair, and color of eyes;

(4) a description of the item purchased or acquired that includes, for a firearm, watch, camera, or optical equipment bought or acquired, the name of the maker, the serial, model, or other number, and all letters and marks on the item;

(5) the price paid or amount loaned for the item;

(6) the signature of the customer and a notation by the person conducting the purchase or acquisition naming the type of identification card used to identify the customer under (c) of this section and giving the number of the card.

(c) The person actually conducting the purchase or acquisition for which a signature is required under (b)(6) of this section shall verify the identity of the customer by comparing the signature of the customer with the signature on a driver's license, state identification card, or other identification card issued by a governmental entity to the customer.

* **Sec. 2.** AS 08.76.020 is repealed and reenacted to read:

Sec. 08.76.020. Manner of recording entry. (a) A pawnbroker or secondhand dealer shall record the information required by AS 08.76.010 by handwriting or on a computer.

(b) If a pawnbroker or secondhand dealer records the information required by AS 08.76.010 by handwriting, the written entry shall be made in a bound ledger, appear in chronological order, and be made in ink or indelible pencil. A pawnbroker or secondhand dealer may not leave blank lines between entries or make obliterations, alterations, or erasures. A pawnbroker or secondhand dealer shall make corrections by drawing a line in ink through the entry without destroying its legibility.

(c) If a pawnbroker or secondhand dealer records the information required by AS 08.76.010 on a computer, then the pawnbroker or secondhand dealer shall use a system that guarantees that a record cannot be eliminated after entry, including using software that prevents elimination from the computer, saving printed serialized

receipts, or using another method acceptable to the police department or state troopers to whom reports are submitted under AS 08.76.025.

* **Sec. 3.** AS 08.76 is amended by adding a new section to read:

Sec. 08.76.025. Reports and availability of records. (a) A pawnbroker or secondhand dealer shall make all records required by this chapter, whether entered by handwriting or in a computer, available for inspection by a law enforcement officer at all reasonable times.

(b) A pawnbroker or secondhand dealer who is required to maintain records under AS 08.76.010 shall provide a report every two weeks to

(1) the police department of the municipality where the person's business is located; or

(2) the state troopers if the person's business is not located in a municipality or is located in a municipality that does not provide police protection services.

(c) The report required by (b) of this section must summarize all purchases and acquisitions of the pawnbroker or secondhand dealer during the previous two weeks for which the information under AS 08.76.010 is required and must be on a form or in a format established by the Department of Public Safety for the report.

* **Sec. 4.** AS 08.76.030 is amended to read:

Sec. 08.76.030. Criminal liability. A person who **knowingly** violates AS 08.76.010, [OR] 08.76.020, **or 08.76.025** is guilty of a **class A** misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

* **Sec. 5.** AS 08.76.030 is amended by adding a new subsection to read:

(b) In this section, "knowingly" has the meaning given in AS 11.81.900.

* **Sec. 6.** AS 08.76 is amended by adding new sections to read:

Sec. 08.76.050. Property holding requirement. Unless the pawnbroker has acquired the item from a retailer or a wholesaler, a pawnbroker who is subject to the reporting requirements of AS 08.76.010 shall hold an acquired item for 30 days after the item is received by the pawnbroker before the item may be sold or transferred to

another person.

Sec. 08.76.095. Definitions. In this chapter,

(1) "pawnbroker" means a person who engages in the business of acquiring secondhand items as collateral for loans, but does not include a person regulated under AS 06;

(2) "secondhand dealer" means a person who engages in the business of purchasing secondhand articles for resale in whole or part, including a jeweler, a furrier, a coin dealer, and a computer dealer, but does not include a motor vehicle dealer or buyer's agent subject to AS 08.66.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 2, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 4.19.02

The JUDICIARY Committee considered: **HB 472**

HOUSE BILL NO. 472 **PAWNBROKERS/SECONDHAND DEALERS**

"An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

Recommends it be replaced with ____ **CS** HB472 (JUD) [✓] **Same Title** [ ] **New Title**

*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____

[ ] attach amendments

[ ] add new referral to _____Committee

[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *For Chief Clerk's Office Use Only				
List by Dept(s):	***FN#**	**Fiscal**	**Indet.**	**Zero**
DPS				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	**FN#**	**Fiscal**	**Indet.**	**Zero**
DPS	1			✓

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Berkowitz			✓	
	Meyer	✓			
	Coghill			✓	
	JAMES			✓	
	Kookesh			-	
Chair:	Rokeberg			✓	
Chair:					

22-LS1519\O
Bannister
4/18/02

Adopted 4.19.02 Amended

CS FOR HOUSE BILL NO. 472(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GREEN, McGuire, Meyer

A BILL

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(1) has a serial number;

(2) has a resale value of $75 or more; or

(3) is presented in a lot of 10 or more similar items, except for books, in a seven-day period by one individual.

(b) The record required by (a) of this section must contain the following information, which the pawnbroker or secondhand dealer shall record at the time of

each purchase or acquisition:

(1) the date of the purchase or acquisition;

(2) the name of the person conducting the purchase or acquisition;

(3) the name and address of the customer and a physical description of the customer, including age, height, weight, race, color of hair, and color of eyes;

(4) a description of the item purchased or acquired that includes, for a firearm, watch, camera, or optical equipment bought or acquired, the name of the maker, the serial, model, or other number, and all letters and marks on the item;

(5) the price paid or amount loaned for the item;

(6) the signature of the customer and a notation by the person conducting the purchase or acquisition naming the type of identification card used to identify the customer under (c) of this section and giving the number of the card.

(c) The person actually conducting the purchase or acquisition for which a signature is required under (b)(6) of this section shall verify the identity of the customer by comparing the signature of the customer with the signature on a driver's license, state identification card, or other identification card issued by a governmental entity to the customer.

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receipts, or using another method acceptable to the police department or state troopers to whom reports are submitted under AS 08.76.025.

*** Sec. 3.** AS 08.76 is amended by adding a new section to read:

Sec. 08.76.025. Reports and availability of records. (a) A pawnbroker or secondhand dealer shall make all records required by this chapter, whether entered by handwriting or in a computer, available for inspection by a law enforcement officer at all reasonable times.

(b) A pawnbroker or secondhand dealer who is required to maintain records under AS 08.76.010 shall provide a report every two weeks to

(1) the police department of the municipality where the person's business is located; or

(2) the state troopers if the person's business is not located in a municipality or is located in a municipality that does not provide police protection services.

(c) The report required by (b) of this section must summarize all purchases and acquisitions of the pawnbroker or secondhand dealer during the previous two weeks for which the information under AS 08.76.010 is required and must be on a form or in a format established by the Department of Public Safety for the report.

*** Sec. 4.** AS 08.76.030 is amended to read:

Sec. 08.76.030. Criminal liability. A person who **knowingly** violates AS 08.76.010, [OR] 08.76.020**, or 08.76.025** is guilty of a **class A** misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $500, OR BY IMPRISONMENT FOR NOT MORE THAN SIX MONTHS, OR BY BOTH].

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*** Sec. 6.** AS 08.76 is amended by adding new sections to read:

Sec. 08.76.050. Property holding requirement. A pawnbroker who is subject to the reporting requirements of AS 08.76.010 shall hold ~~a~~ purchased or acquired item for 30 days after the item is received by the pawnbroker before the item may be sold or transferred to another person.

conceptual Amend #1 Adopted

if purchased or acquired from an individual but not if purchased from retailer or wholesaler

Sec. 08.76.095. Definitions. In this chapter,

(1) "pawnbroker" means a person who engages in the business of acquiring secondhand items as collateral for loans, but does not include a person regulated under AS 06;

(2) "secondhand dealer" means a person who engages in the business of purchasing secondhand articles for resale in whole or part, including a jeweler, a furrier, a coin dealer, and a computer dealer, but does not include a motor vehicle dealer or buyer's agent subject to AS 08.66.

