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**Report of the  
Alaska Supreme Court  
Advisory Committee  
on Fairness and Access**

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**October 31, 1997**

Alaska Court System  
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Prepared with the assistance of



## **PURPOSE AND ACKNOWLEDGMENTS**

In 1995, a group of judges and administrators from the Alaska Court System attended a national conference on Eliminating Race and Ethnic Bias in the Courts, sponsored by the State Justice Institute. Following this conference, the Alaska Supreme Court appointed the Advisory Committee on Fairness and Access to identify concerns about racial and ethnic bias in the state court system and make recommendations. The Fairness and Access Committee enlisted many community members and court employees to serve on its six subcommittees, to make findings and recommendations to the full committee on a broad range of topics. This report is intended to assist the Alaska Supreme Court in addressing those concerns.

The Fairness and Access Committee thanks the many people who have worked to make the project succeed. The committee received a major grant from the State Justice Institute to hire a project director, conduct research, hold meetings by teleconference, and seek out public participation. The State Justice Institute provided further travel support for the subcommittee members to receive training and work together on their findings and recommendations. The administration of the Alaska Court System provided administrative support and staff time. The Area Court Administrators provided funding for travel and research. The Alaska Judicial Council provided staff time and research support. The individual committee and subcommittee members gave generously of their time.

The Fairness and Access Committee gives special thanks to the many Alaskans who took time to testify at public hearings, write letters, make phone calls and tell the committee of their experiences. This effort could not have occurred without them.

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## COMMITTEE MEMBERS

Justice Jay A. Rabinowitz (retired), co-chair	Alaska Supreme Court, Juneau
Judge Mary E. Greene, co-chair	Alaska Superior Court, Fairbanks
Teresa W. Carns, Vice-chair	Alaska Judicial Council, Anchorage
Judge Larry D. Card	Alaska Superior Court, Anchorage
Judge Dale Curda	Alaska Superior Court, Bethel
Judge Roy Madsen (retired)	Alaska Superior Court, Kodiak
Judge Larry Zervos	Alaska Superior Court, Sitka
Stephanie Cole	Alaska Court System, Anchorage

## SUBCOMMITTEE MEMBERS

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Marla Greenstein	Alaska Commission on Judicial Conduct, Anchorage
Jim LaBelle	Rural Affairs Coordinator, Alaska Dept. of Corrections, Anchorage
Brant McGee	Public Advocate, Office of Public Advocacy, Anchorage
Bob Sawyer	Community Activist, Fairbanks
Richard Slats	Chevak Traditional Council, Chevak

### Court as Employer Subcommittee

Justice Jay A. Rabinowitz (retired), chair	Alaska Supreme Court, Juneau
Teresa W. Carns	Alaska Judicial Council, Anchorage
Cindy Chase	Personnel Director, Alaska Court System
Jim Chase	Department of Military and Veteran Affairs, Anchorage
Stephanie Cole	Deputy Administrative Director, Alaska Court System
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Dorothy Jones	Affirmative Action Program, University of Alaska, Fairbanks
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### **Jury Composition Subcommittee**

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Celeste Hodges	Alaska NAACP, Anchorage
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### **Language and Culture Subcommittee**

Judge Richard H. Erlich, chair	Alaska Superior Court, Kotzebue
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Thelma Buchholdt	Attorney, Anchorage
Mike A. Jackson	Alaska Court Magistrate, Kake
Heather Kendall	Native American Rights Fund, Anchorage
Kimberly Martus	Tribal Justice Advocate, Anchorage
Galen Paine	Assistant Public Defender, Sitka
Judge Larry Zervos	Alaska Superior Court, Sitka

### **Rural Access Subcommittee**

Judge Dale Curda, co-chair	Alaska Superior Court, Bethel
Judge Roy Madsen (retired), co-chair	Alaska Superior Court, Kodiak
Louise Brady	Sitka Tribe of Alaska, Sitka
James Jackson	Alaska Court Magistrate, Galena
Judge Michael Jeffery	Alaska Superior Court, Barrow
John McIntyre	Association of Village Council Presidents, Bethel
Judge Eric Morrison	Tlingit and Haida Central Council Tribal Court, Juneau

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**ALASKA SUPREME COURT**  
**ADVISORY COMMITTEE ON FAIRNESS AND ACCESS**  
**EXECUTIVE SUMMARY**



The Alaska Supreme Court formed the Advisory Committee on Fairness and Access to examine racial and ethnic bias in the Alaska state court system. The eight-member committee spent 20 months identifying public concerns, gathering facts, and weighing proposed recommendations. The committee was greatly assisted by six subcommittees composed of community members and court employees from a variety of ethnic backgrounds, professions, and locations. These subcommittees supplied the findings and recommendations upon which the committee based its own recommendations to the supreme court.

**I. Scope of the Problem**

The Alaska Court System strives to be an impartial and fair forum, accessible to all. In the course of its work, the committee heard almost no complaints of intentional racial or cultural bias by the court system or its employees. It did, however, learn of unintentional bias, cultural misunderstandings, inadequate services, lack of accessibility, and troubling disparities in a number of important areas.

The committee heard from Alaska residents of many ethnicities, economic levels, and experiences. It learned that while most people find legal problems and court proceedings to be difficult, many minority residents find the courts intimidating to the point of being inaccessible. Their cases are complicated by language barriers, cultural differences, lack of access to attorneys, lack of familiarity, and mistrust. Village residents, often Alaska Natives, have additional problems caused by distance and expense.

At least a quarter of Alaska's people come from racial or ethnic minority groups. Many Alaska Natives speak Native languages, and a number of recent immigrants speak English poorly or not at all. As the state increases in diversity, the potential for linguistic and cultural misunderstandings also increases. If the Alaska Court System

is to provide equal justice for all, all judges and court employees must understand the unique needs of minority citizens.

## **II. Work Process and Public Participation**

The six subcommittees first identified the issues they believed important to address, and then researched the issues by reading existing studies, inviting experts to speak, and listening to public testimony. They also conducted a number of their own research projects, with assistance from Alaska Judicial Council staff, the Institute for Social and Economic Research, and the Justice Center at the University of Alaska. The committee held public hearings in nine locations, conducted five radio call-in shows, and spoke at various statewide meetings. Through letters and telephone interviews, the committees contacted several hundred community groups and individuals likely to know of complaints about the court system. The subcommittees made findings and recommendations based on all of this information. The full committee reached its own recommendations based on the subcommittee work and on cost estimates provided by committee staff and the Alaska Court System. All subcommittee findings and recommendations and the full committee recommendations are contained in the report.

## **III. Issues Addressed**

The subcommittees examined a number of issues:

- ◆ experiences of court users of different ethnicities, ways to help people understand the court system, and public perceptions of the state justice system;
- ◆ court hiring practices and work environment for minority employees;
- ◆ disparate confinement of racial and ethnic minorities, including length of prison sentences, access to bail, probation and parole practices, and juvenile delinquency detention, adjudication, and institutionalization;
- ◆ jury selection practices affecting minority and rural jurors;
- ◆ language barriers and cultural differences in responding to the legal system, including the importance of language interpreters and special problems raised by particular cultures; and
- ◆ rural access to the state court system, disparate availability of state services, and availability of local dispute resolution and social services.



#### **IV. Subcommittee Findings**

The six subcommittees made a number of important findings:

- ◆ Urban residents have far more access to justice system services than village residents. One-fourth of Alaskans do not live within reasonable reach of many court system services. Rural residents do not receive adequate legal representation in either civil or criminal cases. (pages 104-106)
- ◆ Many state residents see the court system as a remote, intimidating, and unfathomable institution. This problem is particularly acute for ethnic and cultural minorities. (page 48)
- ◆ A significant number of people believe that the justice system is unfair to members of minority groups, particularly in criminal and children's cases. This perception undermines the effectiveness of the court's work. (page 49)
- ◆ Alaska judges are not trained to know when a language interpreter is needed, how to decide if a particular interpreter is qualified, or how to use interpreters in court. The Alaska Court System does not train interpreters in legal procedure or ethnics or monitor interpreter qualifications. (page 94)
- ◆ Judges and court system personnel do not receive regular cross-cultural training about ethnic and cultural groups living or working in their area. (page 58)
- ◆ Alaska has a number of non-state justice resources such as tribal courts, dispute resolution boards, and social workers, particularly in rural areas. State law enforcement officers, social workers, and judges are reluctant to refer cases to these agencies or ask for input from them. These agencies are underused, while state services are overburdened or unavailable. (pages 107-108)
- ◆ The courts serve a significant number of people who do not speak English well enough to understand court publications, forms, or in-court proceedings. (pages 92-93)
- ◆ Alaska Natives, African Americans, and Hispanics make up a disproportionately high share of the prison population. Native Alaskan and African American youths are more frequently referred by the police on juvenile delinquency matters and more frequently institutionalized. (pages 66-67, 70-71)
- ◆ The state does not provide enough supervision and treatment services in rural areas. The state has few treatment programs designed for minority offenders. (pages 68-69)

- ◆ The Alaska Court System does not call a number of village residents for jury service, because of the high cost of transportation to the nearest court. In hub cities like Bethel and Barrow, jurors and their employers feel burdened by frequent calls for jury service. (pages 81-82; 83-84)
- ◆ Too few minorities are employed by the Alaska Court System, particularly at the management level. The court system should improve its affirmative action plan and employee development efforts. (pages 56-57)

## **V. Fairness and Access Committee Recommendations**

Based on its analysis of the subcommittee's findings and recommendations, the Alaska Supreme Court Advisory Committee on Fairness and Access recommends the following actions:

- ◆ The Alaska Court System should establish its presence in rural areas not now being served and increase its presence in underserved areas. It should encourage and fund judicial travel to local hearings, trials, and sentencings, and send "circuit-riding" judges to travel to rural areas. Judges should appoint local residents as special masters when possible. The Alaska Court System should improve and update its telephone system and information technology for better rural access. (pages 14-15)
- ◆ The Chief Justice should establish a standing public education committee to educate the public about the legal system, and should encourage judges to educate their communities. Other state justice agencies should encourage their personnel to speak at community meetings and in local forums. (page 17)
- ◆ The Alaska Court System should train judges and magistrates in the appointment and supervision of interpreters. It should recruit interpreters of commonly used languages and train them in court procedure. It should develop court rules addressing the standards for interpreter qualifications, and should work with other agencies to determine the most efficient way to hire and pay for interpreters in civil and criminal courtroom proceedings. (pages 18-20)
- ◆ The Alaska Court System should provide ongoing cross-cultural training to all of its employees, including judges. Other justice system agencies should offer similar training. (page 21)
- ◆ The Alaska Court System and its judges should actively support development of voluntary local dispute resolution processes. State justice agencies should share information, request assistance, and work cooperatively with tribal courts and councils, alternate dispute resolution boards, and other local resources. (pages 22-23)

- ◆ The Alaska Court System should revise its forms, related instructions and pamphlets using clear, simple English. It should translate its instructions, publications, and arraignment videotape into commonly used languages. (page 24)
- ◆ The Alaska Court System and other criminal justice agencies should request the legislature to fund a study of the effects of ethnicity and culture on the criminal justice process, for evidence of unwarranted disparities among ethnic groups and between urban and rural residents. (page 25)
- ◆ Judges and magistrates should seek culturally relevant, local sentencing options for minority offenders. The Department of Corrections and the Division of Family and Youth Services should increase locally available rehabilitation programs, supervision alternatives, and culturally relevant sentencing options. Native communities should develop culturally relevant ways to rehabilitate offenders and deal with social issues within the community. (pages 26-27)
- ◆ The presiding judge in each judicial district should identify ways to include more residents as jurors. The Alaska Court System should work to increase the likelihood that citizens will respond to requests for jury service. To lower the burden on citizens serving as jurors, the number of peremptory challenges in criminal cases should be reduced. (pages 28-29)
- ◆ The Alaska Court System should develop a new affirmative action plan to attract, retain, and promote qualified minorities, evaluate its current practices, and monitor progress toward its diversification goals. (pages 30-31)
- ◆ The Alaska Court System should seek funding to develop a pilot program of court facilitators to help members of ethnic and cultural minorities through court processes. (page 32)
- ◆ All agencies with responsibility for Child in Need of Aid cases should review their procedures to assure that they are handling these cases appropriately, without cultural misunderstandings or unjustifiable disparate impact on ethnic and cultural minorities. Employees of the responsible agencies should be regularly trained in the Indian Child Welfare Act. (page 33)
- ◆ The Alaska Legislature should fund Alaska Legal Services and state legal agencies at a level that assures access to the justice system for indigent Alaskans. (page 46)
- ◆ To assure that these problems are promptly addressed, the Alaska Supreme Court should appoint a committee to implement these recommendations during the next three years. (page 34)

## **VI. Conclusion**

Implementation of these recommendations will help alleviate problems caused by unintentional bias and unequal distribution of resources. The committee believes that all of these recommendations are feasible and fiscally responsible. Where significant additional funding is required, the added expense is justified by the magnitude of the underlying problem. These recommendations are designed to promote a justice system that is accessible, affordable, and understandable to all.

# CHAPTER 1

## INTRODUCTION



### I. Purpose and Structure of this Report

This report presents recommendations to the Alaska Supreme Court made by the supreme court's Advisory Committee on Fairness and Access. The report also contains findings and recommendations made by six subcommittees to the Fairness and Access Committee.

The Fairness and Access Committee was appointed by the Alaska Supreme Court to identify concerns about ethnic and cultural bias in the courts and make recommendations. The basic questions before the committee were whether the Alaska Court System was fair and unbiased in its treatment of ethnic and cultural minorities<sup>1</sup> and whether it provided them with equal access to court services. The committee enlisted many community members and court employees to serve on its six subcommittees, asking them to make findings and recommendations on a broad range of topics. This report is intended to assist the Alaska Supreme Court in addressing the problems identified.

The committee focused on the barriers faced by members of ethnic and cultural minority groups in using court services. The ethnic groups most commonly mentioned in the course of this project were Native Alaskans, African-Americans, Hispanic-Americans, and Asian-Americans. The committee studied the problems faced by court users who do not speak English proficiently. Because of the large percentage of Native Alaskans living in remote villages, the committee also studied differences in court services between urban and rural locations.

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<sup>1</sup> This report uses the term "ethnic" to refer to distinctions that also are called "racial" -- that is, categories created on the basis of perceived physical differences. The term "cultural" is used to refer to distinctions based on language, social institutions, belief systems, and arts that are shared by populations. The terms "minorities" and "minority groups" refer to ethnic and cultural groups who experience unequal treatment or discrimination from American society at large because of they are members of that group.

The report consists of five chapters. This introduction gives the background of the project and discusses the general barriers faced by citizens who use the state courts. The second chapter explains the scope of the Fairness and Access Committee's work, its six subcommittees, and the public's participation in the study. The third chapter sets out the Fairness and Access Committee's recommendations to the Alaska Supreme Court. The fourth chapter sets out the Fairness and Access Committee's recommendations to other agencies. The fifth chapter contains the findings and recommendations submitted to the Fairness and Access Committee by each of the six subcommittees. Following the conclusion are appendices containing a summary of public comment, several tables, and a bibliography.

## **II. Need for Examination of Ethnic and Cultural Bias**

The Alaska Court System has long worked to create an impartial and fair forum, accessible to all. Over the last twenty-five years, Alaska's judicial branch has reviewed racial and ethnic disparities in criminal sentencing statistics,<sup>2</sup> cultural diversity issues, and its ability to satisfy the need for language interpretation. While the research revealed no current evidence of intentional ethnic or cultural bias in the court system, unintentional bias, cultural misunderstandings, and unjustified disparities remain a concern. The public perception of bias also is an issue, since public perceptions of ethnic or cultural bias erode confidence in the justice system.

Alaska courts face the unique challenge of administering justice in a state covering more than 586,000 square miles and hosting a relatively small population of 615,000 people from many distinct cultures. Over half of the total population, including most of the state's African-American and European-American people, lives in Anchorage and the surrounding communities. Many of the non-urban residents who live in more than 200 villages across Alaska belong to one of the five major indigenous peoples.<sup>3</sup> Roads do not connect most of the villages to larger communities. Residents travel by plane, boat or snowmobile to hub villages. Many people, including Yupiks in the southwest, Inupiat in the northwest, and Athabascans in the northcentral and northeast, speak Native languages -- indeed, many elders speak little English.

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<sup>2</sup> See ALASKA JUDICIAL COUNCIL, INTERIM REPORT OF THE ALASKA JUDICIAL COUNCIL ON FINDINGS OF APPARENT RACIAL DISPARITY IN SENTENCING (1978) (summary of data on felony cases from Anchorage, Fairbanks and Juneau from 1974-76, giving evidence of racial and other disparities in sentencing for certain types of offenses); ALASKA JUDICIAL COUNCIL, ALASKA MISDEMEANOR SENTENCES: 1974-76 RACIAL DISPARITY (1979) (showing significant racial disparity in misdemeanor sentences for several categories of offense); ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES: 1976-79 (1980) (showing disappearance of most racial disparities); ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES: 1980 (1982) (showing disappearance of racial disparities).

<sup>3</sup> Several distinct Native groups populated the area now known as Alaska before contact with the Russians in the 1700s, including Inupiat and Yupik Eskimos, Aleuts, Athabaskan Indians and Tlingit and Haida Indians.

Many other Alaska residents speak English as their second language, including Koreans, Filipinos, and Latino peoples. In Anchorage, minorities make up a growing share of the population, increasing from 19.2% of the population in 1990 to 25.1% in 1995, with the most rapid growth among Hispanics and Asians. Other parts of Alaska have seen similar growth in minority populations.<sup>4</sup> Providing adequate access and fair treatment for all members of this diverse population is an ongoing challenge for the Alaska Court System.

### **III. Formation of the Fairness and Access Committee**

In late 1995, the Alaska Supreme Court formed the Advisory Committee on Fairness and Access to examine public perceptions of fairness in the Alaska Court System. The committee included a supreme court justice (now retired), five active or retired superior court judges from around the state, the Alaska Court Deputy Administrative Director (now Administrative Director), and the Alaska Judicial Council Senior Staff Associate.

The committee identified six different areas to examine for perceptions of ethnic or cultural bias.<sup>5</sup> The committee formed six subcommittees, each chaired by a state court judge, to work on each of the substantive areas. Each subcommittee identified the principal issues that it would study and the most reliable and cost-efficient methods of gathering information. They then worked with project staff to collect and analyze data, and prepared findings and recommendations for this final report.

The chairs recruited over 40 additional subcommittee members chosen for their experience and knowledge, representing a broad range of ethnic and cultural viewpoints. There were judges, magistrates and other employees from the state court system, tribal court judges and administrators, human resources specialists, researchers and academics, civil rights and community activists, state employees from other agencies, and criminal and civil attorneys, both public and private.<sup>6</sup> Subcommittee members came from many geographical regions, both urban and rural. The subcommittee members had a wide range of interests, including children's cases, criminal law and corrections, tribal courts and local dispute resolution, rural service delivery, race discrimination, language barriers and interpreter services, cultural misunderstandings, and immigration.

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<sup>4</sup> Alaska Department of Labor, *Alaska Population Overview, 1995 Estimates*, Table 2.5 (July 1996).

<sup>5</sup> The six areas are: consumer/user, court as employer, disparate confinement of adults and juveniles, jury selection, language and culture, and rural access. The issues addressed by each of these committees are described in the next chapter.

<sup>6</sup> Eighteen of the 50 subcommittee members were employees of the Alaska Court System, 14 were from other state agencies that work with or study the courts, and 18 from independent interests concerned with equal court system access for ethnic and cultural groups.

The Alaska Court System increased funding for the project by obtaining a competitive grant from the State Justice Institute.<sup>7</sup> Area court administrators agreed to fund judges' travel to meetings, thus making more money available for research. The generosity of these funding sources allowed the court system to devote substantial time and attention to the Fairness and Access committee.

#### **IV. Understanding Barriers to Court Access**

This report focuses on the concerns of ethnic and cultural minorities. Because of its wide-ranging inquiry, the committee learned of a number of problems faced by Alaskans of all ethnicities when they interact with the courts. It learned that many people do not understand the justice system and have difficulty using court services. For example, at a public hearing in Bethel, a doctor from the Yukon-Kuskokwim Health Corporation said that although she was a highly educated person with English as her first language, she had a hard time understanding the justice system when she served as a juror. People of all races, economic classes, and regions repeated this theme. However, the ethnic and cultural groups of concern to this project experience these problems with more intensity than the white, urban population.

##### **A. Lack of Legal Knowledge**

Lack of legal knowledge often stands between the courts and the citizen. Law is a language of its own, using even common terms in specialized ways. Highly ritualistic roles and procedures in court proceedings require strict adherence to rules of court, evidence, and precedent. Only lawyers and court employees operate easily in this environment. Jurors, witnesses, and parties unrepresented by lawyers often feel left in the dark, and even parties with lawyers often do not receive full explanations of the process. The courts and other organizations have published booklets to explain court procedures and terminology, and some community groups offer personal help for certain problems, but the legal environment remains strange and confusing for citizens of all backgrounds.

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<sup>7</sup> The court system received a grant of \$57,842 from the State Justice Institute, which it used to hire a project director, pay for travel, phone, and teleconference costs for public hearings and meetings, contract for research from the Institute for Social and Economic Research, University of Alaska, Anchorage, and print the final report. A supplemental grant from SJI covered the costs of a May 1997 meeting where subcommittee members met in person to draft findings and recommendations for the final report. The Alaska Court System and the Alaska Judicial Council provided a match of \$89,957, covering administrative costs, some printing, and the time spent by the judges, other court system personnel, and Judicial Council staff. The total budget for the project was \$165,311.



## **B. Financial and Physical Barriers**

Financial and physical barriers also prevent ready access to the courts. Most legal matters are time-consuming and expensive. They impose many direct costs, like filing fees and attorney fees, and many indirect costs, like missed work, child care, and parking. In much of Alaska, physical distance from the nearest court also is a barrier. Twenty-nine percent of Alaska's population does not have easy year-round access to a full-service court location, and at least 6% has no local justice system services other than local police. Inclement weather also frequently prevents participation in scheduled court proceedings.