Alaska State Legislature

WHILE IN SESSION:
CAPITOL BUILDING
JUNEAU, ALASKA 99801-1182
(907) 465-4921
1-800-[illegible]
(907) 465-3716 FAX

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716 WEST 4TH AVENUE
ANCHORAGE, ALASKA 99501
(907) 269-0132
(907) 269-0125 FAX

CHAIRMAN LEGISLATIVE COUNCIL
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MEMBER ETHICS
MEMBER MILITARY & VETERANS AFFAIRS

BUDGET SUBCOMMITTEES
ALASKA COURT SYSTEM
DEPT. OF CORRECTIONS
DEPT. OF LAW

Representative Joe Green
District 10

Sponsor statement for House Bill 472

"An Act relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles."

When property is stolen, one of the ways the thief can profit from the items they have taken is by selling them to a pawnshop. Pawnshop owners don't accept merchandise that appears to be stolen, but it is easy for a thief to appear to be the true and rightful owner of the item in question.

To help track stolen property, Alaska State Laws require that pawnshops keep records of the items that they receive and that these records be open to any law enforcement agency that asks to see them. When municipal police or state troopers receive reports of stolen goods they can then match them to the records in the pawnshops. Unfortunately, this system requires a lot of time on the part of the officers, and it is not unusual for the property to have been sold by the pawnshop before it has been identified as stolen.

House Bill 472 would address this problem by requiring that pawnshops provide weekly reports to their local police department or state troopers listing all of the property that they have received. While officers will still have to look through the reports, it will make the process much more efficient. HB 472 also requires that pawnshops record the physical description of the person selling an item, in addition to the other identifying information that they are already required to record under statute. This will help the officers in recognizing and prosecuting people who traffic in stolen goods.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 472(L&C)
(H) Publish Date: 4/2/02

Revision Date/Time (Note if correction):
Dept. Affected: Public Safety
Title: An Act relating to persons who buy and sell secondhand articles . . .
BRU: AST Detachments
Component: AST Detachments
Sponsor: Representative Green
Requester: House Labor & Commerce Comm.
Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Julia Grimes
Phone 269-4532
Division: Division of Alaska State Troopers
Date/Time 2/28/02 4:12 PM
Approved by: Commissioner Glenn Godfrey
Date 2/28/2002
Agency: Department of Public Safety

(Revised 9/2001 OMB)

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

March 29, 2002

Representative Joe Green
State Capitol
Juneau, AK 99801-1182

Dear Representative Green:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 472 relating to persons who buy and sell secondhand articles and to certain persons who lend money on secondhand articles.

The Alaska Peace Officers Association fully supports HB 472. Requiring weekly reports from pawnshops will help law enforcement authorities identify stolen property on a timely basis before it is resold. The additional requirement of a physical description of the person pawning an item will enable prosecution of those persons who use fraudulent ID cards when conducting these transactions.

Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Leo J. Brandlen

Leo Brandlen
State President

Subject: FW: HB 472 Hearing
Date: Thu, 04 Apr 2002 10:36:14 -0900
From: Laura Achee <Laura_Achee@legis.state.ak.us>
Organization: Alaska State Legislature
To: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Representative Jeannette James <Representative_Jeannette_James@legis.state.ak.us>,
Representative John Coghill <Representative_John_Coghill@legis.state.ak.us>,
Representative Kevin Meyer <Representative_Kevin_Meyer@legis.state.ak.us>,
Representative Ethan Berkowitz <Representative_Ethan_Berkowitz@legis.state.ak.us>,
Representative Albert Kookesh <Representative_Albert_Kookesh@legis.state.ak.us>
CC: Heather Nobrega <Heather_Nobrega@legis.state.ak.us>

Judiciary Committee members:

Deborah Fink is the former owner of the Cash Alaska pawnshops in Anchorage. She will not be able to testify on House Bill 472 tomorrow, so I am forwarding this to you at her request. If you have any questions, feel free to let me know or email Deborah directly at her address below.

Laura Achee

Subject: FW: HB 472 Hearing
Date: Wed, 3 Apr 2002 18:23:05 -0900
From: "D Fink" <dsfink@gci.net>
To: "Laura Achee" <Laura_Achee@legis.state.ak.us>

Subject: Re: HB 472 Hearing

Dear Laura,

As I indicated to you on the phone, I am not at all opposed to the proposed bill regarding pawnshops and other second hand dealers. I realize that businesses dealing in second-hand goods, however much they try to avoid it, are invariably going to get some stolen property. Thus reasonable reporting to law enforcement agents - which is what we currently have in Anchorage - is part of being in the business. The bill, in that it follows current Anchorage procedures, is acceptable to me.

I have two problems with the bill. Current practice in Anchorage excludes many second-hand dealers from reporting. You pointed out that the legislature only passes bill - enforcement isn't your job. It is my belief that second-hand dealers of the types of items mentioned in the proposed bill ought to be reporting and failure to require reporting not only results in reduced recovery of stolen property but also discriminates against the pawn industry where, at least in Anchorage, we are following the law. Passing additional laws that will be selectively enforced goes against my grain.

Additionally, and equally troubling, the proposed legislation requires reporting the name and stats on the pawner or seller of second-hand goods. Essentially, that means our customers and those of like businesses become a part of a police data base used to look for stolen property even though the vast majority of our customers haven't stolen a thing. It clearly discriminates against their right to privacy, a position which courts

have sided with when second-hand dealers have challenged it.

Although I have no desire to enter the legal fray of challenging the law, I hate to see laws violating personal rights, passing legislative scrutiny without some consideration of alternatives.

Reporting property to law enforcement agencies for purposes of identifying stolen items makes perfect sense. Reporting names and personal data of people pawning and selling items that they, in fact, own is out of line.

I am not current on APD stats regarding recovery of stolen property via pawnshops but the last figures I received from APD indicated that only 3% of the property stolen in Anchorage was recovered from the reporting businesses. Based on our records, somewhere under 1/10th of 1% of the items we take in pawn are reported stolen. For that, we are required to report our customers names. The small amount of retrieved property hardly seems to justify that kind of disregard for personal rights of confidentially.

Because most pawners tend to be lower middle class and politically inactive, it seems their rights can be trampled without repercussion. This is hardly new and I'm sorry to see state legislation that continues the trend.

----- Original Message -----
From: "Laura Achee" <Laura_Achee@legis.state.ak.us>
Sent: Wednesday, April 03, 2002 12:46 PM
Subject: HB 472 Hearing

> *Hello!*
>
> *Just a reminder that HB 472 (the pawnshop bill) will be heard in the*
> *House Judiciary Committee at 1:00 p.m. on Friday. With the exception of*
> *one person, this is a whole new crowd so if you support (or perhaps*
> *don't support) this bill you will need to come out again and explain*
> *your position.*
>
> *The hearing will be teleconferenced. If you need to phone in, please let*
> *me know by tomorrow so I can set it up.*
>
> *The most current version of the bill is available at:*
> *http://www.legis.state.ak.us/PDF/22/Bills/HB0472B.PDF*
>
> *If you have any questions, please let me know.*
>
> *Laura*
>

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P.O. BOX 71127 FAIRBANKS, AK. 99707
PHONE/FAX (907)452-8819
RIC AND MARGE THOMPSON

4-10-02

TO:INTERIOR DELEGATION AND INTERESTED LEGISLATORS
RE:HB 472

Regarding HB 472, pertaining to Pawnbrokers and Secondhand dealers, we'd like to voice some serious concerns.