## **C. Emotional Barriers**

Finally, strong emotions distance citizens from the courts.<sup>8</sup> Few people get involved with the courts voluntarily; they come as parties who cannot resolve a dispute, or as jurors, witnesses, and family members. Very few court matters are associated with something pleasant, since the most common cases involve traffic violations, crimes, debt collection, divorce, child support, delinquent and neglected children, business disputes, property disputes, personal injuries, and probate. Apart from some quiet weddings and an occasional adoption, the courthouse is not a happy place to be. Given the nature of these interactions, it is not surprising that most citizens see courts as interesting on television but alien and threatening in daily life.

The particular barriers faced by ethnic and cultural minorities are built on top of barriers faced by most citizens trying to use the justice system. The problems faced by most citizens are compounded by language barriers, cultural differences, lack of familiarity, and mistrust. As Alaska's linguistic and cultural diversity increases, the court system must consider the particular needs of ethnic and cultural minority groups in its efforts to provide equal justice to all.

## **D. Role of Other Agencies**

Courts are only part of the overall system of civil and criminal justice in Alaska. Numerous state and municipal agencies participate in criminal cases, including law enforcement officers, prosecutors, public defenders, and probation officers. In civil cases, participants may include the Attorney General's office, the Division of Family and Youth Services, and various state and municipal enforcement agencies. This report's findings and recommendations have implications for other parts of the civil and criminal justice systems as well as for the courts.

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<sup>8</sup> People experiencing strong emotions find it hard to think clearly, process new information, and remember what they have heard. This effect makes it doubly difficult to learn legal terminology and procedure.



## CHAPTER 2

### COMMITTEE PROCESS



#### I. Scope of work

The Fairness and Access Committee met twelve times between January 1996 and June 1997, with a final meeting in September 1997. At these meetings, committee members set goals for the project, discussed the work of the subcommittees, approved research efforts, allocated staff time, and conducted statewide public hearings.

The six subcommittees began work in March 1996, meeting an average of eight times each. Most subcommittees met by teleconference to reduce travel expenses. The subcommittees identified issues, examined existing sources of information, proposed and conducted research projects, listened to invited speakers, solicited public participation, attended hearings, and eventually made findings and recommendations to the full committee. The subcommittees received research assistance from the project director,<sup>9</sup> the Alaska Judicial Council, and the Institute for Social and Economic Research and the Justice Center at the University of Alaska, Anchorage.

In May 1997, the committee and all its subcommittees met in Anchorage for a two-day conference funded by the State Justice Institute. The conference opened with a panel of policymakers who discussed how to make effective recommendations and address fiscal and political issues. Oregon Judge Paul DeMuniz discussed recommendations from Oregon's racial and ethnic bias task force and how they have been implemented. The subcommittees then met to finalize their findings from their year of work and to craft their recommendations based on those findings. The subcommittees orally presented their findings and recommendations to the conference participants.

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<sup>9</sup> The original staff work on this project was provided by the Alaska Court System out of existing staff time. Funding from the State Justice Institute allowed the court system to hire a project director 30 hours per week, beginning in September, 1996. After the project director resigned for personal reasons in December 1996, the Alaska Judicial Council took over staff responsibilities. The court system has continued to provide substantial administrative support.

After the conference, the six subcommittees' fifty-five recommendations were circulated among all subcommittee members. Subcommittee members were asked to set priorities among the full set of recommendations. The list included fiscal information for each recommendation provided by staff.

The Fairness and Access committee then met several times to draft its own recommendations to the Alaska Supreme Court and other justice system agencies. This report includes the Fairness and Access Committee's recommendations, followed by all findings and recommendations made by each subcommittee.

## **II. Issues Addressed by the Subcommittees**

In its early meetings, the full committee considered the range of issues that might be addressed and divided the work among six subcommittees, each chaired by a state court judge. The subcommittees decided which issues they would review in depth, agreed on the research needed to make findings, assisted staff with data collection and analysis, made findings and recommendations, and assessed the relative importance and feasibility of all the subcommittee recommendations.<sup>10</sup>

### **A. Consumer/Users of Court System Services Subcommittee**

The committee on Consumer/Users of Court System Services asked individuals and groups of different ethnicities about their experiences with the court system, and the effects of cultural differences on access to the state justice system.

The subcommittee sent letters to 315 organizations and individuals who might have information on the experience of minorities with the court system, provided an 800 number for responses, and made follow-up telephone calls to approximately 288 people. The subcommittee also incorporated the information received through public hearings, meetings with other groups, and phone calls. The subcommittee surveyed court materials and outside resources designed to improve consumer understanding and participation in the justice system.

### **B. Court as Employer Subcommittee**

The Court as Employer subcommittee asked whether the court system is perceived as a good place to work and what barriers might exist to the hiring, retention, and

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<sup>10</sup> Some of the subcommittee's research projects are included as appendices in this report. All other data are available from the Alaska Judicial Council, 1029 West Third Avenue, Suite 201, Anchorage, Alaska 99501 (907/279-2526).

promotion of minority employees. It also examined the court system's use of bilingual employees to serve the public.

The subcommittee undertook four research projects: (1) a survey of all court employees asking whether they perceived the court as a good place to work, whether they saw court practices and training as fair, what use the court had for bilingual employees' skills, and what training they thought the court should provide; (2) a four-hour directed group interview with nine court system employees who discussed court system practices in recruitment, promotion, grievances, and work environment with a focus on minority employees; (3) a review of general information provided by the Alaska Court System on hiring practices, and by the Judicial Conduct Commission, Human Rights Commission, and Alaska State Ombudsman's office on bias complaints against the court system and its judges; and (4) a survey of court clerks and magistrates about use of bilingual employees to handle requests for translation during the courts' daily business.

### **C. Disparate Confinement of Youths and Adults Subcommittee**

The Disparate Confinement of Youths and Adults subcommittee discussed racial and ethnic differences in probation and parole practices, length of sentences, access to bail, and rates of delinquency detention, adjudication, and institutionalization. Members tried to determine what disparities existed, to identify the potential causes, to pinpoint places in the system where bias might occur, and to make suggestions for eliminating unjustified disparity.

The subcommittee reviewed data analyzed by Dr. Nancy Shaefer, a member of the subcommittee from the University of Alaska Justice Center, regarding differences in the way minors from different ethnic and cultural groups are handled by the juvenile justice system. The subcommittee also conducted a study of felony probation revocations for selected offenders and offenses, using 154 court case files and presentence reports from Anchorage, Bethel, Nome, Juneau, and Fairbanks to look for possible patterns and problems in revocation practices. The subcommittee surveyed alternatives to imprisonment (like furlough programs, drug treatment facilities, and halfway houses) available in rural areas. The subcommittee also reviewed past studies and reports by the Alaska Judicial Council, Alaska Natives Commission, and Alaska Sentencing Commission, and current information from the Department of Corrections and the Division of Family and Youth Services. Using DOC data, the staff prepared a table showing rates of adult incarceration for different ethnic groups.

### **D. Jury Composition Subcommittee**

The Jury Composition subcommittee reviewed the Alaska Court System's jury selection practices in different communities and barriers to jury service for minority group

members. Specifically, the subcommittee examined under-representation of ethnic and cultural groups on juries, reasons for nonresponse to jury summonses, burdens of jury service, and the effects of excluding people in some communities from jury service. Members agreed that they would not look at legal issues in jury selection, such as use of peremptory challenges to prevent minorities from serving on juries.

The subcommittee conducted three studies: (1) a survey of persons reporting for jury duty in Anchorage, Nome, Kodiak, Fairbanks, and Juneau, asking about barriers to jury service such as time off work, family care costs, and transportation; (2) a survey of jury clerks throughout the state, asking about their practices in notifying prospective jurors and following up on jurors who failed to report to court; (3) follow-up to a November 1995 Alaska Public Interest Research Group report prepared by subcommittee member Steve Conn describing court system administrative practices that exclude some communities from the jury pool. The staff prepared an updated table showing communities from which the court system does not draw jurors, because of distance or the cost of transportation and per diem to bring them to court.

#### **E. Language and Culture Subcommittee**

The Language and Culture Issues subcommittee considered the special problems faced by people who speak English as a second language or do not speak English well, and problems faced by people of various cultures. Members discussed differences in how cultures view time, ambiguity, motivation, conflict, conciliation, crime, confession, and willingness to judge others. The subcommittee assessed the need for courtroom interpreters in certain languages, how they should be trained, and when the court should bear the cost of providing them.

The subcommittee emphasized four areas of inquiry: (1) policies and practices affecting the use of interpreters in Alaska and other courts; (2) court facilitator programs that provide assistance to minority court users, including a presentation by Dave Chartrand from the Manitoba Native Court Worker program; (3) how linguistic and cultural differences affect court proceedings, including a presentation by Phyllis Morrow, professor of anthropology at University of Alaska, Fairbanks; and (4) policies and practices affecting non-English-speaking immigrants. It created a table showing the languages and cultures prevalent at state court and magistrate locations in Alaska.

#### **F. Rural Access to the Court System Subcommittee**

The subcommittee on Rural Access analyzed justice system service areas. Members considered how to improve services, increase local participation, and reduce dependence on state agencies for resolution of some disputes.

The subcommittee developed a table of resources showing the justice system resources available to residents of each census-designated place in the state. The subcommittee also surveyed magistrates at the October 1996 magistrates' conference about the presence of ethnic and cultural groups in most small towns and villages throughout the state. Members also discussed ways to increase cooperation with tribal councils and courts, and to share training and resources with them.

### **III. Public Participation**

The Fairness and Access Committee made a wide-ranging effort to assess the quality of court system services, determine court accessibility to ethnic and cultural minorities, and learn of unfair practices and individual instances of bias. The staff spent a substantial amount of time organizing public hearings, radio call-in shows, and other public comment about perceptions of the court system. In 1996, the committee conducted one public hearing in Anchorage and one at the annual Alaska Federation of Natives convention. Between February and April 1997, the committee held hearings in ten cities and villages across the state: Anchorage, Angoon, Bethel, Dillingham, Fairbanks, Fort Yukon, Juneau, Kake, Kodiak and Napaskiak. Staff publicized the hearings using radio and television news and public service announcements, press releases, posters, and flyers. The committee invited the mayor of each community and representatives of local ethnic and cultural groups to testify. Committee members and staff took testimony, answered questions, and posed questions suggested by the subcommittees.

Committee members attended the meetings of other groups to publicize the committee's work, answer questions, and solicit information. They presented a panel at the Sitka Native Justice Conference in October 1996, and spoke at the statewide meetings of the clerks of court, magistrates, and state court judges. Staff and committee members appeared on radio and TV shows in Bethel, Fairbanks, and Juneau, as well as a regional Southeast call-in show and an hour-long statewide call-in show. The committee sent letters to several hundred community groups and individuals identified as having an interest in ethnic or cultural bias or likely to know of complaints about court system, to solicit their experiences and perceptions. The committee followed up the letters with telephone interviews, and made an 800 number available for people to call in their information.

A summary of all the testimony received from the public is found in an appendix to this report. Some public comments were based on personal experience and observations, while others came from cases people had heard about or from their general impressions. The public comments provide evidence of actual problems and a measure of public confidence in the state justice system.





**CHAPTER 3**  
**ADVISORY COMMITTEE ON FAIRNESS AND ACCESS**  
**RECOMMENDATIONS TO THE ALASKA SUPREME COURT**



**I. Introduction**

This chapter presents the views of the Alaska Supreme Court Advisory Committee on Fairness and Access. To arrive at these recommendations, the Committee considered the findings and recommendations of all six subcommittees, the estimated fiscal impacts of the subcommittee recommendations (where fiscal impact information was available), and the relative importance of the issues raised. The Committee considered the need for fiscal responsibility in making its recommendations, while recognizing that some changes are so important that the Alaska Court System should shift existing resources or obtain new funding in order to make the courts fairer and more accessible to all citizens of the state. A chart showing the fiscal impact of all the recommendations to the Alaska Court System is in the Appendix.

These recommendations fall into thirteen general categories: increased services to rural areas, public education programs, language interpreters, cross-cultural training, local dispute resolution and cooperation with local organizations, more effective communication, studies of the criminal justice system, expanding sentencing alternatives, expanding the jury pool, diversifying the court system workforce, court facilitator pilot program, Child in Need of Aid proceedings, and implementation of recommendations. Some categories contain more than one recommendation.

A brief commentary and fiscal impact statement accompany each recommendation. The commentary refers to the underlying subcommittee findings that support the recommendation, but does not repeat the findings.

## II. Recommendations to the Alaska Supreme Court

### A. Increased Service to Rural Areas

- A(1) **The Alaska Court System should establish its presence in rural areas not now being served and should increase its presence in underserved areas. It should encourage and fund judicial travel to local hearings, trials, and sentencings, and send “circuit-riding” judges to rural areas.**

*Commentary:* Equality before the law requires that justice be available, affordable and understandable. Yet, about 29% of the state’s residents lack ready access to justice system services. Although 71% of the population has reasonable access to a superior court location and an additional 3% can reach a district court with relative ease, 7% have access to a resident magistrate only, 6% have access to a magistrate only by telephone, and 13% live outside census-designated places and may or may not have access to court services.<sup>11</sup>

Available and affordable justice services vary substantially by judicial district within the state. The Third Judicial District is the best served, with 80% of the population having physical access to the full range of justice services, including judges, public attorneys, and probation services. The First Judicial District also is relatively well served, with 71% having physical access to most services. However, fewer than half the citizens in the Second and Fourth Judicial Districts live in locations with judges, public attorneys, and probation officers. One-quarter of the citizens in the Second Judicial District are served by magistrates only, and another quarter have no local court system services at all. In the Fourth Judicial District, 12% of the citizens are served by magistrates only, 11% receive no services, and 27% live in unnamed areas which may or may not have services available.

This situation has been exacerbated over the last ten years by budget cuts that have caused agencies to decrease travel to rural areas and cut rural offices. The court system has responded to budget cuts by decreasing travel to rural areas and downgrading some proceedings that should have been held in person to teleconferences, or not holding them at all.

To reverse this trend and restore an adequate level of interaction and communication between the justice system and its rural constituents, the Alaska Court System should encourage and provide funding for judges to schedule hearings, trials, sentencings and other dispositions in the affected communities. The court system also should consider assigning “circuit-riding”

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<sup>11</sup> The appendix to this report contains two charts analyzing access to justice services, one summarized by judicial district and one showing services available in every city and village.

judges to travel to rural areas. Holding a proceeding locally improves its quality and usefulness to the community. The judge and lawyers can better assess the comprehension and credibility of litigants and witnesses, and local residents can more easily testify at the proceeding and understand the consequences of the court's actions.

This committee also recommends that other agencies and the Alaska Legislature fund increased travel to rural areas and increased rural staff for the state legal agencies.

*Fiscal impact:* Increasing judicial travel could be expensive. One estimate of the fiscal impact would be to express the FY'85 or FY'86 travel budget in 1997 dollars; then compare that amount with the actual allocation for FY'97 travel. Travel costs for other agencies would likely increase as well. Staff time did not permit the committee to accumulate the necessary data to calculate these figures. The cost of a circuit-riding judge or magistrate could range from \$150,000 to \$300,000 per year for salary, travel, and benefits, depending on the level and location of the judgeship. If existing judges travel more, the court might have to pay an extra \$50,000 to \$150,000 per year.

- A(2) Judges should appoint local residents as special masters for appropriate proceedings. Judges also should consider appointing tribal judges and council members as marriage commissioners and guardians ad litem.**

*Commentary:* Appointment of local special masters could be a cost-effective and legally sufficient way to handle certain types of cases. Local residents might be appointed to handle domestic violence, probate, adoption and other children's cases. A judge would retain oversight in the matter, insuring that other agencies recognize the actions taken. Using sufficiently trained, local people could reduce court costs and increase local participation and acceptance of decisions.

*Fiscal Impact:* The court system should train and supervise local residents who are appointed to serve as masters. The court system might recoup the cost of this training by reducing the need for court personnel to travel to villages. Villagers would save money by not traveling to court.

- A(3) The Alaska Court System should establish and maintain a high-quality telephone system.**

*Commentary:* The court system needs to overhaul its rural phone system. Even with increased judicial travel, the court system will continue to conduct a substantial amount of business by telephone. Many courts have outdated speaker phones that transmit poorly and make it difficult for rural residents to participate effectively. The court system also should provide better teleconference options.

*Fiscal Impact:* The committee did not have the time or information necessary to estimate the fiscal impact of upgrading the phone system.

**A(4) The Alaska Court System should expand use of technology to improve court access for rural residents.**

*Commentary:* The court system should use modern information technology to reach rural residents and non-English-speaking people. Computers, videotapes, videoconferences, interactive web-sites, kiosks and other new technology can reach remote areas and provide information in several languages. The court system committee addressing *pro se* litigants and public access (formerly the Kiosk Committee) also should consider ways to use technology to meet the needs of customers who cannot speak or read English.

*Fiscal Impact:* The fiscal impact of this proposal will vary depending on the means the court system chooses. The committee did not have the time or resources to price the various options.

*Cross-references:* Consumer User subcommittee finding #6 and recommendations #2, 5, 6, 8; Rural Access subcommittee findings #1, 2 and recommendations #1, 2, 3; recommendation H to other institutions.

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## B. Public Education Program

- B(1) The Alaska Supreme Court should encourage judges to educate the public about the justice system.**

*Commentary:* Many citizens testified that they did not understand the legal system, including their rights as litigants and court proceedings. Distance and cultural barriers further impair rural residents' knowledge of the law. To address this problem, the Alaska Court System should establish a standing public education committee to design and implement educational programs directed at the lay court customer. The court system should encourage judges and magistrates to speak at community meetings and in the media. Local judges should encourage the establishment of citizen judicial committees to educate the public in their communities. The court system's Public Information Task Force made similar recommendations in its 1994 report to the Alaska Supreme Court.

Area court administrators should coordinate outreach efforts and arrange judicial speaking engagements. The court system should coordinate meetings with local ethnic organizations, provide staff support, and prepare basic legal educational materials and brochures for the judges to use. Public education efforts should focus on criminal, family matters, and small claims. The court system should work with other justice agencies, the University of Alaska, and the Alaska Bar Association. Education materials should include information about the importance of jury service.

*Fiscal Impact:* \$10,000 to \$20,000 annually for the court system to create and print materials, make audiotapes, translate materials as needed, and create radio and TV public service announcements. That figure could double if the court system hired a part-time staff person for the effort.

- B(2) The Alaska Court System should use technology to improve public education about the justice system.**

*Commentary:* The court system's public education effort should use technology to deliver information more economically to rural residents. Possibilities include information on the Internet, videoconferencing and use of videotapes.

*Cross-references:* Consumer/User subcommittee findings #1, 2, 3 and recommendations #1, 2; Language and Culture subcommittee culture recommendation #2; Rural Access subcommittee recommendation #6; recommendation F to other institutions.

### C. Language Interpreters

The need for competent language interpreters in civil and criminal cases was mentioned frequently in the public hearings and is of serious concern to the committee. The committee has adopted four separate recommendations to comprehensively address the need for competent courtroom language interpreters:

**C(1) The Alaska Court System should train judicial officers in the appointment and supervision of language interpreters in civil and criminal proceedings.**

*Commentary:* Judges need training to recognize when an interpreter is necessary for effective communication with a party or witness, how to determine if the proposed interpreter is sufficiently skilled, and how to deal with practical, legal, and ethical problems arising with the use of interpreters.

Proper court interpreting is a highly specialized skill, and miscarriages of justice may occur when interpreters are not qualified. This training effort should be undertaken immediately, at the next Judicial Conference if possible.

Other state agencies should train their lawyers about when interpreters are needed, how to find qualified interpreters, and how to use them effectively in pretrial interviews and court proceedings.

*Fiscal Impact:* Judicial and magistrate training programs could cost about \$3,000 to \$4,000 each for materials and speakers' expenses. Combining training with other state and municipal agencies could reduce the cost. To develop a legal system orientation workshop for interpreters, the court could expect to spend \$5,000 to \$7,000. The court could offset some of the cost by charging a small fee to attend the workshop.

**C(2) The Alaska Court System should recruit and train local interpreters of commonly used languages.**

*Commentary:* Alaska lacks qualified court interpreters. The court system should take the initiative to recruit interpreters for the commonly used languages in each court location.

Few of the interpreters currently working in Alaska's state court system have formal training either in law or in interpreting. The court system should provide a basic level of training for interpreters, to improve their understanding of the skills and appropriate conduct required of court interpreters and to orient them to the work of justice agencies. The training should address basic courtroom procedure, conduct, and ethics. The court could use resources from the National

Center for State Court's Model Court Interpreting Guide. This effort should be undertaken immediately.

*Fiscal Impact:* The cost of developing an interpreter training and certification program in several commonly used languages is likely to be expensive. The court system should work cooperatively with the U.S. District Court for the District of Alaska, which is further along than the ACS in developing standards. The University of Alaska could help estimate the cost of setting up a certification in Native languages.

- C(3) The Alaska Supreme Court should promulgate new court rules establishing qualifications and ethical standards for language interpreters in criminal and civil proceedings. The new rules also should govern appointment and payment of the interpreters.**

*Commentary:* Developing appropriate competency tests for court interpreters, even in the most commonly used foreign languages, is expensive. However, the committee is very concerned about problems created by the continued use of unqualified and untrained interpreters. As a long-term goal, the court system should work toward a formal, comprehensive training and testing program for court interpreters. The court system should work with the U.S. District Court for the District of Alaska, the University of Alaska, and interested community members to share resources and coordinate efforts towards that end. This process should begin immediately, but will likely take at least two years to complete.

*Fiscal Impact:* The court system recently submitted a proposal to the Bureau of Justice Assistance, asking for \$118,000 for an 18-month program to improve the court's ability to find and use interpreters. The proposal incorporates some of the suggestions in this recommendation, but does not include funds to pay interpreters.

- C(4) The Alaska Court System should work with justice agencies to determine the most efficient way to hire and pay for interpreters in civil and criminal proceedings.**

*Commentary:* The state currently pays for interpreters for indigent criminal defendants and witnesses, through funds provided to the Public Defender and District Attorneys, and Office of Public Advocacy. No funds are available for indigent civil litigants, for divorce and child support hearings, child in need of aid proceedings, evictions, or other serious civil matters. In some cases the litigants enlist the services of a relative; in other cases there may be as many as three interpreters in the courtroom, each serving a different litigant or the judge. Discussion is needed to determine the best way to hire and pay courtroom interpreters. The legislature will need to provide additional funds to whichever agency assumes responsibility, to cover civil cases and the expected growth in

Alaska's non-English-speaking population. This process should begin immediately, but will likely take several years to complete.

*Fiscal Impact:* The cost for providing interpreters for indigent civil and criminal litigants and witnesses is estimated to be approximately \$100,000 per year. This cost is expected to increase as the use of language interpreters increases. The legislature will need to provide additional funding for whichever agency or agencies assume the responsibility for providing the interpreters.

*Cross-references:* Language and Culture subcommittee language findings 1-6 and language recommendations 1, 4, 5, 6; recommendations for other agencies.



## D. Cross-cultural Training

**The Alaska Court System should ensure that all employees, including judicial officers, receive cross-cultural training upon hiring and at frequent intervals thereafter. The training should include information about the ethnic and cultural groups living and working in the area served by each court location.**

*Commentary:* Judicial officers and court employees need information about the ethnic and cultural groups in their areas in order to better perform their jobs. The public comments gave examples of several cases where judges misunderstood the language, culture, or behavior of the litigants. The Committee also recommends cross-cultural training for employees of other justice agencies.

To reduce the costs of training, the Alaska Court System should: share resources with other groups and agencies when possible, rely on local resources for most training, base the training in local communities when possible to maximize the number of court staff who can participate; and include cross-cultural training in its other training programs.

*Fiscal Impact:* The total cost of training for judges, magistrates and masters, and court employees is estimated at \$20,000 to \$30,000/year. Costs include development of materials, speaker fees and expenses, travel for trainers, and evaluation of needs and quality of programs. To the extent that other agencies participate, increased costs could be offset by payment from those agencies and in-kind contributions (of training faculty, conference rooms, etc.).

*Cross-references:* Court as Employer subcommittee findings #5, 6, and recommendation #3; Disparate Confinement subcommittee recommendation #4; Language and Culture subcommittee culture recommendation #3; recommendation B for other institutions.

## **E. Local Dispute Resolution Resources and Cooperation with Local Organizations**

- E(1) The Alaska Court System and individual judicial officers should actively support the use of local dispute resolution organizations to which parties voluntarily submit their disputes for resolution.**

*Commentary:* Judicial officers should use local dispute resolution organizations (including tribal courts, tribal councils and non-profits, boards, non-state social workers and community supervision alternatives) to increase service to citizens who lack access to courts and the legal system. For example, judges in Anchorage could refer some types of juvenile delinquency cases to the nonprofit Community Dispute Resolution Center if the juvenile and the victim of the crime agree to mediate a restitution agreement. Judges in Anchorage and other communities could approach local youth courts to explore possible referral options. Judges serving communities with active tribal courts or councils that resolve disputes should learn what kinds of matters the local organizations handle. Judges should explore how they can support or use local organizations that resolve disputes voluntarily submitted to them.

- E(2) Judicial officers should seek the assistance of local dispute resolution and tribal organizations when the organizations can provide useful information, advice, or services.**

*Commentary:* Judges and magistrates in rural areas ask tribal organizations for assistance with state court cases. In criminal cases, judicial officers can encourage local tribal groups to provide information about parties' personal and family histories, prior offenses, and to make sentencing recommendations. They can ask tribal groups to help supervise probation. In children's cases, judges can ask tribal organizations to recommend placement options within the community, make home visits and monitor court orders. Tribal organizations also can give judges insight into family and cultural dynamics.

This recommendation echoes many recommendations made in recent years by other commissions and task forces. It also reflects the actual experience of many judges and magistrates who have worked successfully with local organizations, particularly in children's and criminal cases. It is consistent with trends in other justice system agencies towards developing closer relationships with local organizations, relying on them to offer an appropriate cultural perspective and to provide services that the state does not provide or cannot afford.

*Fiscal Impact:* These recommendations should reduce courts' caseloads by diverting disputes that otherwise would come to court to local organizations. More importantly, it will help fill needs that currently are not being met by the state justice system.

*Cross-references:* Language and Culture subcommittee culture finding #2 and culture recommendation #4; Rural Access subcommittee findings #1, 2, 3, 4 and recommendations #4, 5; recommendation E for other institutions.

## F. More Effective Communication

- F(1) The Alaska Court System should use clear, simple language in its forms and other publications.**

*Commentary:* Even people who speak English as a first language have difficulty understanding common court forms. Simplified forms would help people who lack access to lawyers, particularly people in rural areas. The court system could schedule this project over a period of time, starting with the most commonly used forms and forms that needed revision for other reasons.

*Fiscal Impact:* \$40,000 to \$70,000 for a one-year project to re-write, circulate for comment and finalize new forms; less if done over time as other revisions are needed.

- F(2) The Alaska Court System should translate its publications into the one or two most common languages in each venue district. The translated publications should be in written or audio form.**

*Commentary:* Public comments suggested that many customers who speak English as a second language would be more comfortable with and better able to understand instructions and publications written or audiotaped into their first language. The court system could coordinate this project with its project to clarify its forms. The two languages mentioned most often were Spanish and Yupik.

*Fiscal Impact:* The court system could hire a translator for \$25 to \$40/hour. If the initial project translated only a dozen informational pamphlets into Spanish and Yupik, the time required could be about 50 hours, and the cost would range between \$1,250 and \$2,000.

- F(3) The Alaska Court System should translate the audio portion of the arraignment videotape into commonly used languages in each court location.**

*Commentary:* Members of the public, magistrates and court clerks indicated the need for translations of the arraignment video.

*Fiscal Impact:* Professional videotaping usually costs \$1,000 minimum per minute of videotape. Audiotaping, however, is fairly inexpensive.

*Cross-references:* Language and Culture subcommittee language findings #2, 3, and recommendations #2, 3; Rural Access subcommittee recommendation #9.

## G. Study of Effects of Ethnicity on Criminal Justice Processes

The Alaska Supreme Court should coordinate with other agencies to ask the Alaska Legislature to fund a comprehensive study of the effects of defendants' ethnicity on their treatment by the criminal justice system.

*Commentary:* Public comments revealed a perception that the criminal justice process is unfair to minorities. This perception undermines confidence in the court system. Policy makers should determine the extent to which this perception is based in reality and should pinpoint specific problem areas. A related issue is whether rural and urban defendants receive unwarranted disparate treatment.

The Alaska Supreme Court should seek the support of other criminal justice agencies in presenting a request for study to the Legislature. The comprehensive study should include charging, dismissal, arrest and release decisions, pleas, trials, sentencing, and probation revocations. In addition to the study, the court system and other criminal justice agencies should continue to collect data about ethnicity and the criminal justice process to monitor the equitable distribution of resources, the fairness of justice processes, and related issues.

*Fiscal Impact:* The Alaska Judicial Council estimates that a study of the effects of ethnicity and the criminal justice process would cost \$300,000 to \$350,000. Although the court system currently does not keep data on the ethnicity of criminal defendants, the Department of Public Safety is building an interagency criminal history database that will record this information and make it available for research.

*Cross-references:* Disparate Confinement subcommittee adult findings #1-4, juvenile findings #1-9, and recommendation #7; Consumer/User subcommittee findings #3, 4, 5 and recommendations #3, 4; Rural Access subcommittee recommendation #10; recommendation E to other institutions.

## **H. Expanding Sentencing Alternatives**

**Judicial officers should make greater use of local sentencing alternatives. It is particularly important to rely on culturally relevant sentencing options for ethnic and racial minorities.**

*Commentary:* The Alaska Sentencing Commission, the Alaska Natives Commission, and several bush justice conferences have supported alternative sanctions, increased use of rural resources, and culturally relevant sentencing options. Alternative sentences can help bridge the cultural gap between the court system and the rural residents' concepts of justice.

The courts and other criminal justice agencies should set a goal of providing culturally relevant sentencing and treatment options to as many groups as possible. Judges should make greater use of local intermediate sanctions, rehabilitation programs and supervision services. The court system should encourage attorneys, the Department of Corrections and DFYS to propose alternative sentences. The Committee also recommends expanding halfway houses, rehabilitation programs, local youth facilities and supervision alternatives in rural areas (*see* recommendations to other agencies).

Cultural relevancy is important, because dropout rates for minority participants in many DOC programs are high. For instance, Alaska Natives drop out of the Hiland Mountain sex offender program at a disproportionately high rate. Part of the problem may be an English literacy requirement, since daily journal entries are integral to the program. Hiland Mountain is the only sex offender treatment program DOC offers, so offenders who cannot write in English cannot fulfill court-ordered sex offender treatment in prison. Participation in treatment in turn affects chances for parole. Judges should be aware of these problems, and DOC should work to address them.

Many citizens asked for local incarceration and supervision as a way to participate in rehabilitation efforts, improve support systems available to offenders, and enhance residents' understanding of the justice system. While some offenders should remain out of the community for specialized services, victim safety, or other legitimate reasons, judges should allow other offenders to stay in their communities as much as possible. Local village councils, Native nonprofits, and other ethnic organizations should be encouraged to supervise community work service, provide halfway house beds, and develop and manage rehabilitation programs.

*Fiscal impact:* Although the cost of providing sentencing alternatives falls on the Department of Corrections and DFYS, that cost can be reduced if courts are willing to rely on tribal court judges, respected community members, and local nonprofits to supervise probation and provide services. This reliance would

provide an effective local response to the offender's damage while reducing the state's cost of supervision.

*Cross-references:* Disparate Confinement subcommittee adult findings #3, 4, juvenile findings #3, 8, 9, 11, and recommendation #1, 2, 3; recommendation D to other institutions.

## I. Expanding the Jury Pool

- I(1) The Administrative Director of the Alaska Court System and the presiding judge in each judicial district should identify ways to include as many residents as possible in the jury pool.**

*Commentary:* Residents of 125 communities generally are not called for jury service because of their distance from the nearest trial court location and/or the expense of transporting them. While formally including every community in the jury pool would be prohibitively expensive, the Administrative Director and the presiding judge of each judicial district could increase the number of rural residents in the jury pool. The Alaska Court System should assign every community in the state to a court location. Using this list of communities, the Administrative Director and the presiding judges should consult with other judges and community leaders to develop practical ways to broaden rural participation.<sup>12</sup> In broadening the pool, the Administrative Director and the presiding judges should consider seasonal issues, practical realities, need for a representative cross-section of the community, and avoidance of unreasonable transportation costs.

*Fiscal Impact:* The cost of including more residents in the jury pool will depend on the means chosen. The cost of including residents of all 125 communities is estimated at \$803,700 per year. (See Jury Composition subcommittee finding #1.)

- I(2) The Alaska Court System should work to increase the likelihood that citizens will respond to requests for jury service, and to reduce the burdens of jury service for those who do report.**

*Commentary:* The jury selection subcommittee found some indication that responsiveness to the jury summons may vary by ethnic group. The court system should ensure that a representative cross-section of the community is available to serve. The court system could undertake public education programs or follow up on those who ignore the jury summons. For example, the jury clerk in Anchorage does not follow up on those who fail to report because she lacks the necessary computer and software.

To ease the burdens of jury service for those who do report, the court system might request funds from the legislature to pay juror expenses such as parking and family care, give jurors more timely information about how often they will need to report during their service, or improve uncomfortable physical conditions. The court system also might consider a one day/one trial system to

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<sup>12</sup> See Administrative Rule 15(c).



allow jurors to serve on one trial and then be excused rather than remain on call for 30-90 days at a time.

*Fiscal Impact:* Paying for parking and family care would constitute a significant cost. Under this proposal, 1995 costs for juror parking in Juneau would have been \$4,005; in Anchorage, \$44,449. Reimbursement of family care costs for 10% of the jurors is estimated at \$72,120. Expanding the juror waiting area in Bethel is under consideration but could be expensive. Using a one day/one trial system might increase costs because the court system would use more people for shorter periods of time.

- I(3) To decrease the number of prospective jurors called but not used, the Alaska Court System should ask the Alaska Legislature to decrease the number of peremptory challenges available to the parties in criminal cases.**

*Commentary:* The 1995 increase in the number of peremptory challenges in criminal cases has required courts to bring in larger groups for jury service, because more potential jurors are rejected.<sup>13</sup> The impact of larger jury pools is greatest in rural court locations, where fewer in-town residents are available for jury service and transporting jurors from out of town expensive. Calling smaller pools would help make better use of jurors' time and address rural residents' complaints of too-frequent jury service.

*Fiscal Impact:* Decreasing parties' peremptory challenges in criminal cases could save the court system money. It would speed the process of selecting a jury, thereby saving judge and court staff time. It also would enable the court to call slightly smaller jury pools, thus saving transportation and lodging expenses.

*Cross-references:* Jury Composition subcommittee findings #2, 3, 4, 5 and recommendation #1, 3-9.

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<sup>13</sup> In 1995, 21% of the jurors who reported were peremptorily challenged (3,279 prospective jurors).

## **J. Diversifying the Alaska Court System Workforce**

### **J(1) The Alaska Court System should develop a new affirmative action plan and update it annually.**

*Commentary:* The current affirmative action plan, completed in 1991, is out of date. The Alaska Court System should develop a new plan and use it to help diversify the workforce. The plan should include programs to attract, retain, and promote qualified persons from ethnic and cultural groups at all levels that historically have been under-represented in the workforce. These programs should give particular attention to outreach and training. The court system should consider whether the plan should contain regional as well as statewide goals.

Presiding judges and administrators should give high priority to the goal of achieving racial and ethnic diversity at all levels of employment when making hiring and promotion decisions. The court system should hold administrators and judges accountable for compliance with the plan.

*Fiscal Impact:* \$5,000 to \$30,000 for development of a current plan; minimal cost for annual updates.

### **J(2) The Alaska Court System should assess and eliminate practices that adversely affect minority job applicants.**

*Commentary:* Some of the court system's hiring and recruitment practices may inadvertently adversely affect minority applicants and potential applicants. For example, minimum job qualifications of a high school degree and one year of experience might eliminate minority applicants who come from rural communities lacking opportunities to work for pay. In the area of recruiting practices, the court system may need to devote more effort to minority organizations than to non-minority organizations in order to obtain the same level of response. For example, the court system might consider following up on recruitment bulletins sent to Native and other minority organizations, but need not follow up with non-minority organizations.

The Alaska Court System also should evaluate its fairness in promotion, its employees' understanding of and access to grievance procedures, and the work environment experienced by employees of all ethnic groups. Information received by the Court as Employer subcommittee suggested that employees' overall job satisfaction and morale depended heavily on these three items. Employees' concerns with these items seemed to be universal, cutting across ethnic and gender lines.

Implementing these three recommendations could require significant staff time. While the court system may choose to distribute these responsibilities among existing staff, it also should consider creating a new position. If the court system decides to create a new position, it should be a high-level position with direct access to the Administrative Director.

*Fiscal Impact:* Minority outreach might cost \$5,000 per year. The cost of monitoring achievement of goals would be minimal. If the court system hires a new employee for this work, the cost is estimated at \$70,000 per year for a range 18 employee, plus travel, phone, and secretarial costs.

*Cross-references:* Court as Employer subcommittee findings #1-8, and recommendations #1-10.

## **K. Court Facilitator Pilot Program**

**The Alaska Court System should seek funding for a pilot program of court facilitators or “cultural navigators” to help guide members of ethnic and cultural minorities through court processes.**

*Commentary:* A court facilitator (sometimes called a “cultural navigator”) is a person familiar with the legal system and court processes and also understands minority litigants’ native language and culture. The facilitator explains court processes to the client in the client’s own language, using concepts that relate to the client’s own culture. Courts in Manitoba and Colorado use this type of facilitator. The Alaska Court System has proposed a court facilitator pilot project for funding by the Bureau of Justice Assistance. The Committee believes that the idea has merit and that the court system should test its feasibility. The court system should work with Native nonprofit corporations, the University of Alaska, and ethnic organizations in developing the program.

*Fiscal Impact:* As proposed by the Rural Access and Disparate Confinement subcommittees, the program would cost \$120,000 per year for two years, plus \$40,000 per year for two years to design the program, conduct outreach, and evaluate the program, plus travel costs or substantial telephone expenses (total: \$320,000). The court system estimated \$109,000 in its grant application to the BJA.

*Cross-references:* Disparate Confinement subcommittee recommendation #6; Rural Access subcommittee recommendation #7.

## L. Child in Need of Aid Proceedings

- L(1) The Alaska Supreme Court should ensure that the procedures used to resolve children's cases do not have an unjustifiably disparate impact on children of ethnic minorities.**

*Commentary:* A recent Alaska Judicial Council study of Child in Need of Aid proceedings found a disparity in the rate at which Alaska Native children are adjudicated as children in need of aid compared to children of other ethnicities. To address this and other aspects of CINA proceedings, the court system has obtained funding and appointed a committee (the CINA Committee). The Fairness and Access Committee forwarded public comments concerning children's cases to the CINA Committee for review. The CINA Committee should consider whether to ask the legislature for funds to study the effect of ethnicity on children's proceedings. Other state agencies also should review their handling of these cases.

*Fiscal Impact:* No additional funding is required, unless the CINA committee requests funding for an additional study..

- L(2) The Alaska Supreme Court should require that all judicial officers receive training in the handling of children's cases and the Indian Child Welfare Act.**

*Commentary:* Many members of the public complained about the way children's proceedings are handled, including complaints that judges and social workers do not understand or comply with the requirements of the Indian Child Welfare Act.<sup>14</sup>

*Fiscal Impact:* No additional funding is required if the court system includes ICWA training in its annual judicial education conferences.

*Cross-references:* Consumer User subcommittee findings #3, 5; recommendation G to other institutions.

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<sup>14</sup> 25 USC §§ 1901-1923, 1951.

## **M. Implementation of Recommendations**


**The Alaska Supreme Court should appoint a committee to implement the recommendations of this report.**

*Commentary:* This recommendation follows the model set by the Oregon Supreme Court for its implementation phase. The implementation committee should work with court system staff and judges as well as state and local governments. It should establish a timetable for carrying out the recommendations, identify effects of the recommendations on other branches of government, identify funding sources, suggest methods of implementation, and generally maintain momentum behind the court's efforts. The implementation committee should include members from the Fairness and Access Committee for continuity, as well as representatives of other agencies and organizations. The Alaska Court System should staff the committee and provide necessary resources as available for the committee to oversee the implementation process. After three years, the court system should consider whether to continue the existence of the implementation committee or choose other options.

*Fiscal Impact:* The Fairness and Access Committee has cost about \$75,000 in grant funds and an equivalent amount in in-kind and direct financial support from the Alaska Court System and the Alaska Judicial Council. The implementation committee could operate at a minimal level for \$20,000 to \$30,000/year, to cover in-house court staff support, travel and telephone, and other support services. A better approach would be to seek funding equivalent to that available for the court system's CINA project, which costs about \$120,000/year in federal funds and in-kind services. The court should consider this committee its first priority in implementing the Fairness and Access Committee's recommendations.

*Cross-reference:* Court as Employer subcommittee recommendation #11.

**CHAPTER 4**  
**SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS**  
**RECOMMENDATIONS TO OTHER INSTITUTIONS AND STATE AGENCIES**



In the course of its work, the committee received information relevant to institutions and state agencies other than the Alaska Court System. Lay people frequently do not distinguish between functions performed by the court and those performed by other state agencies. Thus, citizen perceptions of the court system's fairness often depend on how other agencies perform. The Committee also recognized that some changes it has recommended to the Alaska Court System can not be implemented without legislative funding, or without the cooperation of other agencies and institutions. For these reasons, the committee decided to make recommendations to other branches of the government and to community groups working to improve justice services to minorities.

The Fairness and Access Committee's recommendations to other agencies fall into six categories: language interpreters, cross-cultural training, local dispute resolution and cooperation with local organizations, expanding sentencing alternatives, study of ethnicity on criminal justice processes, public education programs, Child in Need of Aid proceedings, and increasing rural services. Each recommendation is followed by commentary and a brief assessment of likely fiscal impact.

## A. Language Interpreters

The need for competent language interpreters was mentioned frequently in the public hearings.

**A(1) Law enforcement officers, lawyers, and juvenile intake personnel should receive training in the need for and use of interpreters in criminal and civil proceedings.**

*Commentary:* These justice system personnel should be trained to recognize when an interpreter is necessary, how to determine if the interpreter is sufficiently skilled, and how to deal with the practical, legal, and ethical problems that often arise.

*Fiscal Impact:* Training programs for each agency could cost about \$3,000 to \$4,000 for materials and speakers' expenses. Combining trainings with other agencies could reduce the cost.

**A(2) State agencies should work with the Alaska Court System to determine the most efficient way to hire and pay for interpreters in civil and criminal proceedings.**

*Commentary:* The state currently pays for interpreters for indigent criminal defendants and witnesses, through funds provided to the Public Defender and District Attorneys, and Office of Public Advocacy. No funds are provided for indigent civil litigants, for divorce and child support hearings, child in need of aid proceedings, evictions, or other serious civil matters. In some cases the litigants muddle along with the services of a relative; in other cases there may be as many as three interpreters in the courtroom, serving each of the litigants and the judge.

The Alaska Court System, the Department of Law, the Public Defender Agency, the Office of Public Advocacy and Alaska Legal Services should jointly determine the best way to hire and pay courtroom interpreters. This process should begin immediately, but will likely take several years to complete.

*Fiscal Impact:* Minimal cost for the agencies to study the issue.