75-85% of our business involves the buying and re-selling of used photographic gear. In our 27 years in business, we have maintained a very cognizant approach to dealing with buying used equipment. WE DO NOT WANT ANY STOLEN ITEMS TO COME OUR WAY. We require that the seller:

1) state the equipment is theirs to sell

2) demonstrate a knowledge of the operation of the equipment they want to sell. (If they can't show me how to do basic things like open the back door or remove the lens, we get very suspicious as to the ownership.)

3) If we have any doubts, we get their driver's license and we call Margaret Hall, Angie or Kim at the State Troopers and have them check the serial number on the statewide and nationwide computer system, to see if it has been reported stolen.

Our point is that we are self-regulating. Nobody has told us to do these things. We do this because we believe it makes prudent business sense. We don't need, nor can we afford another layer of government to tell us how to protect ourselves.

We maintain a good reputation and have had several occasions where we facilitated a stolen camera being returned to the rightful owner. We encourage customers who have a camera stolen to call us with a description and serial number.

We get the sense that if we paid $100 for a camera at a garage sale, this bill would require the seller to show us his driver's license so that I can keep a copy of this for my record. I think you know that people just wouldn't stand for that.

Granted, we probably have some dishonest pawnbrokers in Fairbanks and Anchorage, but why penalize, and bury in paperwork, those who are honest and hardworking and just happen to sell used equipment? We get receipts for everything we buy, but we can't employ someone to fill out paperwork to send to the police on a weekly basis.

How can the local police and the State Troopers afford the extra manpower hours these weekly reports would require? And further, how would enforcement occur? In these times of ever-tightening budgets, I don't see this as a reasonable expectation. I don't think the State can afford it.

Another troubling aspect to this bill is requiring us to hold all we buy for 30 days. We work on a slim margin and thus, a quick turnaround is the key to our success. A pawnbroker is required to hold items for 30 days on what they loan. If we are buying, we

don't believe the same requirement should apply to secondhand sales.

Our competitors who do business on the Internet, would have no way of complying with this requirement. Please don't tie our hands behind our backs. Stiffer requirements and/or penalties should apply to those convicted of trafficking in stolen goods. Don't take the honest bulk of society and make policemen of us all.

Sincerely,

Ric and Marge Thompson

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 5, 2002

SUBJECT: CSHB 472(L&C) and the right to privacy
(Work Order No. 22-LS1519\L)

TO: Representative Joe Green
Attn: Laura

FROM: Theresa L. Bannister
Legislative Counsel

You have asked whether CSHB 472(L&C) ("bill") violates the right to privacy. From reading the information that you sent over, it appears that the concern is with the right to privacy of the person who is pawning or selling the merchandise ("customer"). Under the bill, the pawnbroker or secondhand dealer (jointly referred to as "dealer") is required to obtain and maintain certain information from the customer (name, address, and physical description), to make this information available to law enforcement officers for inspection, and to transmit each week a summary of the transactions and acquisitions of the dealer to law enforcement agencies.

The requirements of this bill do not appear to violate the customer's right to privacy. Before a right to privacy is recognized, a person must exhibit an actual expectation of privacy and this expectation must be one that society is prepared to recognize as "reasonable."[1] In this situation, the customer enters a business that is open to the public in order to make a transaction. The person, therefore, chooses to make a transaction in a situation where the person and the transaction are visible to the dealer and to other persons coming into the store. The public nature of the transaction in this situation limits the expectation of privacy.[2]

In addition, pawnshops and secondhand shops have traditionally been heavily regulated, due to the potential of these transactions to involve stolen goods, and currently require the dealer to record information on the customer (name, age, and address). This would also tend to limit any expectation of privacy that a customer might expect and would also support the conclusion that an expectation of privacy in these circumstances is not one that society would be prepared to recognize as reasonable.

---

[1] Hilbers v. Municipality of Anchorage, 611 P.2d 31 (Alaska 1980).

[2] See Cowles v. State, 961 P.2d 438, 443 (Alaska Ct. App. 1998); and Barron v. State, 823 P.2d 17, 20 (Alaska Ct. App. 1992).

Therefore, in my opinion, since it does not appear that the customer in this situation has an expectation of privacy in the transaction or an expectation of privacy that society is willing to recognize as reasonable, there does not appear to be a violation of the customer's right to privacy in this bill with the gathering, inspecting, or reporting of the information on the customer.

If I may be of further assistance, please advise.

TLB:med
02-351.med

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

BILL NO. CSHB 472(L&C)

Revision Date/Time (Note if correction) _____
Dept. Affected DPS
Title Secondhand Articles
BRU Statewide Support
Component APSIN
Sponsor Representative Green
Requester House Judiciary
Component No. 528

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2002) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The bill requires pawnbrokers to make manual or automated records available to police or AST. Nothing in the bill requires DPS to create or maintain a statewide or centralized database, convert manual records into electronic data, process or produce reports based on pawnbroker data, or assist or evaluate pawnbrokers in selecting or using pawnbroker computer applications/systems. DPS' Information Systems is not required and does not plan to assign any resources to pawnbroker recordkeeping or information systems.

Prepared by: Diane Schenker
Phone (907) 465-4336
Division Administrative Services
Date/Time 2/26/02 12:00 AM
Approved by: Commissioner Glenn G. Godfrey
Date 4/12/2002
Agency Department of Public Safety

For distribution information, call the Governor's Legislative Office

(Rev 8/2000 OMB)

/

Judicial Committee

House Bill 472

PAWNBROKERS AND SECOND HAND STORES

My name is Ben Carpenter, I own a large second hand store in Fairbanks, Alaska known as Ben's Super Store.

I recently learned of House Bill 472 and I am extremely disturbed about one section of this bill. I would like to address the 30 day holding period for purchased second hand merchandise. The 30 days that I would be required to hold this merchandise would cause undue financial hardship, excessive record keeping and storage problems for my business and all second hand business.

I have contacted several fellow secondhand businesses owners here in Fairbanks to discuss our views and concerns. I have spoken to a coin shop operator, a used sporting good store owner, several jewelry store owners, a gold dealer, a stamp and collectible shop, an antique dealer, a clock and watch repair and numerous recreational vehicle dealers including sellers of snowmachines, 4 wheelers, boat dealers and a jet ski dealer.

After talking with my fellow business owners, I would like to explain the financial hardships we would be facing with the 30 day holding period. When dealers acquire second handed items such as snowmahcines, off road vehicles, and all boats and water craft. When these items are purchased mid season for example late July or early August and are then held 30 days to about first part of September. The season is over. The items have to be carried over to the next season, approximately mid May. The season for these vehicle is only 4 1/2 months here in Fairbanks. Taking 30 days out of that time frame is a crippling financial disadvantage. The depreciation factor on

these seasonal items is high resulting in the potential for several hundreds of dollars lost in depreciation. The 30 day holding period has the same disadvantage to gold and coin dealers when they are locked into a 30 day period where they can not sell and the fluctuation of gold price put them at a high risk and could result in a large monitory loss.

The storage and extra bookkeeping will be a major problem for most stores. In my store storage space will be a huge problem. We do not have the space to store 30 days worth of merchandise. We deal in many bulky items such as furniture, exercise equipment and appliances. We may be forced to stop handling these items which are a good portion of our business if we have to hold them for 30 days due to a lack of storage space.

We all feel that the 30 day holding period is unnecessary. We second hand store owners are members of this community. As fellow property owners we are very concerned about stolen property and we have always cooperated fully with law enforcement in their attempts to recovered stolen property and prosecute the thieves here in Fairbanks. We are very vigilante in our efforts to not deal in stolen property.

We business owners haven't had enough time and opportunity to express our concerns pertaining to House Bill 472. We strongly urge you to seek more input from all concerned citizens. Please don't rush this bill through until you have fully heard our side of the story and you have all the facts.

As for our present business practices, my store has been complying with the current Alaskan Law regulating second hand stores and have no problem with it. We have been getting full names, addresses, phone numbers, Alaska Drivers License numbers or State ID numbers plus full descriptions of merchandise purchased with serial numbers as well as signatures of the seller. We have all the purchase invoices on

3

file for the past 10 years. These have always been available for police inspection. We all believe this 30 day holding period is overkill and unjustified. Over the past ten years we have owned our secondhand store, Ben's Super Store, I can recall only one incident when stolen property was sold before it was deemed stolen. It was a bicycle and it was recovered and the purchaser received a refund.

The incident rate of stolen property received by second hand store is not as high as perceived by some people. The published national rate of stolen property that is sold to secondhand stores is about 1/2 of 1%. Based on our store experience I feel the Fairbanks percent is lower than the national average at approximately 1/4 of 1%.

We again strongly urge you take your time to get the facts and statistics before you act on House Bill 472. We all urge you to seek more input from the second hand store owners who will be effected by the 30 day holding period. We are very concerned about the future of our companies if this holding period becomes law.

Thank you for your consideration in this matter.

Ben Carpenter
Ben's Super Store
1402 Gilliam Way
Fairbanks, Alaska 99701

Subject: [Fwd: HB472]
Date: Fri, 19 Apr 2002 11:26:24 -0800
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB472
Date: Fri, 19 Apr 2002 09:30:33 -0800
From: "John Shackley" <john@rocketsurplus.com>
To: <Representative_Norman_Rokeberg@legis.state.ak.us>

Sec. 08.76.050. Property holding requirement. A pawnbroker or
29 secondhand dealer who is subject to the reporting requirements of
AS 08.76.010 shall
30 hold a purchased or acquired item for 30 days after the item is
received by the
31 pawnbroker or secondhand dealer before the item may be sold or
transferred to
01 another person.

This will require me to hold and store for 30 days any items I purchase over the counter(OTC).I am not a pawn shop and do not have the space to store for 30 days anything I purchase OTC. I am not in the busniess to hold item for 30 days I try to sell the item as fast as I can this is not only OTC but all items I purchase. I work on a 30 day net which means I try to turn my product within the 30 day period. This might work for pawn shops but not for me and other store that are not in the full time second hand business, but buy some item over the counter. A few questions.
1. Does items purchased from DRMO need to be held for 30 days.
2. Items purchased at local auction for resell have to be held for 30 days
3. Items purchased at local flea markets or yard sells for resale have to be held for 30 days
Thank you

John Shackley
Rocket Surplus
1401 S. Cushman St.
Fairbanks AK 99701
907-456-7078
Fax 907-451-0236

	Pawn Records	rpt freq	hold time	precious metals	rpt freq	hold time	Other goods	rpt frq	hold time	notes
Alabama	Y	N/S	15				Auction			
Arizona	Y	D	20	Y	W	10	Scrap metal			
Arkansas	Y	N/S	15/7	Y >$50		3/7				3 for gold, 7 for other
California	Y	D	30	Y	D	30	Second Hand	D		elec rpt, items list from AG, not coins bullion or ingots
Colorado	Y	W	10							
Conneticut	Y	W		Y	W		Junk			not public record
Delaware	Y	D					Junk			
Florida	Y	D	30	Y	D	15	Y	D	15	lists reportable goods
Georgia	Y			Y	D	7	Watches			
Hawaii	Y									
Idaho	N									
Illinois	Y	D	48h							48 hrs from report
Indiana	Y									
Iowa	N									Bill failed in 1999
Kansas	Y	W		Y	W	10				10 days from report
Kentucky	Y	D								
Louisiana	Y	D								statutes not available on-line
Maine	Y	M								
Maryland	Y	D		Y	D	18				lists reportable goods, 18 from rpt, not public
Massachusetts	Y	W								
Michigan	Y	D		?			second hand	D		second hand property of any kind
Minnesota	Y			Y		14				
Mississippi	Y		21							
Missouri	Y									
Montana	Y									
Nebraska	Y	D	14	Y	D	5	second hand, junk	D	14	
Nevada	Y	D	ind.				second hand, junk	D	30/15	specifically includes antiques but not coins
New Hampshire	Y									

	Pawn Records	rpt freq	hold time	precious metals	rpt freq	hold time	Other goods	rpt frq	hold time	notes
New Jersey	Y	D		Y		48h	second hand	D		
New Mexico	Y	D								
New York	Y									
North Carolina	Y		48h				scrap			
North Dakota	N									
Ohio	Y	D	15	Y	D	5				not coins, hallmark bars, ingots, coins
Oklahoma	Y		3	Y		10				not coins, commercially made ingots or bars
Oregon	Y	D								
Pennsylvania	Y			Y	D		5			
Rhode Island	Y	prn		Y	W					
South Carolina	Y									
South Dakota	N									
Tennessee	Y	D	48h	Y	D	30	scrap			
Texas	Y		*	Y	D	11				*commish designates hold period
Utah	Y						scrap			
Vermont	Y									
Virginia	Y	D								
Washington	Y	D	30				Second hand	D	30	not coins or bullion
West Virginia	N			Y	D	10	scrap	prn		
Wisconsin	Y	D	30	Y	D	15	Second Hand	D	10	
Wyoming	Y									
				19	15	16	7sh			5 - not coins, 4 not coins, bullion or ingots

HB 489

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 19, 2002 **FURTHER REFERRALS:**

Date of Committee Action: 4.22.02

The JUDICIARY Committee considered: **HB 489**

HOUSE BILL NO. 489 **CRUELTY TO ANIMALS**

"An Act relating to cruelty to animals."

Recommends it be replaced with ____CS HB489 (JUD) [✓] **Same Title** [ ] **New Title**

*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*____

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent _____Committee

List of Abbrev. for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
HSS
LAA
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
COR			✓	
LAW			✓	

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	Berkowitz			—	—
	Meyer	✓			
	Coghill	✓			
	James			✓	
	Lockyer			✓	
Chair:	Rokeberg	✓			
Chair:					

22-LS1580\S
Luckhaupt
4/22/02

Adopted 4.22.02

CS FOR HOUSE BILL NO. 489(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Kott, Croft, Foster, Lancaster, Meyer

A BILL

FOR AN ACT ENTITLED

"An Act relating to cruelty to animals."

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

*** Section 1.** AS 08.98 is amended by adding a new section to article 3 to read:

Sec. 08.98.241. Duty to report cruelty to animals. (a) A person licensed under this chapter who has reasonable cause to suspect that an animal has been subjected to cruelty to animals in violation of AS 11.61.140 shall immediately report the suspected animal cruelty to the Alaska State Troopers or municipal law enforcement agency.

(b) A person who in good faith makes a report under this section is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report unless the person making the report is the person who subjected the animal to cruelty.

*** Sec. 2.** AS 11.61.140(d) is amended to read:

(d) Cruelty to animals is a class A misdemeanor. **The court may also**

(1) require a defendant convicted of cruelty to animals to

participate in psychological counseling and tre. tment, at the defendant's expense, as the court determines to be appropriate;

(2) prohibit a defendant from owning or possessing an animal for a period of not more than five years.