**A(3) The Alaska Legislature should provide additional funding to meet the growing need for interpreters.**

*Commentary:* The court system serves significant numbers of people who do not speak English or do not speak it well. Court clerks reported that they routinely encounter customers who have difficulty with English, among them customers who speak Alaska Native languages (Yupik, Athabascan, Inupiat and Tlingit,



in order of frequency), Spanish, Asian (including Tagalog, Japanese and Vietnamese), and Russian. Public comments indicated that Korean and Samoan are often spoken in Alaska.

Language interpreters are underutilized in state courts. Attendees at the 1970, 1976 and 1985 Bush Justice Conferences all made some form of recommendation for Alaska Native court interpreters. Attendees at the Fairness and Access Committee's 1997 public hearings in Bethel, Napaskiak and Anchorage asked that the court provide interpreters for non-English speaking litigants. Languages mentioned included Yupik, Korean and Spanish. Research from the National Center for State Courts and others shows that errors and miscarriages of justice can and do result from inadequate or incompetent court interpretation. In Alaska, University of Alaska at Fairbanks anthropologist Phyllis Morrow has documented problems with court interpretation in Bethel, including word errors, alterations in meaning and cultural differences that affect translation. Providing language interpreters for in civil and criminal cases for those who cannot afford them must be viewed as a routine expense of ensuring due process and equal access to justice.

Based on these findings, the Fairness and Access Committee recommends increased access to and use of interpreters in court proceedings. Legal agencies that use interpreters should collaborate to determine the most efficient way to provide interpreter services. Because Alaska's non-English-speaking population is expected to grow, whichever organization assumes responsibility will need additional funds from the legislature.

*Fiscal Impact:* The current cost for providing interpreters for indigent civil and criminal litigants and witnesses is estimated to be around \$100,000 per year. This cost is expected to increase as the use of language interpreters increases. The Alaska Court System recently submitted a proposal to the Bureau of Justice Assistance, asking for \$118,000 for an 18-month program to address various aspects of improving the court system's ability to find and use interpreters. The proposal incorporates some of the suggestions in this recommendation, but does not provide payment for interpreters used by parties in court proceedings.

*Cross-references:* Language and Culture subcommittee language findings #1-6 and language recommendations #1, 4, 5, 6; recommendation C to Supreme Court.

## **B. Cross-cultural Training**

**State employees who work in the justice system should receive cross-cultural training upon hiring and at frequent intervals during their employment. The training should include information about the ethnic and cultural groups living and working in the area that each office serves.**

*Commentary:* Cross-cultural training for justice system employees is an important component of insuring fairness to ethnic and cultural minorities. The public comments gave examples of several cases where judges and lawyers fundamentally misunderstood the parties' language, culture, or behavior. Based on these and other comments, the Committee recommends cross-cultural training for law enforcement officers employed by the Department of Public Safety, lawyers employed by the Department of Law, the Public Defender Agency and the Office of Public Advocacy, guardians ad litem employed by OPA, juvenile intake officers and social workers employed by the Division of Family and Youth Services, probation and parole officers employed by the Department of Corrections, and employees of all agencies who interact with the public. The Committee also recommends cross-cultural training for court system employees.

To reduce the costs of training, agencies should share resources as often as possible, rely on local resources for most training, base the training in local communities when possible to maximize the number of staff who can participate; and include cross-cultural training in other training programs.

*Fiscal Impact:* Costs will vary by agency. Costs include development of materials, speaker fees and expenses, travel for trainers, and evaluation of needs and quality of programs.

*Cross-references:* Court as Employer subcommittee findings #5, 6 and recommendation #3; Disparate Confinement subcommittee recommendation #4, 5; Language and Culture subcommittee culture recommendation #3; recommendation D to supreme court.

### C. Local Dispute Resolution

**State agencies involved in the justice system should actively support the use of local dispute resolution organizations to which parties voluntarily submit their disputes for resolution. State agencies should seek the assistance of local tribal organizations when the organizations can provide useful information, advice, or services.**

*Commentary:* State agencies should use local dispute resolution organizations (including tribal courts and councils, alternate dispute resolution boards and non-profits, non-state social workers and community supervision alternatives) to increase service to citizens who lack access to courts and the legal system. The committee made a similar recommendation to the Alaska Court System.

State agency employees should share information, request assistance, and work cooperatively with tribal and village courts and councils and alternate dispute resolution boards. Law enforcement officers, prosecutors, and juvenile intake officers should encourage parties to use alternative dispute resolution for appropriate cases before state court involvement, for example, referring minor criminal matters, juvenile cases and children's cases to tribal courts, referring criminal matters in which the victim wishes to be involved in the resolution to victim-offender mediation, or referring juvenile delinquency matters to youth courts. In criminal cases, state agencies can call upon local groups for testimony about personal and family histories, prior offenses, and sentencing recommendations. They can ask for help supervising probation, making home visits, and monitoring court orders. In children's cases, they can gain insight into family and cultural dynamics, and request assistance with placement and supervision.

This recommendation echoes many recommendations made in recent years by other commissions and task forces. It also reflects the actual experience of many state employees who have worked successfully with local organizations, particularly in children's and criminal cases, relying on them to offer an appropriate cultural perspective and to provide services that the state cannot afford. The court system and other state agencies should work closely with local justice organizations to exchange information and support.

*Fiscal Impact:* This recommendation should reduce agency caseloads by diverting disputes that otherwise would come to the state court system to local organizations. More importantly, it will help fill needs that currently are not being met by the state justice system.

*Cross-references:* Language and Culture subcommittee culture finding #2 and culture recommendation #4; Rural Access subcommittee findings #1, 2, 3, 4 and recommendations #4, 5; recommendation E to Supreme Court.

#### **D. Expanding Sentencing Alternatives**

- D(1) The Department of Corrections should provide programs allowing for culturally relevant and locally available sentencing options for minority defendants.**

*Commentary:* The Alaska Sentencing Commission, the Alaska Natives Commission, and several bush justice conferences have supported alternative sanctions, increased rural resources, and culturally relevant sentencing options. The courts and other criminal justice agencies should set a goal of providing culturally relevant sentencing and treatment options to as many groups as possible.

Cultural relevancy is important, because dropout rates for minority participants in many DOC programs are high. For instance, Alaska Natives drop out of the Hiland Mountain sex offender program at a disproportionately high rate. Part of the problem may be an English literacy requirement, since daily journal entries are integral to the program. Hiland Mountain is the only sex offender treatment program DOC offers, so offenders who cannot write in English cannot fulfill court-ordered sex offender treatment in prison. Participation in treatment in turn affects chances for parole. Judges should be aware of these problems, and DOC should work to address them.

*Fiscal Impact:* The fiscal impact will depend on the program developed.

- D(2) To the maximum extent possible, the Department of Corrections should provide programs allowing for halfway houses, intermediate sanctions, rehabilitation programs, and other services in every superior and district court location.**

*Commentary:* The Department of Corrections and DFYS should expand the availability of halfway houses, rehabilitation programs, local youth facilities, and supervision alternatives in rural areas. Alternative sentences can help bridge the cultural gap between the court system and the rural residents' concepts of justice.

Many citizens asked for local incarceration and supervision as a way to participate in rehabilitation efforts, improve support systems available to offenders, and enhance residents' understanding of the justice system. While some offenders should remain out of the community for specialized services, victim safety, or other legitimate reasons, judges should allow other offenders to stay in their communities as much as possible. Local village councils, Native nonprofits, and other ethnic organizations should be encouraged to supervise community work service, provide halfway house beds, and develop and manage rehabilitation programs.

*Fiscal impact:* The Department of Corrections currently supervises over 3,000 probationers and parolees. The committee does not have the resources or expertise to estimate the cost of additional state supervision and rehabilitation programs in rural areas.

- D(3) The Alaska Legislature should adequately fund the Department of Correction's expanded use of halfway houses, rehabilitation programs, local youth facilities, and supervision alternatives in rural areas.**

*Fiscal Impact:* The committee does not have the resources or expertise to estimate the cost of implementing this recommendation. The committee recognizes that it will be expensive.

- D(4) The Division of Family and Youth Services should increase the opportunities for local institutionalization, supervision and rehabilitation in rural areas.**

*Commentary:* Many citizens commented that local incarceration and supervision gave communities an opportunity to participate in rehabilitation efforts, improved the chances that offenders would have necessary support systems, and gave residents a better understanding of the justice system. The committee recognizes that some offenders will need to remain out of the community for specialized services, safety of the victim, or other legitimate reasons, but offenders should remain in their communities as much as possible. Local village councils, Native nonprofits, and other ethnic organizations should be encouraged to supervise community work service, provide halfway house beds, and develop and manage rehabilitation programs. This ties in with the recommendation encouraging court cooperation with local justice resources.

*Fiscal Impact:* The committee does not have the resources or expertise to estimate the cost of this recommendation.

- D(5) The Native communities, through their corporations, nonprofits, and foundations, should develop culturally relevant rehabilitation programs and address social pathologies within their communities.**

*Commentary:* Cultural relevancy is an important consideration, because the dropout rate for minority participants in many DOC programs is high. For instance, Alaska Natives drop out of the Hiland Mountain sex offender program at a disproportionately high rate. Part of the problem may be an English literacy requirement, since daily journal entries are integral to the program. Hiland Mountain is the only sex offender treatment program DOC offers, so offenders who cannot write in English cannot fulfill court-ordered sex offender treatment in prison. Participation in treatment in turn affects chances for parole. DOC also

makes little use of interpreters in working with its non-English-speaking population. Judges should be aware of these problems, and DOC should work to address them.

*Fiscal Impact:* If Native organizations develop culturally appropriate programs, they may wish to bid on contracts with the state to offer these services. In the long run, if the programs reduce substance abuse and criminal behavior, they could save the state substantial sums.

*Cross-references:* Disparate Confinement subcommittee adult findings #3, 4, juvenile findings #3, 8, 9, 11 and recommendations #1, 2, 3; recommendation H to supreme court.

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## E. Study of Effects of Ethnicity on Criminal Justice Processes

**The Alaska Legislature should fund a comprehensive study of the effects of defendants' ethnicity on their treatment by the criminal justice system.**

*Commentary:* Public comments revealed a perception that the criminal justice process is unfair to minorities. This perception undermines confidence in the court system and in state government as a whole. Policy makers should determine the extent to which this perception is based in reality and should pinpoint specific problem areas. A related issue is whether rural and urban defendants receive unwarranted disparate treatment.

All state criminal justice agencies jointly should support a request to the legislature for a comprehensive study of these issues. The comprehensive study should include charging, dismissal, arrest and release decisions, pleas, trials, sentencing, and probation revocations. In addition to the study, the court system and other criminal justice system agencies should continue to collect data about ethnicity and the criminal justice process that the agencies can use to monitor the equitable distribution of resources, the fairness of justice processes, and related issues.

*Fiscal Impact:* The Alaska Judicial Council estimates that a study of the effects of ethnicity on the criminal justice process would cost \$300,000 to \$350,000. The Department of Public Safety is in the process of building an interagency criminal case history database that will record this information and make it available for studying criminal justice processes.

*Cross-references:* Disparate Confinement subcommittee adult findings #1-4; juvenile findings #1-9, and recommendation #7; Consumer User subcommittee findings #3, 4, 5 and recommendations #3, 4; Rural Access subcommittee recommendation #10; recommendation G to Supreme Court.

## F. Public Education

- F(1) Each state legal agency should encourage its employees to educate the public about the agency's legal system.**

*Commentary:* The public comments related many instances of citizens who did not understand the legal system, including their rights as litigants and the court proceedings. Distance and cultural barriers further impair rural residents' knowledge of the law.

State justice agencies should encourage their personnel to speak about their role in the criminal justice system at community meetings and in the media. The Fairness and Access Committee has recommended that the court system prepare basic legal educational materials and brochures, with a focus on criminal, family matters, and small claims. Other justice agencies, the University of Alaska, and the Alaska Bar Association should work with the court system on this effort. The court system's Public Information Task Force made similar recommendations in its 1994 report to the Alaska Supreme Court.

*Fiscal Impact:* Minimal expense annually for each agency to create and print materials for presentations.

- F(2) The Alaska Bar Association should develop ongoing public education projects.**

*Commentary:* Private attorneys, too, should assume responsibility for increasing public trust in and understanding of the legal system. The Alaska Bar Association should develop public education programs in conjunction with the court system and public agencies' educational efforts.

*Fiscal Impact:* Modest cost to develop materials.

*Cross-references:* Consumer User subcommittee findings #1, 2, 3 and recommendations #1, 2; Language and Culture subcommittee culture recommendation #2; Rural Access subcommittee recommendation #6; recommendation B to Supreme Court.



## G. Child in Need of Aid Proceedings

- G(1) Each state agency involved in Child in Need of Aid proceedings should ensure that the procedures used to resolve those cases do not have an unjustifiably disparate impact on children of ethnic minorities.**

*Commentary:* A recent Alaska Judicial Council study of Child in Need of Aid proceedings found a disparity in the rate at which Alaska Native children are adjudicated in need of aid compared to children of other ethnicities.

To address this and other aspects of CINA proceedings, the court system has obtained funding and appointed a committee (the CINA Committee). The Fairness and Access Committee forwarded public comments concerning children's cases to the CINA Committee for review. Other state agencies also should review their handling of these cases.

*Fiscal Impact:* No additional funding is required.

- G(2) All state agencies should require that employees who handle children's cases receive specialized training about those cases and the Indian Child Welfare Act.**

*Commentary:* The Fairness and Access committee received many public complaints about the way children's proceedings are handled, including comments that judges and social workers do not understand or comply with the requirements of the Indian Child Welfare Act.<sup>15</sup>

*Fiscal Impact:* No additional funding is required.

*Cross-references:* Consumer User subcommittee findings #3, 5; recommendation L to supreme court.

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<sup>15</sup> 25 USC §§ 1901-1923, 1951.

## **H. Funding for Alaska Legal Services and State Legal Agencies**

**The Alaska Legislature should fund Alaska Legal Services and state legal agencies at a level that assures access to the justice system for indigent Alaskans.**

*Commentary:* Legal services to indigent rural residents of Alaska have eroded to the point that the civil justice system is in danger of becoming irrelevant. Budget cuts have forced Alaska Legal Services to close offices in Nome, Kotzebue, Kodiak, and Dillingham during the last three years. The agency has lost over \$1 million in federal funding over the past two years. Its legislative appropriation has been reduced from \$1.2 million in 1985 to \$90,000 in 1997.

The closure of regional offices in these superior court locations denies not only local residents but those of all the communities served by the local court the ability to seek legal help in critical cases including adoption, divorce, custody, and other matters important to the lives of citizens. The majority of rural residents previously served by Alaska Legal Services are Alaska Natives and these cuts therefore have a disproportionate impact on Alaska Natives' rights of access to the justice system.

State legal agencies should be given the staff resources to assure adequate representation of village Alaskans in child in need of aid and custody proceedings.

*Fiscal Impact:* Staff time did not permit the committee to gather the necessary information to calculate this cost.

*Cross-references:* Consumer User subcommittee recommendation #6; Rural Access subcommittee findings #1, 2.

## CHAPTER 5

### SUBCOMMITTEE FINDINGS AND RECOMMENDATIONS



This chapter contains the findings and recommendations that each of the six subcommittees presented to the Fairness and Access Committee. The committee relied on its subcommittee to conduct research projects, make findings of fact, and arrive at recommendations for the committee to use as a basis for its own recommendations. Each subcommittee's section begins with a few relevant quotations from the public testimony.

#### **I. Consumer/User Subcommittee Findings and Recommendations**

“People don’t understand how the court system works. The court needs to educate citizens about the process, define terms, and explain what the various hearings are about. The lack of knowledge is a drawback to equal access and fair treatment.” (Roundtable discussion in Angoon)<sup>16</sup>

“The court should make more of an effort to educate members of the public about the workings of the court, and talk to people who are not in trouble. African-Americans believe that African-American men do not get a fair trial in the Fairbanks courts. We need to work in the court system in order to understand it better. I invite you to send someone to an NAACP meeting to talk about the justice system.” (President, Fairbanks NAACP)

“There is a perception of discrimination in the justice system and feelings of distrust as a result. Not everyone feels this way, but the feeling is significant. This feeling extends to the DA, the PD, and the police. The cause is probably deep-rooted in history, based on the lack of ability to participate on a decision-making level. Many people remember overt discrimination by the white community through the 1960's and beyond.” (Attorney, Sitka Tribal Association)

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<sup>16</sup> These quotes, and the quotes at the beginning of each subcommittee's section, are summaries of comments made by those who testified at hearings and in letters. The quotations are not intended to be comprehensive, but are illustrative of issues addressed in the findings and recommendations of each subcommittee.

“Too many budget cutbacks have created a situation where decisions by judges, attorneys and caseworkers (mostly white) are made arbitrarily, without time to understand the lives of people involved. Bureaucratic pressures for judges to handle more cases limit their ability to ask questions and explore a case. This isn’t racism, but it’s poor policy.” (Two OPA contract attorneys, Anchorage)

When Legal Services pulled out of Nome, we started referring people to their office in Fairbanks. Now that office has a five-month backlog. People are very frustrated and often do not attend to their problems with custody, divorce, child abuse, etc. A new problem is being created. (Court clerk, Nome)

## **A. Consumer/User Subcommittee Findings**

**Finding #1: Lack of understanding of the justice system.** Many citizens, especially urban ethnic groups, rural residents, and Alaska Natives, perceive the court system as a remote, unfathomable, intimidating institution.

The Consumer/User subcommittee analyzed all of the public comments received by the Fairness and Access Committee. A strong theme ran throughout the comments, that citizens have difficulty understanding and using the justice system, both civil and criminal.<sup>17</sup> The lack of knowledge is broad-based: many people do not understand legal terms and concepts; they do not know what to expect in court or what the court expects of them; they do not understand the roles of judges, social workers and probation officers; they do not have or do not trust lawyers; they do not feel comfortable testifying as witnesses or serving as jurors; they believe that the courts in turn do not understand them or their cultures. Many people do not understand what it means to plead guilty or what rights they have as parents. Native Alaskans from rural areas made these comments most frequently, and Filipinos, Hispanics, African-Americans, and Caucasians from all parts of the state and at all levels of education concurred. The justice system intimidates most people who do not use it regularly. Ethnic and cultural minorities in particular stressed their discomfort with it.

To reduce costs and avoid inconvenience to judges and lawyers, the court system has tended to centralize proceedings in urban areas. The effect of this is to remove local cases from rural areas, to limit access to the court by local residents and to make it expensive and difficult for them to participate. Removing cases from the local area also limits understanding of what the court system does.

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<sup>17</sup> A summary of the public comments appears in the appendix to this report. With respect to lack of knowledge, see comments collected at pages B2-B3, B13-B14, B31-B32.

**Finding #2: Limited sources of basic information.** Little accurate information exists about the justice system in general and the courts in particular.

The court system publishes one-page brochures on a range of subjects; the Alaska Judicial Council publishes a guide to the criminal justice system and a crime victims' manual; and some advocacy groups distribute materials on specialized topics.<sup>18</sup> The Anchorage Bar Association sponsors Law Day programs that send lawyers into secondary school classrooms, and state and local bar associations occasionally sponsor public talks on legal topics. Still, court proceedings are rarely held in many communities, residents of small communities almost never see lawyers and judges, and even cases or issues of great importance are resolved in distant urban areas. For those who are isolated from the social mainstream by virtue of language, culture, or distance, it is difficult to learn how the justice system works.

**Finding #3: Perception of unfairness.** Many citizens believe that the justice system as a whole is unfair to ethnic and cultural groups.

This perception, whether accurate or not, undermines confidence in the justice system. Although the Alaska justice system strives to be fair, some members of the public have lost confidence in the system. They perceive the justice system as an institution that will treat them unfairly if they must participate in it.

The public comments identified a range of problems. Many people believed that African-Americans are at a disadvantage as criminal defendants, and are more likely to be arrested, denied bail, convicted by juries, and serve longer sentences.<sup>19</sup> Many people believed that the courts do not understand Alaska Native cultures and family structures, and do not handle Indian Child Welfare Act cases properly.<sup>20</sup> Many people believed that justice system personnel do not have the time and patience to properly handle cases involving recent immigrants and non-English speakers. They noted the inherent unfairness of not using an interpreter when the litigant must struggle to understand the proceedings.<sup>21</sup> Observers saw the effects of discrimination as particularly pronounced in criminal and children's cases.

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<sup>18</sup> For example, the Joint State-Federal Courts Gender Equality Task Force and the Network for Domestic Violence and Sexual Assault currently are revising a guide to the legal system on topics of particular interest to women.

<sup>19</sup> See public comments at pp. B3-B5, B11-B13.

<sup>20</sup> See public comments at pp. B6-B7, B30.

<sup>21</sup> See public comments at pp. B11-B12, B22-B28.

**Finding #4: Statistical disparities.** The perception of unfairness derives in part from ethnic and cultural differences between justice system personnel and those brought into the justice system involuntarily. At nearly every level of every justice agency, employees are more likely to be white than the general population, although some agencies can point to exceptions at lower levels of employment. Among prisoners, adjudicated delinquents, and children in need of aid, the disproportion runs the other way, with over-representation of many ethnic and cultural minorities.

For instance, adult Native Alaskans are incarcerated at a rate 3.2 times higher than white Alaskans, African-Americans are incarcerated at a rate 5.6 times higher, and those of Hispanic or other background are incarcerated 4.4 times as often. This trend applies in part to juveniles as well: Native Alaskan juveniles are 1.8 times as likely to be adjudicated delinquent as white juveniles and African-Americans are 3.2 times as likely. In child abuse and neglect proceedings, ICWA cases (neglect cases involving an Alaska Native child) were 1.4 times more likely to result in an adjudication as non-ICWA cases.<sup>22</sup> The disparity in incarceration rates has been noted with concern by the Alaska Natives Commission, the Alaska Sentencing Commission, the 1996 Sitka conference on Alaska Natives and the Justice System, and others.