*** Sec. 3.** AS 11.61.140 is amended by adding a new subsection to read:

(e) Each infliction of severe physical pain or prolonged suffering on an individual animal under (a)(1) of this section, failure to care for an individual animal under (a)(2) of this section, or killing of an individual animal under (a)(3) of this section is a separate violation of this section.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 22, 2002

SUBJECT: Special sentencing provisions for cruelty to animals
(Work Order No. 22-LS1580\S)

TO: Representative Norman Rokeberg
Attn: Heather

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the draft CS(JUD) you requested. You asked me to consider placing the special sentencing provisions[1] for this crime in AS 12.55. I did not place those provisions in AS 12.55 and here are my reasons. Generally, when creating crimes the legislature usually just identifies the level of misdemeanor or felony that is being created. To discover the range of punishments permitted for that level of crime one must look to AS 12.55 where the legislature has established general provisions related to sentencing, the types of sentences that are available, and the forms those sentences may take. Apart from provisions setting minimum jail terms for certain misdemeanor offenses[2] the legislature has not placed individual sentencing provisions that only apply to individual crimes in AS 12.55. In those cases when the legislature has chosen to establish or emphasize a special sentencing option or component of a sentence that is not generally available to all sentences in AS 12.55 and is specific to one crime, the legislature has placed that provision in the section defining the offense. See, e.g., AS 11.46.487; AS 11.51.120(c); AS 11.61.110(c); AS 11.76.140(b).

GPL:med
02-400.med

Enclosure

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[1] Those provisions relate to allowing the trial court to impose a limitation of ownership of animals by the defendant and allowing the court to require counseling or treatment for the defendant.

[2] See AS 12.55.135(c), (d), (f), (g), and (h).

22-LS1580\O
Luckhaupt
4/18/02

Adopted 4.19.02

CS FOR HOUSE BILL NO. 489( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Kott, Croft, Foster, Lancaster

A BILL

FOR AN ACT ENTITLED

"An Act relating to cruelty to animals."

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

*** Section 1.** AS 11.61.140(a) is amended to read:

(a) A person commits the crime of cruelty to animals if the person

(1) knowingly inflicts severe physical pain or prolonged suffering on an animal;

(2) with criminal negligence, fails to **provide the minimal standard of** care for an animal**, including food, water, shelter, and humane veterinary care** and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal; or

(3) kills an animal by the use of a decompression chamber.

delete new language

*** Sec. 2.** AS 11.61.140(d) is amended to read:

(d) Cruelty to animals is a class A misdemeanor **if the defendant has not previously been convicted of violating this section. Cruelty to animals is a class C felony if the defendant has been previously convicted of violating this section.**

remove

Multiple offenses = Multiple charges

New Text Underlined [DELETED TEXT BRACKETED]

The court may Title 12?

(1) require a defendant convicted of cruelty to animals to participate in psychological counseling and treatment, at the defendant's expense, as the court determines to be appropriate;

(2) prohibit a defendant from owning or possessing an animal for a period of not more than five years.

* **Sec. 3.** AS 08.98 is amended by adding a new section article 3 to read:

Sec. 08.98.241. Duty to report cruelty to animals. (a) A person licensed under this chapter who has reasonable cause to suspect that an animal has been subjected to cruelty to animals in violation of AS 11.61.140 shall immediately report the suspected animal cruelty to the Alaska State Troopers or municipal law enforcement agency.

(b) A person who in good faith makes a report under this section is immune from civil or criminal liability that might otherwise be incurred or imposed for making the report unless the person making the report is the person who subjected the animal to cruelty.

22-LS1580\L.1
Luckhaupt
4/19/02

Conceptual
AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE JAMES

TO: CSHB 489( ), Draft Version "X" "O"

Page 1, line 8, following "**care**":

Insert "**, that conforms to accepted animal husbandry practices**"

Page 1, following line 11:

Insert a new bill section to read:

"* **Sec. 2.** AS 11.61.140(b) is amended to read:

(b) It is a defense to a prosecution under

(1) (a)(1) [OR (2)] of this section that the conduct of the defendant

(A) [(1)] conformed to accepted veterinary or animal husbandry practice;

(B) [(2)] was part of scientific research governed by accepted standards;

(C) [(3)] was necessarily incident to lawful hunting or trapping activities; or

(D) [(4)] conformed to professionally accepted training and disciplinary methods**; or**

(2) (a)(2) of this section that the conduct of the defendant

(A) conformed to accepted veterinary practice;

(B) was part of scientific research governed by accepted standards;

(C) was necessarily incident to lawful hunting or trapping activities; or

(D) conformed to professionally accepted training and disciplinary methods."

Renumber the following bill section accordingly.

REPRESENTATIVE
MIKE CHENAULT

Interim:
145 Main St. Loop, Second Floor
Kenai, Alaska 99611
(907) 283-7223
Fax: (907) 283-3075

STATE OF ALASKA

HOUSE OF REPRESENTATIVES

Official Business

Session:
Capitol Building, Room 432
Juneau, Alaska 99801-1182
(907) 465-3779
Toll Free: (800) 469-3779
Fax: (907) 465-2833

Sponsor Statement
House Bill 489

This fall in Sterling, State Troopers, animal rescuers, veterinarians and a member of my staff witnessed possibly the worst case of mass animal cruelty in Alaska. Dozens of dogs, some frozen to the ground but still alive, were found on a parcel of land in the Sterling area. Some were locked in an abandoned bus, some tied to trees and stakes. None had the bare margin of food, water, or humane shelter. The only bedding was canine feces or ice. *A video is available for viewing with the warning that it is quite graphic and not for the faint of heart.*

A week ago, a police officer stopped a drunk driver who had his dog tied to the bumper of his truck. While the dog received emergency medical treatment, it was put down as a result of being dragged for several miles.

It is appalling to find any human being capable of such horror. In fact, many individuals who are later convicted of grave crimes to fellow humans are found to have seriously abused animals at some time in their lives.

Representative_Mike_Chenault@legis.state.ak.us

Several days ago, I distributed animal cruelty information. I hope one of your staff had the opportunity to read it. The purpose of this memo is to appeal to your humane side and ask for your support to stop cruelty to animals. This is an issue decent human beings should never have to consider. Common sense and compassion dictates how we should treat animals, unfortunately we cannot depend on fellow human beings to be decent and provide basic food, water and shelter for animals. This is not an issue for partisan politics, as most of us have delightful memories of childhood pets.

Please join me in setting an example to stop abuse of animals. You and I have the opportunity to show our children how kind and compassionate animals can be while teaching responsibility of animal care.

My four kids have a dog names Destiny that is a loving, mischievous companion to each of us. Although she has to be into what ever I am doing, be it painting or repairing the kitchen sink, the kids are learning the responsibility of caring and providing for another living being, an important part of becoming an adult.

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 22, 2002

SUBJECT: Sectional Summary - (HB 489; Work Order No. 22-LS1580\A))

TO: Representative Mike Chenault

FROM: Gerald P. Luckhaupt
Legal Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1. Amends the crime of cruelty to animals by amending an existing form of the crime and by adding a new form of the crime.

Section 2. Changes the crime of cruelty to animals from a class A misdemeanor to a class C felony.

GPL:med
02-190.med

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 489
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Law
Title "An Act relating to cruelty to animals."
BRU Criminal Division
Component All
Sponsor Representative Chenault
Requester House Judiciary Committee
Component No.

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*********	*********	*********	*********	*********	*********
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	*********	*********	*********	*********	*********	*********
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*********	*********	*********	*********	*********	*********

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

HB 489 adds seeing someone commit animal cruelty, and then knowingly fail to report the crime to law enforcement, to the definition of cruelty to animals. The bill further increases the penalty for cruelty to animals from a misdemeanor to a class C felony.

During 2000, the Department of Law got convictions in eight cruelty to animal cases. Due to the relatively low number of these cases, increasing the penalty for animal cruelty to a felony as defined in current law is expected to have a negligible fiscal impact on the agency. However, making failure to report animal cruelty a felony is expected to cause many new referrals for prosecution, which will need to be investigated and reviewed, even if the state cannot ultimately prosecute. While we believe passage of section 2 of HB 489 will increase the department's workload, we have no way of reliably estimating the impact.

Prepared by: Joan M. Kasson
Phone (907) 465-5370
Division Attorney General's Office
Date/Time 3/8/02 8:30 AM
Approved by: Kathryn Daughhetee for Bruce M. Botelho, Attorney General
Date 3/8/2002
Agency Department of Law

(Revised 9/2001 OMB)

Pet Industry Joint Advisory Council
1220 19th Street, N.W., Suite 400
Washington, DC 20036
(202) 452-1525 - Telephone
(202) 293-4377 - Facsimile

NAME/COMPANY:	Honorable Norman Rokeberg, Chair, Judiciary Committee	
FROM:	Michael Maddox	
FAX NUMBER:	907-465-2040	
DATE:	3/14/02	PAGES (INCLUDES COVER SHEET): 4

MESSAGE: **IMPORTANT - Please include the attached testimony in the March 15, 2002 hearing on House Bill 489, for distribution to all committee members and (if appropriate) being read into the record. Thank you for your kind assistance.**

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

PET INDUSTRY JOINT ADVISORY COUNCIL
TESTIMONY ON HOUSE BILL 489
BEFORE THE HOUSE COMMITTEE ON JUDICIARY

March 15, 2002

The Pet Industry Joint Advisory Council (PIJAC) requests introduction of the following testimony on House Bill 489. PIJAC is the largest trade association in the United States representing the entire pet industry, counting among its membership national associations, regional and local organizations, and individual businesses throughout the United States. Such organizations and businesses are involved in and associated with the breeding, distribution, wholesale and retail sale of pets and the manufacture, distribution, wholesale and retail sale of pet-related products.

In its representation of the pet industry, PIJAC regularly endorses and supports high standards of excellence in the care and handling of pet animals. We have for decades worked with federal and state agencies to enhance the effectiveness of licensing and oversight programs. PIJAC's animal care certification programs are highly respected by persons in the pet industry as well as the humane community. PIJAC regularly strives to maintain and enhance a state and federal regulatory scheme to ensure an effective oversight mechanism for the commercial breeding, distribution and sale of companion animals in the United States.

Because PIJAC endorses humane animal treatment, it is not often that we oppose legislation enacting or amending animal cruelty statutes. Typically, only where such bills are ambiguous or overly broad would PIJAC offer testimony in opposition. However, the extraordinary nature of this measure compelled our attention. The prohibition proffered by H 489 violates a fundamental precept of criminal law: that citizens shall not be guilty of a crime for the absence to act except where a special relationship or exceptional circumstances exist. It is not uncommon for persons acting in a specific capacity to be charged by law with an affirmative duty to respond. It is highly unusual for any citizen (which is to say, every citizen), regardless of circumstances, to be legally imposed with a duty to act merely for observing a condition.

Yet that is precisely what this bill would codify. The amendment to Alaska Statutes Section 11.61.140(a)(2) establishes a criminal offense for failing to "provide the necessary standard of care for an animal." Such a mandate in itself is sufficiently ambiguous that one might question the wisdom of enacting it into law. But to criminalize "observ[ing] and knowingly fail[ing] to report a violation" of such a mandate is literally unprecedented. Is one to be legally required every time they see a companion animal to evaluate whether its owner is providing necessary care? The subjectivity inherent in such a duty is evident on its face.

There is no analogy in state law anywhere, much less in Alaska itself. Perhaps the closest example in Alaska Statutes would be Section 11.56.765, which criminalizes a failure to report a violent crime against a child. Under the provisions of this section, however, to be in violation a person must "witness what the person knows or reasonably should know is" the murder, attempted murder, kidnapping or attempted kidnapping, sexual penetration or attempted sexual penetration of a child, or the assault of a child resulting in serious physical injury."

Actual observation of such gross physical violence against a child can in no measure be viewed comparably to witnessing an animal which may (or may not) have failed to receive the "necessary standard of care" in any of myriad particulars. Again, PIJAC must reiterate, such a criminal statute would be completely novel and, we believe, an unacceptable burden on the average citizen.

The subject of this bill is not one of complicit behavior. Section 11.16.110 already makes criminal any act which is complicit in another's commission of a crime. PIJAC certainly has no objection to this. Rather, H 489 makes mere inaction a crime. We question the appropriateness of such a standard as applied to any part of the cruelty statute, but must emphatically object to its application to subsection (a)(2), which already involves a high level of subjectivity in determining the existence of a violation.

With due respect to Representative Chenault, the offense contemplated by this bill is made even more alarming with its designation as a felony. The aforementioned criminal offense of failing to report a violent crime against a minor is only a misdemeanor. Would this committee honestly wish to communicate to the good people of Alaska the notion that observing neglect of (or even observing active cruelty to) an animal is actually a more egregious offense than failing to respond to violent physical abuse of a child? Surely not.

While PIJAC questions the wisdom of adopting legislation criminalizing the failure to report animal cruelty (absent existence of a special relationship or professional status which may dictate such an affirmative obligation) at all, we submit it to be self-evident that such an offense cannot appropriately be categorized as a felony. Indeed, we would further suggest that there is a significant distinction between misfeasance and malfeasance. Thus, even if subsection (a)(1) were to be made a felony, subsection (a)(2) should not be.

We ask the committee not to report this measure. The novel provision criminalizing the failure to report a violation of the underlying statute is ambiguous and should not be made a part of your code. The revised standard for criminal negligence is likewise subject to capricious enforcement, and requires greater deliberation. The penalty provision of this bill is simply excessive, particularly as applied to subsections (a)(2) and (a)(4) of AS 11.61.140.

PIJAC does not lightly oppose measures to properly enforce animal cruelty or neglect, but H 489 is simply not a well-crafted bill. Please reject it. PIJAC thanks this committee for its kind indulgence of our comments, and due deliberation of the concerns we have expressed on behalf of Alaska's pet trade and the people of this state.

Respectfully Submitted
Pet Industry Joint Advisory Council

By: Michael P. Maddox, Counsel

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 489
() Publish Date:

Revision Date/Time (Note if correction):
Dept. Affected: Corrections
Title: "An Act relating to cruelty to animals
BRU: Administration and Operation
Component: All
Sponsor: Rep. Chenault
Requester: House Judiciary Committee
Component No: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This legislation elevates cruelty to animals from an A misdemeanor to a C felony. It also broadens the elements of the crime to include "failure to provide the necessary standard of care" but removes "and as a result, causes the death of the animal or cause severe physical pain or prolonged suffering to the animal". Finally, this legislation would make the observation and knowing failure to report a violation to a law enforcement agency a C level felony also.