**Finding #5: Need for objective study.** Although different groups have reviewed criminal sentences periodically for evidence of disparity,<sup>23</sup> other areas have gone unexamined. No recent studies have set out to determine whether legitimate differences in offender or offense characteristics justify observed disparities in bail, probation conditions, and probation revocations.

The Judicial Council evaluated the court's role in child in need of aid proceedings and found significant disparities in Native and non-Native adjudication rates. The study hypothesized several reasons for this disparity,

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<sup>22</sup> Alaska Department of Corrections, *1996 Inmate Profile*, p.10; Youth Corrections Services Data Summary, vol.1, no. 1, p.3 (July 1996); ALASKA JUDICIAL COUNCIL, IMPROVING THE COURT PROCESS FOR ALASKA'S CHILDREN IN NEED OF AID 71 (October 1996) (hereinafter "IMPROVING THE COURT PROCESS").

<sup>23</sup> The Alaska Judicial Council has examined racial disparities in sentence lengths periodically since the mid-1970s. The more recent studies found no disparity directly attributable to racial differences, but it noted that judges have limited sentencing options for rural offenders, and that lifting the ban on plea bargaining could affect rural residents disparately. See Alaska Judicial Council, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED 145-152 (January 1991). The UAA Justice Center currently is analyzing disparities in delinquency adjudication rates. The findings of the disparate confinement subcommittee discuss these studies in greater detail.

including cultural factors and lack of uniform standards, but did not have sufficient data to pinpoint the cause of the disparity.<sup>24</sup>

**Finding #6: Inadequate legal representation.** Rural residents do not receive adequate legal representation in civil or criminal cases.

Loss of funding has reduced the ability of Alaska Legal Services to provide representation in important civil cases, especially child custody cases. Funding for the Public Defender and Office of Public Advocacy has not kept pace with the caseload; instead, agency expenditures reflect increases in telephone bills and decreases in travel expenses. An overwhelming public defender caseload in hub cities precludes attorneys from establishing good relationships with their clients; the subcommittee received complaints about lack of face-to-face contact, preparation time, and cultural awareness. Few rural communities have an economic base sufficient to attract resident lawyers. Even those rural residents who can afford private counsel must make arrangements for representation by attorneys who live in remote, urban areas.

## **B. Consumer/User Subcommittee Recommendations**

**Recommendation #1: The Alaska Supreme Court should educate the public about the legal system.**

*Commentary:* This recommendation for more public education is not new. The Alaska Court System's Public Information Task Force made similar recommendations in its 1994 report to the Alaska Supreme Court. The subcommittee received more comments on this issue than any other. Citizens complained consistently that they did not understand court proceedings, legal vocabulary, or their rights as litigants. Although the courts seem intimidating for citizens of all ethnic backgrounds, rural residents, ethnic and cultural minorities, and recent immigrants have particular problems. Their lack of familiarity with the justice system undermines access to justice, and perpetuates the perception that the courts do not treat minority litigants fairly.

The Alaska Supreme Court should appoint a standing committee to promote ongoing public education efforts. Local judges should encourage the establishment of a citizen judicial committee to educate the public. The Alaska Bar Association should develop public education projects. The University of Alaska should offer more courses on the Alaska legal system. The court system should encourage judges and magistrates to speak at local community meetings, in schools, and on radio programs. At the public hearings held by the Fairness

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<sup>24</sup> IMPROVING THE COURT PROCESS, *supra* note 22, at 124-128.

and Access Committee, representatives of several community groups (NAACP, Filipino, and UAF Native Student Program) invited judges to speak with their groups about legal issues. The court system should coordinate these efforts and prepare basic legal educational materials and brochures for the judges to use.

The Alaska Bar Association currently sponsors Law Day programs in secondary schools, but these programs do not reach smaller towns with no resident lawyers. The bar association should explore ways to expand this program to rural schools or otherwise provide legal education to rural communities. In addition, the University of Alaska should consider ways to expand its general legal educational courses, particularly in rural areas. (This recommendation also was made by the Rural Access subcommittee.)

*Fiscal Impact:* \$10,000 to \$20,000 annually for the Alaska Court System to create and print materials, make tapes, translate materials and create radio and TV public service announcements.

*Cross-references:* Rural Access subcommittee #6; recommendation B(1) to Supreme Court; recommendation F to other institutions.

**Recommendation #2: The Alaska Court System should use technology to ensure greater public access to justice.**

*Commentary:* The Alaska Court System must make the justice system understandable to the public. The Alaska Court System should take advantage of developments in technology to promote better communication and access to information, to provide better access for rural residents, and to encourage public education. Technology includes computers, user-friendly forms, videos, videoconferences, interactive web-sites, and other new technology to assist consumers/users. Videotapes and translated materials are important to consumer/users who do not read or speak English.

*Fiscal Impact:* The costs will vary with the technology used. The Alaska Court System already owns much of the necessary hardware.

*Cross-references:* Recommendations A(4), B(2) to the Supreme Court.

**Recommendation #3: The Alaska Judicial Council should identify and study ethnic and cultural and rural/urban disparities in sentencing and bail.**

See commentary and fiscal impact at Disparate Confinement subcommittee recommendation #7.



**Recommendation #4: The Alaska Court System and other agencies should study possible bias and discrimination in the justice system.**

*Commentary:* The court system should collaborate with the Alaska Judicial Council, the University of Alaska, other state agencies, and ethnic group representatives to conduct objective, scientifically acceptable studies that test for the presence of bias and discrimination in the justice system. Areas deserving study include juvenile delinquency adjudication, child in need of aid proceedings, child custody, jury behavior, statewide availability of services, use of interpreters, and disparities caused by poverty.

*Fiscal Impact:* The cost depends on the scope of each study. The sponsoring organizations may be able to find grants to support their research.

*Cross-references:* Disparate Confinement subcommittee recommendation #7; Rural Access subcommittee recommendation #10; recommendation G to Supreme Court; recommendation E to other institutions.

**Recommendation #5: The Alaska Court System should expand travel to rural areas.**

*Commentary:* The court system must expand its services in rural Alaska. At a minimum, the court system should expand the magistrate system and require judges and lawyers to travel to villages for hearings and trials. To diminish the tendency to centralize court proceedings in urban areas, the court system needs to make a concerted effort to require judges to travel to rural areas for hearings and trials. Expanding services to rural areas will promote access to the court system, encourage local participation and give rural residents a greater stake in the justice system. The Rural Access subcommittee also made a similar recommendation.

*Cross-references:* Rural Access subcommittee recommendations #1-3; recommendation A(1) to the Supreme Court.

**Recommendation #6: The Alaska Legislature should fund Alaska Legal Services and state legal agencies to provide adequate services in rural areas.**

*Commentary:* Alaska Legal Services has suffered serious budget cuts over the last three years, forcing it to close its offices in Nome, Kotzebue, Kodiak, and Dillingham. As a result, residents often must confront serious civil matters without legal representation. The problem is particularly acute in rural areas. Some cases are handled long-distance; some are left unattended and create new

problems.<sup>25</sup> Budgets for the state agencies that handle criminal cases stay fixed while caseloads increase. Agencies have drastically reduced client contact and local presence, lowering the quality of service in rural areas. The state should reverse this trend toward substandard service for selected citizens by funding the Department of Law, the Public Defender, Alaska Legal Services and the Office of Public Advocacy at levels that assure rural residents have adequate representation.

*Fiscal Impact:* The subcommittee did not have time, expertise or resources to calculate the fiscal impact of this recommendation.

*Cross-references:* Recommendation H to other institutions.

**Recommendation #7: The state should pay for telephonic court hearings in matters involving indigent clients and Indian Child Welfare Act cases.**

*Commentary:* Even with increased travel and rural staff budgets, agencies will continue to rely on telephonic hearings to improve service to outlying areas. Currently, litigants or their attorneys are charged for the cost of many telephonic hearings. The Alaska Court System and state agencies benefit greatly from telephonic hearings which save substantial travel costs and judicial time. The court should pay the telephone costs in cases with indigent clients or ICWA matters.

*Fiscal Impact:* The subcommittee lacks information to estimate the effect of this recommendation. The court system could estimate costs of telephonic participation in ICWA cases with the data in the Judicial Council's 1996 assessment of the court's role in CINA cases.

**Recommendation #8: The Alaska Court System should improve service to rural residents by enhancing its technology for telephone hearings and teleconferences.**

*Commentary:* Every court in the state should have up-to-date telephone systems, because all courts serve the rural areas or have parties participating from them. Many courts currently have outdated or inadequate phones. The court system also should provide teleconference options so that parties from different areas of the state can participate simultaneously.

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<sup>25</sup> Alaska Legal Services reports that it has lost \$1 million in annual federal funding over the last two years, plus substantial state cuts. ALSC estimates the cost of reopening the four closed offices at \$1 million/year.

*Fiscal Impact:* The initial investment might be significant but the savings in travel time and judicial time would more than repay the investment.

*Cross-references:* Recommendation A(3) to the Supreme Court.

## II. Court as Employer Subcommittee Findings and Recommendations

“There should be a real effort to increase the visible number of minorities in the court system. When I visit jails, I see . . . [many] incriminated and incarcerated minorities, but when I visit the courts it is just the opposite -- everyone is white. Just seeing minorities would be a comfort.” (Employee, Alaska Native Health Board)

### A. Court as Employer Subcommittee Findings

**Finding #1: Past discrimination.** Discriminatory employment practices in the past have foreclosed economic opportunity to a substantial number of persons in the United States. In Alaska, economic indicators such as unemployment rates and average income indicate disparity in employment opportunity according to ethnicity. According to the 1990 US census, 7.0% of Caucasians in Alaska were unemployed, 22.1% of Native Alaskans, 11.2% of African-Americans, 11.2% of Hispanics, and 5.1% of Asian/Pacific Islanders. Average income was \$45,000 for Caucasians, \$24,200 for Native Alaskans, \$31,500 for African-Americans, and \$35,100 for Asian/Pacific Islanders.<sup>26</sup>

**Finding #2: Lack of a diverse workforce.** Analysis of the court system workforce indicates that disproportionately few minority group members work in the court system, particularly in higher range positions. The exceptions are African-Americans in all but the highest level of positions, and Alaska Natives in magistrate positions. (All Alaska Native magistrates serve in small communities that do not have a superior or district court judge. None are law-trained).

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<sup>26</sup> Wide regional variations occurred in this pattern. Unemployment rates and average income figures were taken from the 1990 U.S. Census of Population, Social, And Economic Characteristics, Alaska. Unemployment rates are calculated using people who are unemployed and have looked for work in the last four weeks. It does not include people who support themselves by subsistence activities and do not look for paid employment. The category “Hispanics” includes people of all races.

<b>Court employment 1996</b>	<b>Caucasian</b>	<b>Native</b>	<b>Afr.-Amer.</b>	<b>Asian</b>	<b>Other</b>
Alaska population age 18+	78.60%	13.2%	4.1%	4.2%	N/A <sup>27</sup>
All court employees	71.70%	7.6%	5.6%	1.2%	4.4%
Employees range 6-12	75.60%	10.4%	6.5%	1.8%	5.6%
Employees range 13-14	79.50%	12.8%	5.1%	0	2.6%
Employees range 15+	97.50%	0	1.3%	0	1.3%
Magistrates	75.00%	25.0%	0	0	0
Law clerks	95.80%	0	0	0	4.2%
Judges	96.30%	0	1.8%	0	1.8%

**Finding #3: Need for a more diverse workforce:** Many public comments noted that most court employees are white while many litigants are not, particularly in criminal and children’s cases. Several respondents said that this situation leads to feelings of mistrust, intimidation, and avoidance.<sup>28</sup> The situation perpetuates itself, because some minority group members, particularly Alaska Natives and Asians, view the court system as an unfriendly place to work and apply for jobs less frequently as a result.

**Finding #4: No current affirmative action plan.** The Alaska Court System does not have a current affirmative action plan. The most recent affirmative action plan, completed in 1991, is out of date.

**Finding #5: Sensitivity to diverse languages and cultures.** Community and customer comments suggest court system personnel at all levels lack understanding of and sensitivity to persons of different cultures. This lack of understanding adversely affects court customers, court employees, and community perceptions of the court. Several comments gave examples of situations where the judge fundamentally misunderstood a case because he or she did not understand the litigants’ culture.<sup>29</sup>

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<sup>27</sup> Alaska population figures come from ALASKA DEPARTMENT OF LABOR, ALASKA POPULATION OVERVIEW 1995 ESTIMATES, which does not have categories for Hispanics or “others.” Court employment figures come from the ALASKA COURT SYSTEM, 1996 ANNUAL REPORT, at p.8, which includes Hispanics under “other minorities.”

<sup>28</sup> See public comments at pp. B3-B5, B9-B10.

<sup>29</sup> See public comments at pp. B3-B5, B11, B31-B32.

**Finding #6: Lack of cross-cultural training.** The court system currently provides little cross-cultural training for most of its employees. Judges received cross-cultural training at the 1995 and 1997 judicial conferences; the last training before that was in 1983. The magistrates received cross-cultural training at their conferences in 1986 and 1992. However, the court system does not systematically provide cross-cultural training for supervisors, people in customer service positions, or other employees.

**Finding #7: Lack of professional development opportunities.** The court as employer subcommittee conducted a survey of court employees to ask how the court values different groups of employees, how well it trains employees, how fair its employment policies are, and how well it deals with bilingual employees and situations. The subcommittee also conducted a four-hour group interview with nine volunteer court employees to discuss similar issues. Employees responding to survey questions believed that judges and magistrates had more training and professional development opportunities than did clerical and support staff. Court staff asked for more professional development and cross-training to enhance job performance and promotional opportunities.

**Finding #8: Misunderstanding of the grievance procedure.** Employees have used the court system's formal grievance procedure only ten times in the last three years. Comments from employees suggested that they did not understand or trust the formal grievance procedure, and feared that supervisors would label them confrontational if they filed grievances. However, employees use informal grievance process more frequently. Minority employees perceived the grievance processes as potentially unfair.

## **B. Court as Employer Subcommittee Recommendations**

**Recommendation #1: The Alaska Court System should develop a new affirmative action plan and update it annually.**

*Commentary:* As part of its commitment to equal employment opportunity, the court system should have an affirmative action program to attract, retain, and promote qualified "protected class" persons who have been historically under-represented in the workforce. In the absence of a current affirmative action plan, the Alaska Court System lacks a systematic approach to the hiring, training, promotion and retention of qualified minority employees. The concept of affirmative action requires the court to eliminate practices that adversely impact protected classes unless the court can demonstrate a legally permissible basis for the practices.

After the court adopts the plan, it should use the plan to help diversify the workforce. In keeping with the plan, the court system should design programs to attract, retain and promote minority employees at all levels. Periodically, the Alaska Court System should evaluate progress towards its goals. The court system also should consider whether to develop regional as well as statewide goals.

Presiding judges and administrators responsible for hiring and promoting should give high priority to the goal of achieving racial and ethnic diversity at all levels of employment when making hiring and promotion decisions. The plan should contain a system by which the Alaska Court System and the Alaska Supreme Court can hold administrators and judges accountable for failure to recruit, hire, and promote minorities.

*Fiscal Impact:* \$5,000 to \$30,000 for development of a current plan; minimal cost for annual updates. Minimal cost to monitor achievement of goals.

*Cross-references:* Recommendation J(1) to the Supreme Court.

**Recommendation #2: The Alaska Court System should establish a position of Assistant to the Administrative Director for Equal Opportunity.**

*Commentary:* Currently, Human Resources takes the responsibility for pursuing equal employment opportunity and affirmative action goals. This responsibility conflicts with the preference of most hiring authorities for maximum flexibility and autonomy. The supreme court should create a separate position, reporting directly to the Administrative Director, to focus on affirmative action goals and ensure that the Alaska Court System meets them appropriately. The University of Alaska has a similar position that reports at this level. This employee's duties could include implementing the Court as Employer subcommittee's recommendations: maintain the affirmative action plan, work with administrators on hiring goals, create outreach programs, keep statistics, develop cross-cultural training, review position descriptions and hiring panels, and provide staff support for implementation of fairness and access recommendations as adopted by the supreme court (see following recommendations). The new EEO employee also might oversee the salary review, monitor skill-building programs, and provide education and grievance information.

*Fiscal impact:* It may be possible to reassign the duties of an existing position. If a new position must be created, it would cost \$70,000 per year for a range 18 employee, plus travel, phone, and secretarial costs. If the supreme court obtains funding to staff a position with these responsibilities, the fiscal impact of some of the other recommendations will decrease.

*Cross-references:* Recommendation J(3) to the Supreme Court.

**Recommendation #3: The Alaska Court System should develop an ongoing cross-cultural training program for all employees, including judicial officers.**

*Commentary:* Supervisor training and customer service training also should incorporate cross-cultural training. This training should address communication styles and body language, family and social structure, and customs and lifestyles.

*Fiscal impact:* Training for judges: \$5,000/year; for magistrates, \$5,000/year; for court employees, \$10,000 to \$20,000/year. Total \$20,000 to \$30,000/year. Costs include development of materials, speaker fees and expenses, travel for trainers, and evaluation of needs and quality of programs.

*Cross-references:* Disparate Confinement subcommittee recommendation #4; Language and Culture subcommittee recommendation #3; recommendation D to the Supreme Court; recommendation B to other institutions.

**Recommendation #4: The Alaska Court System should create programs to recruit minority group members.**

*Commentary:* The Alaska Court System should have a marketing plan to reach minority applicants. The plan could include such ideas as job fairs and partnerships with schools and colleges. The Alaska Court System should advertise all jobs in media that reach minority applicants. Local communities sometimes perceive the Alaska Court System as an inhospitable place to work, a preconception that limits the number of qualified minority applicants.

*Fiscal Impact:* If the new EEO position is created, these tasks would be an important component of the job duties. If the position is not created, existing staff might be able to implement this recommendation.

*Cross-references:* Recommendations J(1), (2) to the Supreme Court.

**Recommendation #5: The Alaska Court System should evaluate its hiring procedures for any unnecessary adverse effect on minority applicants.**

*Commentary:* The evaluation should include: (a) reviewing position descriptions as vacancies arise to make sure the descriptions do not require unnecessary skills; (b) reviewing the screening procedures for minimum qualifications used by the personnel office before sending applications to the hiring authority; (c) creating written procedures for evaluating applicants' written materials,



references, and interviews; and (d) institutionalizing the practice of using a hiring panel to screen and interview, and encouraging the inclusion of minority group members (including community members) on hiring panels.

The Alaska Court System also needs to review and formalize a number of its hiring procedures to guard against any unnecessary adverse impact on minority applicants. Court employees commented that while they do not feel hiring and promotion practices are the result of overt racism, they do believe that the Alaska Court System bases too many decisions on personal friendships within the Alaska Court System. They view this as unfair, with a potentially disparate impact on minorities. For this reason, it would be healthy to have written evaluation procedures and to ask people from outside the court system to participate in hiring panels.

*Fiscal Impact:* If the new EEO position is created, these tasks would be an important component of the job duties. If the position is not created, the cost of reviewing the present system and making the recommended changes could run from \$20,000 to \$40,000, including the cost of reviewing all position descriptions, screening procedures, creating written procedures based on applicable nationally accepted standards, and establishing new procedures for hiring panels. This cost estimate is based on \$35/hour professional fees, for three to seven months work, plus costs of producing new written materials, training personnel staff, and initiating new hiring panels. Inclusion of community members on hiring panels also will have some costs for outreach, possible per diem costs, and training.

*Cross-references:* Recommendation J to the Supreme Court.

**Recommendation #6: The Alaska Court System should encourage the employment of bilingual and bicultural employees.**

*Commentary:* The Alaska Court System should recognize bilingual ability as a valid job skill for hiring purposes where appropriate to the job and to the community. Trial courts should increase the number of bilingual and bicultural court personnel who have contact with the public where appropriate to the needs of the local population. A survey of clerks and magistrates indicated considerable need for bilingual employees in Anchorage, Bethel and Dillingham, with occasional need in other court locations.

**Recommendation #7: The Alaska Court System should train employees who have the abilities necessary for promotion to higher-level positions.**

*Commentary:* Because the workforce is more diverse in entry level positions than in more skilled or advanced positions, the Alaska Court System should focus training efforts on skills for future career development. The court system should decide what skills employees need to advance within the system. Supervisors should assess each employee's skills and create job training programs based on these skills and the employee's goals. Expectations of employees should increase as they complete training, so that they can use and refine the newly acquired abilities. The court system should advise employees about the existing educational reimbursement program.

The Alaska Court System has recently hired a resource development officer to coordinate training for the judicial districts and the administration, to insure that employees receive consistent statewide training, and to create career development strategies for court system employees. One of the first duties of this new position is to conduct an employee training needs assessment. The emphasis on training should help the court system to retain and promote talented minority staff members.

*Fiscal Impact:* Costs will include the time for supervisors to objectively assess and record employees' skill levels, time to design training programs, and time for supervisors to monitor and work with employees on using new skills. Employee costs will include time to take tests to determine skill levels and training needs, time to attend training, and time to practice and use new skills.

*Cross-references:* Recommendation J(3) to the Supreme Court.

**Recommendation #8: The Alaska Court System should systematically review employee salary structure throughout the state, to assure that compensation packages attract and retain qualified employees.**

*Commentary:* The subcommittee heard comments that the Alaska Court System loses qualified minority applicants to other employers whose pay higher salaries. In some locations, courts have trained good entry-level employees only to lose them to another agency after the employee has developed more marketable skills. If true, the Alaska Court System also may lose newly trained non-minority employees to other agencies.

*Fiscal Impact:* Cost of a salary survey would be at least \$50,000, depending on the amount of information collected and the detail sought in the analysis. The state recently completed a study of the statewide geographic differential, which may be of some use. The state also plans to conduct a salary survey in the next

year, at least for executive branch employees. The cost of providing competitive compensation packages to employees would depend on the survey findings.