The Department of Law reports that in 2000 there were 8 convictions of cruelty to animals with an average sentence of about 10 days. It difficult to estimate what an average sentence would be if this becomes a felony. There will undoubtedly be additional imprisonment as well as probation supervision imposed. While the impact to the Department is difficult to quantify, there will be an impact. Most

Prepared by: Candace Brewer
Phone:
Division: Commissioner's Office
Date/Time: 3/14/02 1:41 PM
Approved by: Margaret Pugh, Commissioner
Date: 3/14/02
Agency: Department of Corrections

ANALYSIS CONTINUATION

troubling is the creation of a new felony for failure to report. The Department of Corrections has been experiencing an overcrowding crisis for a number of years. Each year, our population increases due to increased sentences, new crimes and converting misdemeanors into felons. This legislation represents all of those things. We are also facing significant budget cuts. Although we cannot quantify the impact, serious consideration needs to be given to amending the current statutes to add to the serious burden that already exists on the criminal justice system.

DID YOU KNOW.....

REPORT ON THE STERLING ALASKA RESCUE SITUATION

By

Judy McConnell

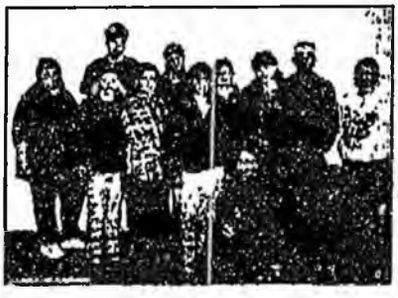
Brad asked me, ***"How did you get involved in the Sterling, Alaska rescue?"*** My answer is, ***"Do not have dinner with*** **Dale Cuddy."** The night before we left the Specialty in Phoenix, **Dale** asked me if I would consider doing rescue for **ABRL (American Bouvier Rescue League)** in Alaska. It was a spontaneous ***"Sure."*** I arrived back from Phoenix on November 6 to find a message that **Carolyn B.** had come back into our lives. Last year she had been cited but somehow "the problem had gone away." She had been given until Friday to clean the place up or to face prosecution. Her choice was to give the dogs to the **Alaska SPCA.** She was allowed in the agreement to keep seven dogs—six Bouviers and a Miniature Schnauzer.

I received a call from the **SPCA** asking me to go to Sterling, a small town on the Kenai Peninsula, approximately 3 hours from Anchorage. ***Finn,*** my 3-½ year old male Bouv, and I arrived in 30-degree below zero Sterling around 3:00 pm, only slightly recalling the 90-degree temperatures we had left in Phoenix. I left Finn in the motel room and met with a representative from Sterling. We went to the site. It was horrific—Bouviers everywhere, tied to trees, trucks and fences on 6 inch leads. They looked like buffalo with hair matted to the skin with feces, sticks, grass, you name it. The dogs had not eaten for 3 weeks. Each Bouvier looked into my soul, and the competition of the Specialty seemed like a dream. It made me reevaluate what was truly important.

I then boarded a **Greyhound type bus** lined with wooden boxes, approximately 2 feet by two feet by two feet, with Bouviers and Kerry Blues in them. They had eaten through the wood so that only their heads could stick out and their eyes could peer woefully at me. I stood in feces and urine up to my ankles and cried. I cried for the live dogs and for the five dead Bouviers and the five dead Kerry Blues in the bus. We left the site, went to a small town store and I purchased all the dog food that they had on hand. We returned to the site and fed and watered all the animals. As I walked I notice something moving in the snow. There was a pair of six-week-old Bouvier pups huddled together. After spending a couple of hours more, the two pups and I joined ***Finn*** at the motel. I was unable to sleep after seeing such vivid images. But was heartened to see the two half frozen pups defrosting, thanks to the wonderful instructions given to me by the **Alaska SPCA** workers. (I groomed one of the puppies today, happy and healthy in her new home.) The **SPCA** workers and I returned to the site. We counted and assessed the breed and health of the dogs. There was never a sign of aggression, only grateful looks. It was 17 below that morning and all we could think about was getting the truck and the hospital-on-wheels and getting those babies back to Anchorage.

In Anchorage a warehouse was donated and set up like a hospital unit. Each dog was evaluated for medicine, shaved and fed three times daily. They were emaciated but in amazingly good health. Volunteers from the University of Alaska Anchorage and all over the city, walked the dogs. I received a call from **Carolyn** and she handed over the last of the Bouviers by the weekend.

The outpouring of money that came from individuals, the **ABRL, ABDFC, SCBDFC, BCNC, Northern Alaska Kennel Club** and **Cook Inlet Kennel Club** was amazing. The bill totaled $13,000-$15,000. A total of 64 dogs were rescued including 28 Bouviers, 16 Kerry Blues as well as Siberians, Huskies and mixes thereof. There were ten dead dogs, five Bouviers and five Kerry Blues, not counted among the 64. Two people-aggressive dogs, a Bouvier and a Kerry Blue, were euthanized. 26 Bouviers are in homes in Alaska, all are doing beautifully, and almost all were Bouvier owners. 2 Bouviers are in Michigan and 24 dogs are yet to be placed. None of this could have been done without the loving and caring workers of the **Alaska SPCA.** They are professionals in every sense and an amazing group of people. I have never been able to pride myself on being a volunteer. I have always loved my own family, my close friends and my dogs. This rescue experience has truly made me realized what reaching out really does for the soul—mine.



Thanks, Judy! ***BB***

HB 489 YES

I am Judy McConnell of Anchorage Alaska. I come before you as the representative of the National Bouvier des Flanders Club (the Bouvier is a large friendly dog of the herding group). I head the Club's "Rescue for Alaska" operation when needed. I am here to ask you to help prevent cruelty to animals by passing HB No. 489, which will serve as a deterrent to Alaskan tragedies such as I witnessed last year.

Last November, I was asked to assist in the rescue of 64 dogs (half of which were Bouviers) in Sterling, Alaska. The 64 were the starving and freezing survivors of what can only be described as a canine concentration camp. The article I passed out to you provides only a glimpse of the physical pain and suffering these dogs endured—many to their last breath.

The five frozen Bouviers that I chiseled out of the snow didn't survive, and many more were on the brink of dying when the rescue team arrived. The article I distributed to you just now, was originally written for the Southern California Bouvier des Flandres Club to give them an account of the rescue; they contributed very generously.

The article provides a stark overview of the cruelty that was visited upon these creatures, but it does not begin to convey what I

experienced when I arrived at the site in Sterling, Alaska in minus 30 degree weather with the Anchorage SPCA team.

I saw emaciated Bouviers and Kerry Blue terriers, some huddled in a bus in cube shaped cells amid their own filth with the corpses of their dead companions dangling from the enclosures and on the floor. Others were unsheltered outside the bus, tethered to leads as short as 9 inches, dead and dying, and some so tangled they had become maimed. All were unkempt with coats matted and covered in feces, and weighed less than 50 pounds when normal body weight was 100. All of the rescue team were obliged to wear masks in order to carry on with the work. The owner who victimized these dogs, said to me, "Things got out of control." No punishment was meted to her for her unconscionable cruelty to these animals. We need to add teeth to the Alaska Statutes, to better deter cruelty to animals. HB No 489 does that, by amending AS 11.61.140(a).

The amendment clearly defines cruelty to animals, and makes cruelty to animals a class C felony. HB 489 is a must.

Thank you for your timely consideration of these creatures who depend upon us, trust us, and add so much to our life in Alaska.