**Recommendation #9: The Alaska Court System should collect information on employees' and applicants' ethnicity and review the information periodically to assess progress towards its affirmative action goals.**

*Commentary:* The Alaska Court System recently has begun to collect information on the ethnicity of job applicants, new employees, promotions, demotions, and transfers. It does not collect data that would show why employees leave the Alaska Court System. The Alaska Court System should collect this information and evaluate it periodically to assess progress towards its affirmative action goals.

*Fiscal Impact:* Minimal additional cost for maintaining and evaluating data.

*Cross-references:* Recommendation J to the Supreme Court.

**Recommendation #10: The Alaska Court System should disseminate more information on informal and formal grievance procedures.**

*Fiscal Impact:* Minimal. The Alaska Court System would need to review its current training and informational materials, revise them as necessary, and enhance them by giving more training, distributing materials more widely, or taking other appropriate steps.

*Cross-references:* Recommendation J to the Supreme Court.

**Recommendation #11: The Alaska Supreme Court should appoint a blue-ribbon panel with a three-year life to oversee the implementation of the Advisory Committee on Fairness and Access.**

*Commentary:* The work of this committee and its subcommittees will be lost if this report is simply set on a shelf somewhere. Progress will require sustained effort and follow-through from the Alaska Court System. A small panel of high-ranking court system employees and representatives of ethnic groups should oversee the implementation of those recommendations adopted by the supreme court. The panel will provide specific recommendations for what is to be accomplished, by what means, who is responsible, when it should be completed, and what funding is required. The panel should prepare an annual progress report for the Alaska Supreme Court. Appellate Judge Paul De Muniz, who chaired the parallel committee in Oregon, spoke at the committee's conference and highly recommended this approach.

*Fiscal Impact:* \$10,000/year for phone, copying, and limited travel. Staff support could be provided by the new affirmative action assistant if funded. If that position is not funded, the Alaska Court System should expect to provide at least \$40,000 to \$50,000 of in-kind staff support to assure that the panel can accomplish its objectives.

*Cross-references:* Recommendation M to the Supreme Court.

### III. Disparate Confinement Subcommittee Findings and Recommendations

“I am a chaplain at Cook Inlet Treatment facility, and I hear many complaints from inmates that sentences for blacks are much harsher than for Caucasians. This difference is a major concern to the black community as a whole. One out of four black males in the U.S. is incarcerated or on probation or parole. Something is very wrong here and we need to look at these statistics.” (Eagle River minister)

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“I don’t think that racial bias in the court system is intentional, but rather unintended. I spent 20 years in and out of the court system and successfully completed treatment ten years ago. Criminal defendants do not know that they should plead not guilty, at least at first. The public defenders are too busy to work the cases, and they can only do what they can with the time available. Criminal defendants also do not understand the consequences of guilty pleas for future sentencing. They think that it doesn’t really matter to plead to something a little worse than what they really did, and are too accepting of recommendations sometimes. This acceptance explains disparate incarceration rates, at least somewhat. At sentencing, the Native defendant may not know the response that will make the judge the happiest. The Native defendant may be misinterpreted by the judge, who then may inadvertently give a somewhat higher sentence to a Native defendant than a non-Native defendant.” (Bethel resident)

“Many Alaska Natives are released from prison with probation conditions. These probation conditions cannot be met in the villages so they are forced to stay in the urban areas where they have no financial stability, family or community support which is necessary for rehabilitation. Not being able to integrate back into their communities is detrimental to their successful rehabilitation, so they often violate conditions and are remanded back to prison to serve the remainder of their time.” (Native Advocate, Alaska Native Justice Center)

#### A. Disparate Confinement Subcommittee Findings about Adult Offenders

**Finding #1: High percentage of Alaska Natives, African Americans, and Hispanics in prison.** Alaska Natives, African Americans, and Hispanics make up a higher percentage of the prison population than they do in the general Alaska population. The overall rate of incarceration (per 100,000 population) is over three times higher for Native Alaskans than for Caucasians and over five times higher for African-Americans.<sup>30</sup> The overall rate of incarceration for Hispanics may be over four

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<sup>30</sup> The overall rate of adult incarceration per 100,000 population for Caucasians is 376, for Native Alaskans 1,232, for African-Americans 2,129, for Asian/Pacific Islanders 289, and for Hispanics 1,663. These figures come from the Department of Corrections’ *1996 Inmate Profile* for persons incarcerated on December 31, 1996. A table showing 1996 rates of incarceration by crime category and ethnicity is included in the appendix to this report.

times as high as for Caucasians, although incarceration figures for Hispanics are less reliable than for other groups.<sup>31</sup>

The disproportionate confinement subcommittee sought to examine the impact of race or ethnicity on various aspects of the criminal justice system, such as bail, sentence length, and conditions of probation. The committee began its analysis by comparing the percentages of minority defendants in a certain population (for example, African-American offenders in the Alaska prison population) to their percentages in the general population. Disproportionality exists when an ethnic group is over represented in the particular population compared to the general population (for example, African-Americans constitute 14.81% of the Alaska prison population, but only 4.35% of the general Alaska population<sup>32</sup>).

However, the existence of disproportionality does not mean that the ethnic group has been treated unfairly, that the difference is unjustified, or that the system is somehow biased. To reach even preliminary conclusions on these issues, there must be further investigation into questions like the relative severity of offenses committed and the seriousness of the offenders' prior records. Even this analysis may not be accurate if ethnic bias led to exaggerated charges, unfair arrest or conviction, or past bias contributing to previous convictions. For these reasons, the subcommittee viewed a finding of disproportionality as an indicator that further investigation was warranted. The subcommittee's findings will note where studies attempted to control for some of these factors.

**Finding #2: Disproportion varies by type of crime and ethnicity.** The amount of disproportionality varies by type of crime and by ethnicity. Alaska Natives make up a high proportion of those incarcerated for sexual offenses, other violent crimes, misdemeanors, and revocations; Alaska Natives constitute a relatively low percentage of incarcerated substance abuse offenders.<sup>33</sup> The number of

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<sup>31</sup> The 1990 United States census categorizes the Alaska population by race (White, Native American, Black, Asian/Pacific Islander, and Other/unknown), noting that persons of Hispanic origin may be of any race. It also takes a separate count of Hispanics, counting 17,803 persons of Hispanic origin in Alaska in 1990. The Alaska Department of Corrections does not have a systematic way of categorizing persons of Hispanic origin. Some are counted as white or black based on their appearance. Those recognized as Hispanic (based on their surname, language, or response to interview questions) are categorized under "Other/unknown." Unlike the United States census, no separate count is made of all Hispanics based on interview questions.

<sup>32</sup> *1996 Inmate Profile* at 11; Alaska Department of Labor, *1995 Population Overview* at 29.

<sup>33</sup> *1996 Inmate Profile* at 10; ALASKA SENTENCING COMMISSION, *1992 ANNUAL REPORT* at appendix B-2 (1992).

Alaska Natives arrested for rape, aggravated assault, burglary, assault, arson, liquor, disorderly and sex offenses is particularly high.<sup>34</sup> Over half of those arrested for domestic violence or child abuse in Anchorage are Alaska Natives.<sup>35</sup>

Disproportionate percentages of African-Americans are incarcerated for violent crimes (other than sex offenses), property crimes, and substance abuse.<sup>36</sup> They represent a relatively low percentage of incarcerated sex offenders and misdemeanants, but a higher percentage incarcerated for revocations.<sup>37</sup>

Hispanics are over-represented among those incarcerated for violent crimes, revocations, and particularly substance abuse cases. They represent a relatively low percentage of incarcerated property offenders. Asian/Pacific Islanders are under-represented in all crime categories relative to their presence in the population.<sup>38</sup>

**Finding #3: Factors contributing to a higher rate of incarceration.** A number of factors contribute to different rates of incarceration for the same type of crime.

- a) **Prior record.** Alaska Natives convicted of felonies are more likely to have a prior felony record than either Caucasian or African-American felony defendants. The three groups have comparable misdemeanor records.<sup>39</sup> A felony prior record subjects the offender to presumptive sentencing, typically resulting in longer sentences with no discretionary parole.
- b) **Alcohol use.** The abuse of alcohol and the commission of criminal offenses in Alaska are clearly connected. This alcohol connection is particularly strong in rural areas and among Alaska Natives wherever situated.<sup>40</sup> The

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<sup>34</sup> ALASKA NATIVES COMMISSION, FINAL REPORT VOL. II, 157-59 (May 1994).

<sup>35</sup> *Id.* at 159.

<sup>36</sup> *1996 Inmate Profile* at 10.

<sup>37</sup> ALASKA SENTENCING COMMISSION, 1992 ANNUAL REPORT, appendix B-2.

<sup>38</sup> *1996 Inmate Profile* at 10; and ALASKA SENTENCING COMMISSION 1992 ANNUAL REPORT, appendix B-2.

<sup>39</sup> ALASKA SENTENCING COMMISSION, 1992 ANNUAL REPORT, appendix B-1.

<sup>40</sup> *Id.* at 18. Although Alaska Natives constitute about 16% of the state's population, they make up 58% of the participants in state-sponsored alcohol treatment programs. Division of Alcohol and Drug Abuse, *Client Characteristics by Primary Substance Used* (March 11, 1997). A study of Alaska sex offenders noted that 46% of Whites, 20% of "Other" race, and 14% of Alaska Natives reported no substance abuse history. Fifty-two percent of Natives in the analysis said that they used both drugs and

Alaska Sentencing Commission estimated that at least 75% of Alaska offenders have problems with substance abuse and that this figure is probably higher for Native offenders. Many people in rural areas believe that alcohol causes 75-100% of the crime in their communities.<sup>41</sup>

- c) **Differences in pleading guilty.** Alaska Native ethics of non-confrontation and truth-telling can lead to guilty or no-contest pleas based on incomplete understanding of the defendant's rights and options, particularly in misdemeanor cases. A number of public comments noted that Alaska Natives may plead guilty more often because they do not understand the meaning of a guilty plea.<sup>42</sup>
- d) **Lack of alternatives to incarceration.** Rural areas have fewer treatment programs, probation services, and alternatives to incarceration. A large percentage of rural probationers and parolees—the vast majority of them Alaska Native—live in communities with no resident probation officer.<sup>43</sup> A judge in a rural area may have to incarcerate an offender so that the offender can receive treatment; a similar offender in an urban setting may receive probation because treatment and sentencing alternatives are available without incarceration.

**Finding #4: Sentences for minority defendants not meaningful.** Many people believe that the courts sentence Native and other minority defendants in ways that work at cross-purposes with the defendants' cultural norms.<sup>44</sup> Disproportionate numbers of probation and parole revocations for Native and African-American offenders may show that the conditions imposed have little meaning for those offenders, and present practical conflicts with the defendants' culture.

- a) **Urban probation for rural offenders.** Alaska Natives often must serve probation or parole time in urban areas away from their villages, due to lack of supervision and treatment services in rural areas. A number of public

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alcohol and 31% said that they used only alcohol. DEPARTMENT OF CORRECTIONS AND UAA JUSTICE CENTER, SEX OFFENDER TREATMENT PROGRAM, INITIAL RECIDIVISM STUDY 38 (1996).

<sup>41</sup> UAA JUSTICE CENTER, PUBLIC SAFETY AND POLICING IN ALASKA NATIVE VILLAGES 18 (1995).

<sup>42</sup> See also Morrow, *A Sociolinguistic Mismatch: Central Alaskan Yup'iks and the Legal System*, Alaska Justice Forum 10(2), Summer 1993; ALASKA NATIVES COMMISSION REPORT, VOL. II at 154-56.

<sup>43</sup> Memo from Lynda Zaugg, Director DOC Division of Community Corrections to Teri Carns, Alaska Judicial Council (11/6/96) including DOC internal document by Widmer (9/96) showing location of probationers and parolees.

<sup>44</sup> See public comments at pp. B15-B17.



comments noted that this deprives offenders of the family and community support needed at a critical time in their lives. It also deprives the village of the opportunity to participate in sentencing and rehabilitation, to offer culturally relevant services, and to help set limits on the offenders' future behavior.

- b) **Probation conditions based on stereotypes.** The disparate confinement subcommittee conducted a study of probation conditions and revocations for 154 offenders from Anchorage, Juneau, Fairbanks, Bethel, and Nome.<sup>45</sup> It found no significant differences between ethnic groups with respect to the reason for revocation or the additional time imposed for the violation. However, the study did find significant variations in the original conditions of probation. Judges ordered African-American offenders to complete anger management courses twice as often as Caucasians and four times as often as Natives; this held true even for property offenders. Judges placed a “no drinking” condition of probation on Native offenders much more frequently than on Caucasian or African-American offenders. Restrictions on movements (forbidding contact with the victim or presence in a certain place) also were placed on Native offenders more frequently. To some extent, these conditions may be based on ethnic stereotypes rather than individual need.<sup>46</sup> Due to time and budget restrictions, the subcommittee study was based on a small sample of 154 offenders, which made it hard to reach statistically significant conclusions.
- c) **Non-completion of sex offender treatment.** Alaska Natives spend significantly less time in sex offender treatment programs while in custody. A disproportionate number of Alaska Natives leave the Highland Mountain Correctional Center program in the first six months.<sup>47</sup> The Hiland

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<sup>45</sup> The Disparate Confinement subcommittee study of probation conditions and revocation is found in the appendix to this report.

<sup>46</sup> The subcommittee recognizes that characteristics of defendants in particular cases may justify some of the differences. If it can be shown that African-American offenders committed offenses like burglary and criminal mischief in more violent ways than other defendants, or had more history of violent offenses, the disproportionality of anger management conditions might be justified. If more Alaska Natives have drinking problems, then more can be expected to face drinking restrictions and alcohol treatment requirements. The study hypothesized that the lack of treatment alternatives in Nome and Bethel may have left judges with little choice but to simply forbid drinking or being in places where a defendant might feel tempted to drink. The small sample size of the probation revocation study prohibited further analysis, but the possibility of stereotyping suggests the need for additional review of probation conditions.

<sup>47</sup> DEPARTMENT OF CORRECTIONS, SEX OFFENDER TREATMENT PROGRAM: INITIAL RECIDIVISM STUDY at 40.

Mountain program relies on the ability of the offender to read and write English; this may explain some of the disproportionate dropout rate. An offender who does not read or write English well may be at a disadvantage in obtaining meaningful treatment. Hiland Mountain is the only sex offender treatment program DOC offers, so if an offender drops out, he cannot fulfill a court order to undergo sex offender treatment in prison (which in turn will affect his chances for parole).

**Finding #5: Petitions to revoke probation almost always granted.** Judges generally grant probation revocation petitions and typically impose some additional incarceration. In the subcommittee study, judges imposed additional incarceration for 68% of the Caucasian probation violators, 81% of the African-American offenders, and 82% of the Native offenders (not a statistically significant difference in this size study. For most offenses, differences between ethnic groups in the length of additional time imposed were also not statistically significant.

## **B. Disparate Confinement Subcommittee Findings about Juvenile Offenders**

**Finding #1: Disproportionate referrals by law enforcement.** Law enforcement agencies refer a disproportionate number of Alaska Native and African-American youth to DFYS on juvenile delinquency matters. The disproportions are particularly noticeable in drug/alcohol offenses for Native youths and crimes against the person, public order, and weapons offenses for African-American youth.<sup>48</sup>

**Finding #2: Disproportionate use of pre-adjudicatory detention.** Police request pre-adjudicatory detention of African-American youth at a disproportionately high rate compared to other ethnic groups. DFYS recommends detention of African American youth at screening in disproportionate numbers. African-American and Native youth are detained in disproportionate numbers.<sup>49</sup>

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<sup>48</sup> Youth Corrections Services Data Summary, vol.1, no.1, p.3 (August 1996).

<sup>49</sup> *Id.* This data does not account for the severity of the offenses committed or the length of the offenders' prior records, but it is a starting point for further investigation.

**Finding #3: Length of detention by race.** Minority youth are held in detention for longer periods of time than non-minority juveniles.<sup>50</sup>

**Finding #4: The DFYS intake decision is positively associated with race.** A recent University of Alaska Justice Center study of minority youth in the justice system found that race is significantly associated with DFYS intake decisions. Native Alaskan and African-American youths are more likely than white youths to receive a petition for adjudication of delinquency (a court proceeding) than a dismissal or an adjustment (an intermediate disposition by the intake officer), for the same offenses.<sup>51</sup>

**Finding #5: Native Alaskan and African-American youths are more likely to have a prior record or referrals.** DFYS intake workers typically file a petition for adjudication if the youth committed a serious felony, if making restitution will take a long time, or if the case otherwise justifies court intervention. The Justice Center study of juvenile detention in Alaska showed that youth with no prior record had a better chance of receiving an adjustment, while youth with a prior record were much more likely to receive a petition for adjudication for the same offenses. The study also found that Native Alaskan and African-American youth have a significantly higher mean number of prior referrals. The study hypothesized that the decision to petition for adjudication may be more related to the youth's prior record than to race or ethnicity. However, the data in this study was not sufficiently detailed to analyze if the difference in prior records accounted for the entire difference in outcomes among the ethnic groups.<sup>52</sup>

**Finding #6: Less use of informal probation.** Without going to court, DFYS intake workers can place youths on informal probation, requiring them to perform certain conditions and stay out of trouble. Disproportionately few Alaska Native youths receive informal probation.<sup>53</sup> DFYS staff hypothesized that the

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<sup>50</sup> N.E. Schafer & R. Curtis, *Juvenile Detention in Alaska 1993*, Alaska Justice Forum 6, table 3 (Fall 1994).

<sup>51</sup> N.E. Schafer, R. Curtis, C. Atwell, DISPROPORTIONATE REPRESENTATION OF MINORITIES IN THE ALASKA JUVENILE JUSTICE SYSTEM 14, Table 5 (revised September 1997).

<sup>52</sup> *Id.* At 14, Table 5, and 19. The authors of the study hope to be able to do this analysis in the future.

<sup>53</sup> *Youth Corrections Services Data Summary*, at 3. During public hearings, a roundtable of Kake and Angoon residents suggested the value of informal probation for Native youth:

“Children of junior high age do not show respect for elders and are responsible for an inordinate number of problems. Perhaps juvenile offenders could be required to spend time with an elder, in order to receive guidance in cultural and community norms and

disproportionately high number of Native youth referred for alcohol and substance abuse offenses may cause the lower informal probation rates. They reasoned that informal probation lasts for only six months, too short a period for most substance abuse treatment.<sup>54</sup>

**Finding #7. The judicial disposition decision in juvenile delinquency cases is generally not associated with race.** The Justice Center study looked at the severity of court outcomes for various types of cases (dismissal, diversion, or adjudication, with adjudication being the most serious outcome). It found that race was generally not associated with the judicial disposition decision.<sup>55</sup>

**Finding #8: Disproportionate placement in juvenile institutions.** The court may place a delinquent on probation or may commit him to the custody of DFYS for institutionalization. A disproportionate number of African American and Native Alaska youth are institutionalized.<sup>56</sup>

**Finding #9: Potentially biased use of automatic waiver law.** State law requires that any 16- or 17-year-old charged with an unclassified or Class A felony be prosecuted as an adult;<sup>57</sup> juvenile court jurisdiction is automatically waived. If convicted of at least a Class A felony, the youth will serve the sentence in an adult prison. Individual case information suggests that automatic juvenile waiver may have more severe effects on minority youth and that the prosecutor's charging decision that leads to automatic waiver may be applied on racial grounds. The attorney for an Anchorage defendant has filed a motion to dismiss in state court, alleging that the state has repeatedly manipulated its charging decisions to avoid waiver for white and Native youth but not for similarly situated African-American youth.<sup>58</sup>

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to receive compassion and understanding.”

<sup>54</sup> *Id.* at 4.

<sup>55</sup> In burglary cases, in fact, the study found that being African-American was associated with dismissal. The authors hypothesized that the court might be correcting for “possible excesses at previous stages,” but concluded that the data were not adequate to test that possibility. DISPROP. REPR. OF MINORITIES at 19 and Table 5.

<sup>56</sup> *Youth Corrections Services Data Summary* at 4, Table 3. This data does not account for the severity of the offenses committed or the length of the offenders' prior records.

<sup>57</sup> Unclassified felonies include the most serious forms of murder, sexual assault, and kidnapping. Class A felonies include first-degree robbery, manslaughter, and first-degree assault.

<sup>58</sup> See *State v. Denarius Lockhart*, 3ANS-96-2362 Cr. The judge in that case ultimately denied the defendant's motion.

**Finding #10: Centralization of resources in urban areas.** Juvenile treatment programs and detention facilities exist primarily in larger urban areas. Rural areas have fewer treatment programs, probation services, and detention facilities, even in larger towns like Kotzebue, Barrow, and Nome. The lack of services disproportionately affects village and Native youth.

### **C. Disparate Confinement Subcommittee Recommendations**

**Recommendation #1: The state should offer more sentencing and revocation options in rural areas and should expand the range of culturally appropriate treatment options for different ethnic groups in urban areas.**

*Commentary:* The Disparate Confinement subcommittee recommends the following services:

- a) **Supervision alternatives in rural areas.** The Department of Corrections and the legislature should provide intermediate sanctions and supervision alternatives in communities that do not have these services.
- b) **Halfway house beds in all court locations.** The Department of Corrections and legislature should provide halfway house beds in every superior court location.
- c) **Alternative sentencing pilot projects.** The Alaska Court System should sponsor an alternative sentencing pilot project for rural communities. The pilot project could experiment with circle sentencing, on-site sentencings, and community participation in sentencing and probation and parole supervision.

The Alaska Sentencing Commission, the Alaska Natives Commission, and bush justice conferences all have supported alternative sanctions, increased rural resources, and culturally relevant sentencing options. Public comment received by the committee also supported these goals, particularly the need for probationers to fulfill probation conditions in their own towns and villages. This ties in with the findings and recommendations of the rural access subcommittee that encourage villages to participate in sentencing and help enforce conditions of probation. Alternative sentences can help bridge the cultural gap between the Alaska Court System and the rural residents' concepts of justice. They can also enhance community participation in and ownership of the rehabilitation of the offender and assist community healing.