Judy McConnell
Plea to the AK Legislature
sleepingladybouvier@hotmail.com

03/15/02
Phone: 907 346-1929

Subject: [Fwd: [Fwd: HB 489]]
Date: Mon, 18 Mar 2002 08:08:31 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: [Fwd: HB 489]
Date: Sun, 17 Mar 2002 12:39:49 -0900
From: Carol Jensen <cjensen@pobox.alaska.net>
To: Representative_Norman_Rokeberg@legis.state.ak.us

Subject: HB 489
Date: Thu, 14 Mar 2002 20:49:49 -0900
From: Carol Jensen <cjensen@pobox.alaska.net>
To: Representative_Norm_Rokeberg@legis.state.ak.us,
Representative_Scott_Ogan@legis.state.ak.us, Representative_John_Coghill@legis.state.ak.us,
Representative_Kevin_Meyer@legis.state.ak.us,
Representative_Ethan_Berkowitz@legis.state.ak.us,
Representative_Albert_Kookesh@legis.state.ak.us

Judiciary Committee Members:

I urge you to pass this bill out of committee ASAP and get it to a floor vote for passage. Our animal cruelty statute is a joke. It offers no protection to animals, and animal cruelty is rampant in Alaska. This bill is a good first step towards strengthening the statute.

I do not support any exemption for the victims of domestic violence who witness or know about animal cruelty and do not report it. People who inflict pain and suffering on animals also do it on humans. The first sign of animal cruelty needs to be reported immediately to authorities and the animal(s) removed from the perpetrator.

Thank you.

Carol Jensen
4800 E. 112th Avenue
Anchorage, AK 99516
work phone: (907) 562-3200 ext 111

Subject: [Fwd: HB 489]
Date: Mon, 18 Mar 2002 08:08:15 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB 489
Date: Sun, 17 Mar 2002 12:36:07 -0900
From: Ethel <donethel@gci.net>
To: Representative_Norman_Rokeberg@legis.state.ak.us

Understand that 489 will be re-worded to accommodate the farmers. I was born and raised on a small dairy farm in Wisconsin. Wisconsin and other states have stiff animal cruelty laws and am confident that it can be done here in Alaska and still accommodate the few farmers we have left.

I was a Weather Service Aviation Briefer/forecaster at ANC International from 1959 to 1975. The result of hearing horrible stories from my husband, an FAA pilot and other pilots, plus seeing abandoned animals in ANC, I founded the Alaska SPCA in 1966 and HB489 would very much add to the slow progress we have made.

Alaska SPCA receives many complaints from tourists on what they see as far as animal neglect and now we have a huge audience in the lower 48 and elsewhere awaiting the outcome of HB489 as well as the indictment of Carolyn Boughton , Sterling. The indictment was filed Friday, the 15th.

Please do what you can to pass a long overdue stronger cruelty law

Ethel D. Christensen
Volunteer Executor Director
Alaska SPCA

Alaska State Legislature

MAR 15 2002

Please enter into the record my testimony to the HJUD
(committee name)

committee on HB 489, dated 3-15-02.

3/12/02

VALDEZ VETERINARY CLINIC
P.O. Box [redacted] 708
Valdez, Alaska 99686
Telephone: (907) 835-5280

We would like to express our support for HB489 regarding cruelty to animals. We feel it is important to change the penalty for animal cruelty from a misdemeanor to a felony for the following reasons:

Animals are an integral part of our lives and they should be treated with respect and compassion. We are responsible for their welfare since they have no voice of their own. Individuals, especially young people, who abuse animals, are often individuals who show more and more disrespect for the law. The hands of the officials are "tied" so to speak when an animal cruelty case is only treated with a "slap on the hand" and the seriousness of the offense is not realized.

It is documented that animal cruelty is often linked to spouse and child abuse. If the animal cruelty penalty carried a felony punishment, cases of abuse to spouses/other household members and children may be avoided.

A felony judgment is more likely to deter an individual from repeating the offense. This would give incentive to the officials to pursue cases more intensively.

We urge you to support HB489 to not only protect the animals, but potentially impact human welfare as well.

Kathryn A Hawkins DVM

Kathryn HawkinsD.V.M. Kelly Hawkins D.V.M.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
committee name

Committee on "An Act Relating to Cruelty to Animals" HB 489, dated 3-15-02
bill # / subject

Signed: Sue Carter (Sue A. Carter)
Testifier

Self
Representing (optional)

P.O. Box 212 Kenai, AK. 99611
Address

907-283-9272.
Phone number

Sue C. Carter
Post Office Box 212
Kenai, Alaska 99611

Telephone: 907-283-9272
E Mail: carter-ak-az@worldnet.att.net

House Judiciary Committee
HB 489 – March 15, 2002

I am Sue Carter, a resident of Alaska since 1966, and I am here to support HB 489.

Unfortunately, Alaska now holds the distinction of having the highest rate of abuse in the Nation – not only relative to people but animals as well. This is simply not tolerable to many of us who expect and wish to enjoy a certain level of quality of life here in Alaska.

Animal abuse appears to be increasingly on the rise and some of the worst cases in recent times has occurred here on the Kenai Peninsula. It appears there will be no charges in the recent Sterling rescue – the State Troopers advise these persons most likely will be repeat offenders due to the lack of effective animal cruelty laws that provide appropriate punishment and perhaps determent?

The State dog sled racing association has made great strides in providing a healthier and safer environment for their dogs but we must now work to expect responsible and appropriate requirements for shelter, food and care for all domestic animals in Alaska.

First step, in my opinion, is to make stronger animal cruelty laws and let those individuals who cannot live within these structures know their actions won't be tolerated by the Alaska legal system.

I thank you for giving me this opportunity to speak in favor of HB 489 and I wish you well in this Legislative session.

Sue Carter

Subject: [Fwd: HB 489, Animal Cruelty]
Date: Thu, 28 Mar 2002 14:52:29 -0900
From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>
Organization: Alaska State Legislature
To: Heather_Nobrega@legis.state.ak.us

Subject: HB 489, Animal Cruelty
Date: Wed, 27 Mar 2002 18:21:48 -0900
From: Sally Clampitt <Sclampitt@tyonek.com>
To: "'Representative_Norman_Rokeberg@legis.state.ak.us'" <Representative_Norman_Rokeberg@le

March 27, 2001

Representative Norman Rokeberg, Chairman

Judiciary Committee

Alaska State Legislature

Re: HB 489, Animal Cruelty

Dear Representative Rokeberg:

The purpose of this e-mail is to urge you to support HB 489, an act relating to cruelty to animals. Without question, there is considerable cruelty to animals in Alaska. Local and state laws as currently written are insufficient, vaguely written, and difficult to enforce. Consequences, if any, to animal abusers are frequently weak, and repeat abuse is common. Animal cruelty is a sensitive issue that nobody wants to deal with, so it is much easier to sweep it under the rug, hide it, and try to make inappropriate excuses such as "we don't need more laws" or "all the animal welfare people are extremists" or "animals are personal property and people can do what they want with them". The truth is, animal cruelty is a very serious and ugly problem, is frequently a precursor to child abuse, and we as a civilized society, regardless of our party affiliation, have a strong moral obligation to protect helpless animals who cannot protect themselves.

Without doubt, you and your committee have an opportunity to take a small but nevertheless important step forward in the fight against animal cruelty by supporting HB 489. I hope you will recognize this and do the responsible thing.

Alaska Equine Rescue is a statewide non-profit horse welfare organization. We have had more than 10 years of experience dealing with abuse to horses and other animals, and we receive overwhelming support from the public for our efforts. We are all-too-familiar with the difficulties faced in helping animals in trouble. We have good working relationships with attorneys, animal control agencies, state troopers and district attorneys offices in many parts of the state. I would be very glad to answer any questions you might have or share information with you from our past experiences that might be helpful to you now as you review this important legislation.