The Disparate Confinement subcommittee learned about circle sentencing proceedings in the Yukon Territory, where the judge, probation officer,

attorneys, family and community members meet in a less formal setting to discuss the best sentence for the offender and to work out the best solution for all concerned. This approach might work well in a village, or in a setting where reconciliation with the victim or family is an important consideration.<sup>59</sup> The Alaska Court System and the Department of Corrections should work together on an alternative sentencing pilot project that incorporates similar concepts.

*Fiscal Impact:* The cost of providing intermediate sanctions and supervision alternatives in rural locations depends on the extent to which the courts can and will use local resources. Using tribal court judges and local nonprofits to supervise probation not only provides an effective local response to problems caused by the offender, it also reduces the cost of supervision to the state. Not all communities will have the resources to cooperate with the Alaska Court System and Department of Corrections in supervising offenders.

The Department of Corrections currently supervises over 3,000 probationers and parolees. We cannot accurately estimate the cost of probation services covering areas without local resources or halfway houses in all court locations. To develop a pilot program on alternative and culturally relevant sentencing procedures, the Alaska Court System might look to grant monies currently available from national sources. In the long run, if programs reduce substance abuse and criminal behavior, they could save the state substantial sums.

*Cross-references:* Recommendation H to the Supreme Court; recommendation D to other institutions.

**Recommendation #2: The state should increase sentencing alternatives for youth.**

*Commentary:* The state needs more treatment programs, local supervision arrangements, and other alternatives for rural youth. DFYS and the Department of Corrections should expand the range of culturally appropriate treatment options in urban areas.

- a) **Youth sentencing alternatives.** DFYS should provide treatment programs and less restrictive alternatives in parts of the state that do not have these services.
- b) **Sentencing alternatives for African American youth.** Judges in Anchorage and Fairbanks should work with the African-American community and DFYS

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<sup>59</sup> Alternative sentencing procedures are not appropriate for all cases. For instance, based on the experience of the Yukon project, the subcommittee does not recommend informal sentencing proceedings in cases involving sexual assault or sexual abuse of minors.

to develop preventative programs and effective treatment programs for African-American youth in those cities.

Youthful offenders need the same local services and culturally relevant options as adults need. African-American youth in urban communities appear to be particularly alienated by the criminal justice system and in need of more effective sentences and preventative efforts. The numbers of African-American youth are greatest in Fairbanks and Anchorage.

*Fiscal Impact:* While the committee cannot estimate what fiscal impact this recommendation might have, it likely would be costly. In the long run, however, programs that reduce substance abuse and criminal behavior would save the state substantial sums.

*Cross-references:* Recommendation H to the Supreme Court; recommendation D to other institutions.

**Recommendation #3: The Alaska Native community should develop culturally relevant sentencing alternatives for Alaska Native offenders.**

*Commentary:* The Native community should develop culturally relevant and effective programs to deal with social pathologies within their communities, including substance abuse, domestic violence and sexual abuse/assault. All agencies that work with these issues should participate when requested to do so by the Native communities. The Native communities should explore ways to guide, supervise and rehabilitate Native youth.

The Alaska Natives Commission report concludes that the need for solutions to Native problems, particularly with alcohol, should come from within the Native community. The subcommittee encourages the Native community, through its corporations, nonprofit organizations and foundations, to develop culturally relevant ways to rehabilitate offenders and restore communities.<sup>60</sup>

*Fiscal Impact:* If Native organizations develop culturally appropriate programs, they may wish to bid on contracts with the state to offer these services.

*Cross-references:* Recommendation H to the Supreme Court; recommendation D to other institutions.

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<sup>60</sup> The Rural Access subcommittee's Finding Number 4 lists a number of successful Native-developed programs.

**Recommendation #4: The Alaska Court System should provide initial and ongoing cross-cultural and diversity training to all employees.**

*Commentary:* Disproportionality clearly exists at several important points in the adult and juvenile criminal justice systems, but it is difficult to arrive at definitive reasons for the disproportionality. Because the possibility exists that the disproportionality may be based in part on unjustified reasons, the Alaska Court system and other agencies must act to eliminate that possibility. If cultural misunderstandings or racial bias leads to different results for different ethnic groups, justice cannot be served.

*Fiscal Impact:* The total cost of training for judges, magistrates and masters, and court employees is estimated at \$20,000 to \$30,000/hear. Costs include development of materials, speaker fees and expenses, travel for trainers, and evaluation of needs and quality of programs. To the extent that other agencies participate, increased costs could be offset by payment from those agencies and in-kind contributions (of training faculty, conference rooms, etc.).

*Cross-references:* Court as Employer subcommittee recommendation #3; recommendation D to Supreme Court; recommendation B to other institutions.

**Recommendation #5: Employees of all agencies in the criminal justice system should receive cross-cultural and diversity training.**

*Commentary:* Lawyers, caseworkers, intake officers, and corrections workers all need information about the ethnic and cultural groups in their areas in order to better perform their jobs. The public comments gave examples of several cases where justice agency employees misunderstood the language, culture, or behavior of the litigants. Because disproportionality among ethnic groups appears at a number of states in the criminal justice process, all agencies need to eliminate the possibility that the disproportion is the result of cultural misunderstanding or racial bias.

*Fiscal Impact:* Staff time did not permit the committee to assess the cost of cross-cultural training for all agencies. To reduce the costs of training, agencies can share resources with other groups, rely on local resources for most training, base the training in local communities to maximize the number of staff who can participate, and include cross-cultural training in other training programs.

*Cross-references:* Court as Employer subcommittee recommendations #5-6; Language and Culture subcommittee recommendation #3; recommendation D to Supreme Court; recommendation D to other institutions.



**Recommendation #6: The Alaska Court System should work with local communities and minority groups to establish a program to train “court facilitators” or “cultural navigators.”**

*Commentary:* People of all cultures need help understanding court procedures, to make the courts more accessible and increase trust in the court’s actions. Similar court worker programs in Canada and Colorado can be used as models. The Alaska Court System recently proposed a pilot project for Bethel to train ten community people as court facilitators for victims and witnesses and coordinate their work. Public comments reveal that many people from ethnically diverse cultures have a very difficult task when confronted with the criminal justice system. Clearly, it is easier to train a person from the diverse culture to understand the legal system and have that person assist others from the same culture than it is to train everyone in the legal system in each diverse culture.

*Fiscal Impact:* As proposed by the subcommittee, the cost would be \$120,000 per year for two years to hire and train two court facilitators (one Central Yupik, one Spanish-speaking); \$40,000 per year for two years to design the program, do outreach, and evaluate the program. The total cost would be \$320,000 for a two-year pilot program, plus travel costs, or substantial telephone expenses. The Alaska Court System estimated \$109,000 in its grant application for the Bethel pilot project, using a different format.

*Cross-references:* Rural Access subcommittee recommendation #7; recommendation K to Supreme Court.

**Recommendation #7: The Alaska Court System and other criminal justice agencies should monitor and understand the impacts of their actions on ethnic and cultural minorities, and should try to correct any unwarranted negative disparate impacts.**

*Commentary:* Lawmakers and state agencies often make policy decisions without fully understanding their effects on different ethnic and cultural groups. In some instances, policymakers could avoid decisions that have disparate impacts on minorities. Other disparities may accumulate as a result of interlocking decisions by law enforcement, prosecutors, courts, and parole and probation officers. State agencies periodically have assessed disparity in criminal sentence lengths; however, no agencies have systematically analyzed disparities in bail, probation conditions, and probation revocations or determined whether equivalent differences in criminal behavior justify them. In particular, the Alaska Court System, DFYS and law enforcement should evaluate the effects of their decisions on African-American and Alaska Native youth.

The Disparate Confinement subcommittee has identified eight areas which merit further study or increased monitoring. These areas include: collection of data on ethnicity of offenders, a study of bail, sentencing, and probation/parole

decisions, a study of juvenile delinquency, a study of sex offenders, a study of juvenile waiver, and continued judicial monitoring of delinquency cases. Each project is discussed below, followed by its potential fiscal impact.

1. **Collection of ethnicity data.** If necessary, the Alaska Court System should record the ethnic background of all people charged with criminal offenses. Combined with recent major improvements in the Alaska Court System's computer information systems, this data will greatly reduce the cost of studying bail decisions, sentence length, probation conditions, and probation revocations.

*Fiscal impact:* The Alaska Court System should be able to record ethnic data with little extra funding. However, the interagency criminal case history databases that the state plans to build may eliminate the need for the Alaska Court System to separately record the information. As currently proposed, the Department of Public Safety will record the ethnic background of each defendant.

2. **Bail Study.** Alaska studies in previous years have shown that pretrial release plays a critical role in the outcome of a criminal case, and that existing standards for granting bail disproportionately affect minorities.<sup>61</sup> The state should study the effects of pretrial release in Alaska, including the effect of rural/urban residency.
3. **Sentencing Study.** The Alaska Judicial Council has examined racial disparities in sentence lengths periodically since the mid-1970s. The most recent study, in 1991, found no disparity directly attributable to racial differences.<sup>62</sup> However, the study noted that limited sentencing options for rural offenders may force judges to incarcerate rural offenders for treatment or supervision that would be available without incarceration in a more urban community. And, while the Attorney General's ban on plea bargaining was credited with eliminating some of the racial disparities found in earlier studies, these disparities that may have returned since the ban on plea bargaining was lifted in 1993. The Alaska Legislature should fund a new sentencing study by the Judicial Council.
4. **Study of probation conditions and revocations.** The Disparate Confinement subcommittee reviewed probation revocations for selected offenders in five communities. This preliminary work found disparities in the original

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<sup>61</sup> ALASKA JUDICIAL COUNCIL, ALASKA FELONY SENTENCES: 1976 - 79 Appendix A, Tables II-3, II-6, III-3, and III-6 (1980); ALASKA FELONY SENTENCES, Appendix I, Tables II-4, II-7, III-7, and III-11 (1980), and also show this effect for certain types of crimes.

<sup>62</sup> See ALASKA JUDICIAL COUNCIL, ALASKA'S PLEA BARGAINING BAN RE-EVALUATED 145-152 (January 1991).

probation conditions imposed and possibly in disposition of the revocations, but the small sample size made it impossible to draw statistically reliable conclusions. The Alaska Court System should sponsor further study of the effect of ethnicity on probation conditions and disposition of violations, to be funded by the legislature.

*Fiscal Impact:* To collect data more efficiently and effectively, the state should combine the bail, sentencing, and probation revocation studies into a single project. The Alaska Judicial Council estimated the probable cost of the work at between \$300,000 and \$350,000.

5. **Study of juvenile delinquency.** DFYS has collected useful data about the stages of the juvenile delinquency process and their effects on minority youth. The University of Alaska Justice Center has analyzed the data. DFYS and the Justice Center should continue to monitor and study the over-representation of minorities in the juvenile delinquency process.

*Fiscal impact:* Depending on the range of variables considered, this monitoring process could cost from \$10,000 to \$50,000.

6. **Study of juvenile waiver provision.** Charging decisions under the automatic juvenile waiver provision may have racially discriminatory effects. The Alaska Legislature should fund an investigation of alleged discriminatory charging practices under the new law.

*Fiscal impact:* A review of the limited number of cases filed under the new law and a sufficient sampling of comparison cases and offenders could cost about \$10,000.

7. **Study of sex offenders.** The reasons for the prevalence of sexual assault and sexual abuse of minors in rural Alaska are little understood. The legislature should fund a review by the Departments of Health and Social Services and Corrections of the causes of sexual offenses, the role of alcohol abuse, and reasons for the increase in sexual assaults in villages. The study should look for appropriate and effective treatment methods, particularly for Native offenders.

*Fiscal impact:* Despite significant funds devoted to study of alcohol abuse, sexual offenses and related issues over the past thirty years, no organization has proposed definite answers to these questions. A limited review of existing literature, supplemented with review of trends in villages, and an assessment of existing treatment methods (both traditional Native methods and currently accepted Western methods), with recommendations, could cost between \$20,000 and \$40,000. Any more substantial review would cost \$200,000 to \$500,000 or more.

Several national organizations fund research, including the Bureau of Justice Assistance and the State Justice Institute. The Department of Health and Social Services and the Department of Corrections could apply to one of these sources to partially fund this work.

*Cross-references:* Consumer/User subcommittee recommendations #3, 4; recommendation G to Supreme Court; recommendation E to other institutions.

## IV. Jury Composition Subcommittee

“I am a life-long Alaskan who lives in village about 100 miles away from Bethel. No one from my village has ever been called for jury duty. I feel left out of the justice system because I would not understand court proceedings if I ever had to go to court. I would not know what to do if I were called to court.” (Village resident)

“Jury service puts a burden on our corporation, which employs twelve people. Our employees frequently are called (sometimes two at a time) and they generally are happy to serve but are needed at work. The length of time for which people serve (three months) adversely impacts our business, mainly because of the uncertainty of having to come back every day.” (CEO, Bethel Native Corporation)

### A. Jury Composition Subcommittee Findings

**Finding #1: Master jury service list in Alaska.** The Alaska Court System compiles the statewide master list of prospective jurors from the Permanent Fund Dividend list, a universally inclusive source for jurors. Alaskans from all communities, all walks of life, and all economic levels apply for the dividends, and the Department of Revenue updates the list annually. This compares favorably with other states, where lists of prospective jurors often do not reflect the demographic composition of the jury pool.

**Finding #2: Rural geographic exclusion.** Using the master list of prospective jurors, the jury clerk for each court location mails qualification questionnaires to citizens residing in nearby communities.<sup>63</sup> The questionnaire asks about the citizen’s qualification to serve, availability, and requests for excuse from service due to health, age, absence from the area, or other hardship. In the Third Judicial District, clerks do not send petit jury questionnaires to citizens residing more than thirty miles from the court location; in the other judicial districts the Alaska Court System calls citizens residing within a radius of fifty miles for petit juries.<sup>64</sup> The clerks also do not send questionnaires to residents of villages where the Alaska Court System has decided that transportation to the court

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<sup>63</sup> The procedure followed in summoning and selecting jurors is set out in Administrative Rule 15. In many of the state’s larger courts, the qualification questionnaire and summons for jury duty go out together. In the smallest courts (under 2,000 names on the prospective juror list, the clerks send out questionnaires once a year, and send summonses separately if litigants ask for a jury trial.

<sup>64</sup> In the Third Judicial District, the Alaska Court System draws grand jurors from the entire district; in the other judicial districts, grand jurors come only from communities within the 50-mile radius. Use of the grand jury depends on prosecutorial practices in a given court location, rather than on decisions by the litigants or parties in a case.

location is too expensive (usually villages from which prospective jurors must fly in and stay at least overnight.)<sup>65</sup> Some villages with daily commuter flights are included in the pool. Finally, some villages are theoretically in the jury pool but are assigned to inactive court locations where trials are rarely held. Altogether, these restrictions routinely exclude residents of 125 rural communities from jury service.<sup>66</sup> Although the Alaska Public Interest Research Group Report on jury service does not mention it, the Alaska Court System occasionally does call jurors, usually at the request of the parties, from some normally excluded communities.

**Finding #3: Non-response to juror questionnaire.** A substantial number of citizens do not respond to the jury questionnaire on the first mailing. From its survey of jury clerks, the Jury Composition subcommittee learned that while roughly one-third of the clerks enjoy a 90% response rate to the questionnaires, another third have only a 50-75% response rate. Jury clerks follow up on the unreturned questionnaires in a variety of ways: some do nothing, some send reminder letters, some make personal phone calls, and some send an order to show cause. The rate of response improves considerably after follow-up.

The clerks then review the questionnaires to determine which citizens qualify to serve and which should be excused. The qualified jurors are placed on the venire list. Based on the court's caseload, the clerks determine when the court will need jurors, and how many, and whether the jurors will serve on a grand jury or a trial jury.

**Finding #4: Non-enforcement of jury summons.** In most of the state's larger communities, the summons goes out with the qualification questionnaire. The summons asks prospective jurors either to report to the court on a particular day for jury duty, or to call the court for reporting information. A substantial number of the jurors summoned to appear for jury service do not appear. Depending on the judicial district, the jury clerks report that from 26% to 42% of those summoned fail to appear on the day assigned.<sup>67</sup> How the jury clerks respond depends largely on the judge: some call the missing juror, some issue

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<sup>65</sup> For example, the Fourth Judicial District paid \$152,968.19 in 1996 for the meals, travel, and lodging costs. Alaska Court System personnel said that most of those costs are paid for Bethel-area villagers within the 50-mile radius to go to Bethel for jury service; Fairbanks spent relatively little on travel for the same year. Bethel had 24 jury trials in calendar 1995, with an average of 71 jurors reporting to court for each trial (data provided by Alaska Court System).

<sup>66</sup> See Alaska Public Interest Research Group, "Juror Exclusion Project" (November 1995).

<sup>67</sup> Data collected from the survey of jury clerks for the Fairness and Access Jury Selection subcommittee are consistent with the data reported in an unpublished Alaska Court System study of juror utilization for 1993, 1994, and 1995.

an order to show cause (sometimes followed by a fine), some add time to the person's jury service, some issue bench warrants as a last resort. Other clerks do not follow up at all, because they do not have time, the visiting judge has left town after the trial, or the clerks believe that it doesn't matter as long as enough people are available to choose a jury. Because of this non-compliance and leniency, jury clerks must call considerably more people than they can use to assure that the court can empanel a jury. This overcalling increases the burden of service on those who respond.

**Finding #5: Ethnic composition of jury pool.** Failure to enforce jury summonses may change the ethnic composition of the jury pool. The Jury Composition subcommittee distributed questionnaires to prospective jurors reporting for duty in Anchorage, Fairbanks, Juneau, Nome, and Kodiak. Ethnic minority respondents were under-represented in some communities when compared to the proportion of ethnic minorities counted in census data. In particular, Native Alaskans were under-represented in Kodiak and Nome, African-Americans were under-represented in Anchorage and Fairbanks, and Asian-Americans were under-represented in Anchorage. Although strong conclusions cannot be drawn from this one survey, the data suggest the possibility that members of those groups do not respond to the summons for jury service in some communities at the same rate as other ethnic groups.<sup>68</sup> This lower response rate may result in nonrepresentative jury pools, despite the initial use of the permanent fund dividend list.

**Finding #6: No Anchorage jury clerk computer.** In Anchorage, the jury clerk's office manages jury selection without a computer. This manual system significantly limits the clerk's ability to follow up on prospective jurors' failure to respond to questionnaires and summonses.

**Finding #7: Burden imposed by length of jury service.** After receiving the summons, the prospective jurors must remain available for jury service for a specified length of time, calling in periodically to see if the court needs their services. The length of time summonsed jurors must remain available depends on the number of qualified jurors in the community.<sup>69</sup> For larger communities with master venire

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<sup>68</sup> The Rand Institute for Civil Justice conducted a 20-year study of civil jury cases in Chicago (1959-1979). One of its findings was that African-American citizens respond to jury questionnaires at a lower rate than white citizens do.

<sup>69</sup> Administrative Rule 15(j)(1).

lists over 7,000,<sup>70</sup> the maximum term of availability is 30 consecutive days; for mid-size communities with a master venire list between 2,000 and 7,000,<sup>71</sup> jurors must report for 90 days; for smaller communities (under 2,000 names on the master venire list),<sup>72</sup> the jurors must remain available for a year. Because trials are not often held in the smallest towns, the heaviest burden of service falls on citizens and employers in mid-sized communities. Several members of the public commented that jurors and their employers had great difficulty planning around a possible call from the court for three months at a time.

**Finding #8: Effect of increasing peremptory challenges.** The jury clerks select trial panels at random from those who appear in answer to the summons. These groups of prospective jurors go to the trial courtroom, where the judge and the attorneys question them to decide whether to seat them, excuse them for cause, or excuse them with a peremptory challenge. In 1994, the legislature increased the number of peremptory challenges the prosecution receives in felony trials from six to ten, equal to the number available to the defense.<sup>73</sup> Several judges observed that increasing the number of peremptory challenges has increased both the time needed to choose a jury and the number of prospective jurors the court must call. Both changes increase the Alaska Court System's expenses for juries.

**Finding #9: Significant disincentives to jury service.** Citizens find several significant disincentives to jury service. As part of the juror survey, the subcommittee asked about difficulties caused by transportation and parking, family care, and interference with employment, self-employment, and subsistence activities. Many prospective jurors anticipated employment problems if called upon to serve. Among self-employed jurors, one-half to three-quarters believed that jury service would cause them significant problems or financial hardship (the proportion varied by location). Among private-sector employees, one-quarter to one-half believed that jury service would cause problems at work. One-quarter of government employees expected problems. Few responses in the five cities surveyed mentioned subsistence activities as an issue. Public comments noted

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<sup>70</sup> These communities are Anchorage, Fairbanks, Juneau, Ketchikan, Sitka, Kenai, Palmer, Kodiak, and Homer.

<sup>71</sup> These communities are Barrow, Nome, Kotzebue, Bethel, Seward, Unalaska, and Valdez.

<sup>72</sup> This includes Angoon, Craig, and Petersburg; Selawik, and Unalakleet; Cordova, Glennallen, Naknek, and Dillingham; and Aniak, Emmonak, Tok, and Chevak, along with a number of other small communities.

<sup>73</sup> Alaska R. Crim. Proc. 24 (d), as modified by ch.117 § 1 SLA 1994. The rule provides that in felony trials, each side has ten peremptory challenges; in misdemeanor trials, the rule limits peremptory challenges to three per side.



that part of the problem arose from the daily uncertainty of the process, with neither employee nor employer knowing whether the court might need the employee on a given day.

About 20% of the prospective jurors in Anchorage and Juneau mentioned that parking caused problems. Family care created financial and logistical problems for roughly 10% of those surveyed. In Bethel, public comments noted that crowded conditions, insufficient chairs, and lack of drinking water at the courthouse made jury service unnecessarily unpleasant.

**Observation: Unconscious Race Bias in Juries.** It is the observation of the subcommittee and of each of its members that unconscious race bias on the part of jurors influences juror decisions.<sup>74</sup>

*Commentary:* While there is no statistical evidence specific to Alaska juries, data from other jurisdictions supports this observation. A number of studies have found that race bias may enter into jury decision-making among other factors.<sup>75</sup> A recent study by the Center for Equal Opportunity examined over 55,000 felony cases since 1992 drawn from the largest U.S. counties, and found that juries acquitted black defendants substantially more often than white defendants in murder, rape and other trials. Juries acquitted whites more often than blacks only in assault and robbery cases.<sup>76</sup> A number of studies have been inconclusive, perhaps because of an inability to separate out the many factors involved in the complex process of jury decision-making.<sup>77</sup>

Anecdotal evidence in Alaska supports the observation that juries either may favor a party because of ethnic or cultural background or be biased against the party for the same reason. In criminal cases, either the defense or the prosecution may try to avoid trial in a small community because the attorney believes that the jury will favor the opposite side, based at least in part on the probable ethnic composition of the jury. Some public comments reflected the

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<sup>74</sup> The jury selection subcommittee decided at the beginning of its work that it would not consider legal issues related to jury selection, such as legal challenges to the racial or ethnic composition of the jury (*Batson* challenges). As a result, the committee made an observation about its perceptions, rather than making a finding.

<sup>75</sup> See studies collected in Abbott, Hall, and Linville, *JURY RESEARCH: A REVIEW AND BIBLIOGRAPHY* at secs. 4.08 and 5.15 (ALI-ABA Publications, 1993); HANS & VIDMAR, *JUDGING THE JURY* 136-40 (Plenum Press 1986); Gross and Mauro, *Patterns of Death: An Analysis of Racial Disparity in Capital Sentencing and Homicide Victimization*, 37 *STANFORD L. REV.* 27-153.

<sup>76</sup> *Utne Reader* (May-June 1997) citing a study by Robert Lerner that originally appeared in *Reason*, January, 1997.

<sup>77</sup> See GUNTHER, *THE JURY IN AMERICA* 93-95 (Facts on File Publications, 1988).

belief that white juries may be biased against ethnic minorities, particularly black defendants in criminal trials.

Whether or not the outcomes of individual trials are affected, the lack of demographically balanced juries also affects the strength of the American social fabric. One recent article argued that when “minority citizens receive less exposure to the educational experience of jury service, [it] fuels the decline of public trust in jury fairness, and raises the risk that some jury decisions may be mis- or under-informed, lacking the breadth of experience that diverse panels can provide.”<sup>78</sup> Another author supporting ethnically diverse juries stated the benefits similarly: “The main reasons for impaneling a reasonably large body of jurors are to ensure a diversity of viewpoints, increase the likelihood that the jury will represent the community, promote group deliberation, and enhance public acceptance of jury rulings.”<sup>79</sup>

## **B. Jury Composition Subcommittee Recommendations**

**Recommendation #1: The Alaska Court System should expand the jury pool to include all communities in the state.**

*Commentary:* The presiding judge in each judicial district should consult with other judges in that district and with community members to identify ways in which all residents within the district can participate as jurors. The presiding judge should consider seasonal issues, practical realities, need for a representative cross-section of the community, and avoidance of unreasonable transportation costs (*see* Administrative Rule 15(c)). The Alaska Court System should assign every community to a court location.

The Alaska Court System should avoid excluding communities from the opportunity to serve on juries. Rural residents often feel removed from the operation of the law and have little chance for input in legal matters that concern their villages. At the same time, jurors and employers in hub cities like Bethel and Barrow feel burdened by constant jury service, because those courts hear cases from the villages as well as the larger community. Excluding the villages also results in jury pools with fewer Native Alaskans, not representative of the local population. Allowing rural residents the opportunity for jury service will increase rural knowledge of the law, create a more ethnically representative jury pool, and ease the burden on jurors who must serve too often.

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<sup>78</sup> King & Munsterman, *Stratified Juror Selection: Cross-section by Design*, 79 JUDICATURE 273, 274 (1996).

<sup>79</sup> Alschuler, *Equal Justice*, ABA JOURNAL 36 (December, 1995).

The subcommittee recognizes that this proposal potentially carries substantial costs, involving airfare and overnight accommodations. It recommends that the presiding judges meet with the communities affected and look for ways to extend the opportunity for jury service with reasonable cost and effort using court travel, rotation of communities into the jury pool, acceptance of volunteers,<sup>80</sup> and other means.

*Fiscal impact:* The staff attempted to arrive at a rough estimate of the cost of including every community in the state in the jury pool. It assessed the number of jury-qualified citizens in the community (generally, all 18 years old and older), the average percentage of jurors in that judicial district who report for jury duty when called, and a very conservative cost of \$300 travel and per diem expenses for each juror from one of the usually excluded communities. These calculations suggest costs per year of \$80,100 for the First Judicial District, \$173,700 for the Second Judicial District, \$314,400 for the Third Judicial District, and \$235,500 for the Fourth Judicial District, a yearly total of \$803,700 for the state.

A number of factors could substantially lower these costs. Residents of the more distant communities might experience severe hardship because of family obligations, health or other factors that would reduce the number of qualified, non-excused potential jurors. The response rate to juror questionnaires and summonses might be substantially lower from these communities; the potential number of jurors then would depend on the court's follow up procedures. Assuming two-thirds fewer potential jurors would reduce the calculated cost to \$265,221. On the other hand, some trials last more than one day, and weather conditions or airline schedules sometimes require additional overnight stays in the trial community, increasing the costs to the Alaska Court System.

*Cross-references:* Recommendation I(1) to Supreme Court.

**Recommendation #2: Alaska residents should acknowledge jury obligations on their permanent fund applications.**

*Commentary:* The legislature should require Alaska residents to check a box on their Permanent Fund Dividend applications signifying that they understand that each person who receives a Permanent Fund Dividend has a responsibility to serve on a jury if called and qualified. The court system should continue its practice of using the Permanent Fund Dividend list as the jury list.

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<sup>80</sup> AS 09.20.050 (d) permits citizens to volunteer for jury service by contacting the administrative director of the Alaska Court System and providing the information the administrative director may require. Volunteer jurors must be qualified in the same ways as other jurors.

*Fiscal impact:* No significant impact.

**Recommendation #3: The Alaska Court System should create and implement sanctions for failure to comply with jury summons.**

*Commentary:* The Alaska Court System should enforce the mandate of the jury summons. Currently, jury clerks respond to people who fail to come to court after receiving a jury summons by phone calls, fines, and bench warrants; however, about 20% of the jury clerks responding to a written questionnaire indicated that they did not follow up at all because of lack of time or staff. These practices may affect the proportion of racial and ethnic groups represented in the jury pool. The court system needs to identify the procedures that maximize citizen participation, and give jury clerks the time and resources to follow through on those who do not respond to summonses. Better enforcement will increase the size of the jury pool, assure that it is a representative cross-section of the community, and spread the responsibility of jury service fairly across the community. The court system should take into account response rates in each community and reasons for the lack of response in designing its sanctioning process.

*Fiscal impact:* The Alaska Court System would need to analyze the reasons for lack of follow-up in each court location, the number of prospective jurors who did not respond, and effective techniques for follow-up before deciding the fiscal impact of this proposal. An analysis of non-respondents in several selected communities probably would require a telephone survey of non-respondents, which the Alaska Court System could carry out for about \$5,000 for the survey and analysis. Anchorage, with a high percentage of all jurors, is among the courts that does not follow up.

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #4: The Alaska Court System should educate the public about the necessity of serving on juries and about the individual and community benefits, through public service announcements and other means.**

*Commentary:* The court system should create and maintain a public education program as part of the effort to broaden and diversify the jury pool. This effort could be incorporated in the general outreach program recommended by other committees.

*Fiscal impact:* Minimal additional cost if done as a part of a general outreach program.

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #5: The Alaska Court System should reimburse jurors in Anchorage and Juneau for parking expenses, and should reimburse all jurors for family care expenses incurred as a result of jury service.**

*Commentary:* The court system should try to reduce the practical problems that act as disincentives to jury service. The courts in Anchorage and Juneau should provide or pay for parking for those who report for jury duty (other courts provide sufficient free parking). Jurors who incur family care expenses that they would otherwise not incur should be able to apply for reimbursement for those expenses. Public comments indicated that the juror per diem is not enough to offset some jurors' out-of-pocket expenses.

*Fiscal impact:* At \$5/day, one day each, for the 801 jurors who reported for service in 1995 in Juneau, parking would have cost the Alaska Court System \$4,005. At \$7/day (based on the costs that respondents to the survey of jurors noted), one day each, parking for the 6,207 jurors who reported in Anchorage would have cost the Alaska Court System \$44,449. At \$5/hour for 8 hours, child or family care would cost \$40/day for each of the jurors with family care costs (10% of 18,030 jurors who reported in 1995 x \$40 = \$72,120).

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #6: The Alaska Court System should investigate how to minimize inconvenience caused by length of jury service.**

*Commentary:* One of the biggest problems jurors face is disruption to their work. The Alaska Court System should explore ways to reduce the number of days prospective jurors must report or call in. The courts in larger communities should try a "one day, one trial" system, in which prospective jurors appear for one day only, and are excused if not called for trial on that day.

The American Bar Association for Alaska Court System Standards recommends the "one day one trial" system. The recommendation from the ABA notes that this might require some changes in calendaring procedures, especially in smaller courts. This system is essentially the one that Anchorage uses now; it might also work in other larger locations.

*Fiscal impact:* Because this method uses more people for shorter periods of times it probably would lead to some increased costs in qualifying jurors.

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #7: The Alaska Court System should improve the conditions of the jury waiting area in Bethel.**

*Commentary:* In addition to the large number of days they must serve, Bethel jurors complained about crowded conditions at the Bethel courthouse. Prospective jurors often must sit on the floor. The Alaska Court System should provide more chairs.

*Fiscal impact:* For \$3,000, the Alaska Court System can buy 20 chairs at \$100/each. Additional space or remodeling would add expense.

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #8: The Anchorage Alaska Court System should obtain a high quality computer and software for the Anchorage jury clerk.**

*Commentary:* The Anchorage jury clerk needs a computer to track jury questionnaires, summonses, excusals, and service.

*Fiscal impact:* For \$5000, the Alaska Court System could acquire a good computer and database program.

*Cross-references:* Recommendation I(2) to Supreme Court.

**Recommendation #9: The number of peremptory challenges given to the prosecution should be returned to the number provided by the law before it was amended in 1995.**

*Commentary:* This recommendation is intended to decrease the number of prospective jurors called and to speed the process of selecting a jury. The legislature would have to change the law to decrease the number of peremptory challenges.

*Fiscal impact:* In 1995, 21% (N = 3,279) of the 18,030 prospective jurors who reported were peremptorily challenged. Many factors may influence the decisions of attorneys in a given case to use their peremptory challenges. A very rough estimate of the number of jurors not needed would be about 328, because prosecutors would have 30% fewer challenges. Savings to the Alaska Court System would come from reduced judge and Alaska Court System staff time in jury selection, and slightly smaller jury pools that the Alaska Court System would call.

*Cross-references:* Recommendation I(3) to Supreme Court.

## V. Language and Culture Subcommittee Findings and Recommendations

“...We sometimes hear of people who went to jail without having any idea of why they had been arrested. The federal courts do a better job of certifying and paying interpreters. We have heard an interpreter give defendants legal advice, including advising them about what to plead. Translating properly requires an understanding of court procedures and the appropriate role of the translator, as well as an ability to speak the language.” (2 Hispanic Juneau residents)

“Yupik people feel intimidated when they have to go to court. They will often answer in ways they think their questioner wants them to, so as not to cause trouble. When asked if they understand they will say yes, even if they don’t understand. They know that if they answer no, the judge and the lawyers will all focus on them.” (Anthropologist, Fairbanks)

“As a defense attorney, I get frustrated trying to bridge the cultural gap in explaining the criminal justice system to [Native] clients. Language is a barrier, but so is the way people perceive legal concepts. Many go through the system, despite efforts of counsel, without really understanding and without seeing a real effect.” (Anchorage lawyer with cases in Bethel).

The Language and Culture subcommittee made separate findings on language issues and on culture issues.

### A. Language and Culture Subcommittee Findings on Language

**Finding #1: Linguistic diversity.** The Alaska population is increasingly linguistically diverse. Data from the 1990 Census indicated that about 11% of state residents spoke a language other than English at home.<sup>81</sup> Of those, roughly 37% said they did not speak English “very well.” The most common languages spoken at home were Spanish, Tagalog, Korean, Russian or a Native American language. About 10,000 people statewide said they spoke Spanish or Spanish Creole at home, over 5,000 spoke Tagalog, over 3,000 spoke Korean,<sup>82</sup> some 2,000 spoke “other” or “unspecified” languages at home and over 1,000 spoke Russian.<sup>83</sup>

Estimates based on 1990 census data suggest that about 26,700 people, or 36% of the Native American population of the state, spoke a Native American

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<sup>81</sup> *Summary of Social, Economic and Housing Characteristics, 1990 Census, Table 1: Selected Social Characteristics.* Of the total number who speak a language other than English at home, around 80% (49,007 people) are 18 years and over. *Id.*

<sup>82</sup> About 2,500 of the 3,333 Korean speakers lived in Anchorage. *Id.*

<sup>83</sup> 1990 Census Data, Table P31, Variable ANPSADPI (on file at Alaska Judicial Council).

language at home in 1990.<sup>84</sup> This percentage varied widely by area of the state. About 71% of the Natives in Yup'ik-speaking areas of the state said they spoke a Native language at home, followed by 54% of Natives in Inupiat-speaking areas.<sup>85</sup> In contrast, among the Native Americans living in Anchorage and Fairbanks, only about 17% said they spoke a Native language at home in 1990. Finally, among the Tlingit, Haida and Tsimshian, the Department of Labor estimated that only 11% spoke a Native language at home.<sup>86</sup>

**Finding #2: Linguistically diverse court customers.** The Alaska Court System serves significant numbers of people who do not speak English well. The Court as Employer subcommittee asked Alaska Court System clerks and magistrates to estimate the average number of times per month that customers who had difficulty communicating in English came to the court.<sup>87</sup> About 18% said “none,” 3% said “once a month,” and 18% said “10 times or more” per month.

Asked to list the primary languages used by the customers who had difficulty with English, respondents mentioned Alaska Native languages (Yupik, Athabaskan, Inupiat and Tlingit, in order of frequency), Spanish, Asian (including Tagalog, Japanese and Vietnamese), and Russian. Respondents also said that these customers sometimes or usually brought to the court someone to translate for them. Based on these data, the only communities that appeared to need Alaska Native language interpreters more than ten times per month were Bethel and Dillingham. Additional interviews and testimony suggested that Spanish interpreters are often needed in Anchorage and Juneau.

Non-residents represent a second source of non-English speaking court customers. Anecdotal data suggested that a significant number of non-English-

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<sup>84</sup> ALASKA DEPT OF LABOR, ALASKA POPULATION OVERVIEW: 1991 ESTIMATES 78 (1992) (hereinafter 1991 ESTIMATES). Another source suggests that most people who speak a Native American language at home are adults or elders. See Michael J. Krauss, *Language Loss in Alaska, the United States, and the World*, VOL. VI, NO. 1 FRAME OF REFERENCE 1, 3 (Alaska Humanities Forum, December 1995) (“Ninety percent of the Native languages of Alaska are no longer spoken by children.”). Krauss predicts that without “radical change, these languages will be extinct or have no native speakers left some time during the first half of the century nearly upon us.” *Id.*

<sup>85</sup> 1991 ESTIMATES, *supra* note 84, at 72.

<sup>86</sup> *Id.* However, another source asserts that the Tsimshian and Haida languages have no speakers in Alaska younger than 60. Krauss, *supra* note 84, at 3. Krauss also says that eleven Alaska Native languages have no speakers younger than 40 (Aleut, Alutiiq, Tlingit and seven of the eleven Athabaskan languages). *Id.* Consistent with that finding, none of the committee’s interviews or surveys found evidence of requests for Haida, Tsimshian, Aleut or Alutiiq interpreters, and only occasional requests for Tlingit or Athabaskan interpreters.

<sup>87</sup> Fifty-three employees representing 38 court locations, including Anchorage, Fairbanks, Craig, Kotzebue, Dillingham, Glennallen and some smaller courts responded to the written survey.



speaking people associated with the tourist industry (tourists and employees in the tourist industry) come to Alaska during the summer months. Non-English-speaking non-residents associated with the fishing industry work in Alaska year-round.

**Finding #3: Language problems in court.** Published studies of task forces and commissions in other states have documented significant breakdowns in due process and equal protection for non-English speaking litigants who appear before the courts.<sup>88</sup> In Alaska, UAF anthropologist Phyllis Morrow has documented problems with court interpretation, including word errors, alterations in meaning and cultural differences that affect translation.<sup>89</sup>

A number of people testified at the public hearings about language problems in court. A Bethel resident testified that he saw the court arraign two elderly Yupik people who did not understand English. Lacking an interpreter, they relied on a fellow defendant to interpret proceedings for them. An Anchorage public defender said that judges often postpone the arraignments of people who do not speak English until the assigned public defender can attend, which may delay release from jail for another 24 hours. Other comments noted that many Native adults in their 40s or 50s speak English adequately for some purposes, but not well enough to understand or participate in court proceedings. An ICWA worker gave the example of a non-English-speaking mother whose child was removed from the home, and who was not told what was happening or that she would be denied future contact with her child.

Advocates for immigrants raised a slightly different but related problem, saying that immigrants who waived their rights or pled guilty in criminal proceedings often did not understand that their actions would affect their immigration status. The court is not obligated to advise the immigrant-defendant on collateral consequences, and defense attorneys appointed for the criminal case may not have enough training in immigration law to advise the client. Many non-English-speaking people come from countries with radically different legal systems and cultural norms regarding conflict, acceptance of state authority, and individual rights.

**Finding #4: Interpreter training and qualifications.** According to the National Center for State Court's study on court interpreting, "[M]any individuals have enough proficiency in a second language to communicate at a very basic level. But

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<sup>88</sup> HEWITT, COURT INTERPRETATION: MODEL GUIDES FOR POLICY AND PRACTICE IN THE STATE COURTS 12 (National Center for State Courts, 1995).

<sup>89</sup> See Morrow, *Legal Interpreting in Alaska*, 10 ALASKA JUSTICE FORUM #4 (Winter 1994).

participation in court proceedings requires far more than a very basic level of communicative ability.”<sup>90</sup> Judges must be able to determine whether the party’s English ability permits meaningful participation in the proceedings. Alaska judges and most Alaska lawyers have never been trained on how and when to decide that an individual needs an interpreter.

Once the judge has decided that a party needs an interpreter, the judge must determine whether a bilingual individual suggested as an interpreter meets necessary qualifications.<sup>91</sup> In Alaska, Evidence Rule 604 governs qualifications of interpreters. It requires the court to “inquire into and consider the interpreter’s education, certification and experience in interpreting relevant languages; the interpreter’s understanding of and experience in the proceedings in which the interpreter is to participate; and the interpreter’s impartiality.”<sup>92</sup> In Alaska, the state court administrative office and the area court administrators do not establish or monitor interpreter qualifications. The Alaska Court System has not trained Alaska judges on how to evaluate interpreters’ qualifications.

In recent years, the federal courts and some state courts have taken steps to improve the quality of court interpretation. The federal district courts have an interpreter certification program that tests language fluency, knowledge of legal concepts, and understanding of ethical standards. At least nine states have established mandatory minimum training standards for all interpreters as a prerequisite for continued employment in the courts.<sup>93</sup>

States that wish to establish mandatory minimum training standards can use the National Center for State Court’s free standard workshop curriculum and materials covering basic orientation to the courts, fundamentals of court interpreting and ethics.<sup>94</sup> The National Center for State Courts also has established an Interpreter Certification Consortium to help state courts educate, test, and certify interpreters and to educate judges and lawyers on how to best use interpreters in the courts. Seven states are participating.<sup>95</sup> The standard

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<sup>90</sup> HEWITT, *supra* note 88, at 125.

<sup>91</sup> *Id.* at 18.

<sup>92</sup> AK. Rules of Court, Evidence Rule 604.

<sup>93</sup> Memo from Paul C. Gomez, National Center for State Courts, to Interested State Court Officials, regarding improvement of court interpreting services, at p. 3 (March 27, 1997) (on file with Alaska Judicial Council).

<sup>94</sup> *Id.* Consultant fees for experienced workshop faculty range from \$300-\$500 per day. *Id.*

<sup>95</sup> National Center for State Courts, *State Courts Work to Ensure that Nothing is Lost in Translation* in 1 CENTER COURT VOL. 2, at 1 (1996).

membership fee is \$25,000. The fee is adjustable for jurisdictions with non-English-speaking populations less than 100,000.<sup>96</sup>

**Finding #5: Alaska case law relating to use of interpreters.** The Alaska cases have not recognized a constitutional right to an interpreter, although neither have they denied that such a right exists. Case law suggests that it is generally in the trial judge’s discretion to determine whether an interpreter is needed.<sup>97</sup>

A number of Alaska appellate cases have addressed a litigant’s claim that a criminal conviction or adverse civil decision should be overturned on the grounds that an interpreter was not provided. The decisions all concluded that the defendants understood enough English and declined to grant the relief requested. The decisions focused on three factors: whether the case was civil or criminal, whether the person asking for the interpreter objected at trial, and whether the lack of an interpreter significantly impaired the non-English-speaking person’s ability to understand or be understood.

In the criminal cases, the defendants’ possible need for an interpreter arose in the context of the trial courts’ failure to allow allocution,<sup>98</sup> motions to withdraw pleas,<sup>99</sup> the voluntariness of a confession<sup>100</sup> the trial courts’ decisions about appointing interpreters for witnesses<sup>101</sup> and one case alleging a violation of a

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<sup>96</sup> *Id.*

<sup>97</sup> See *Perovitch v. U.S.*, 2 Alaska Fed, 750 U.S. 86 (1907) (“it does not appear from the answers made by the witness that there was any abuse of discretion [in not appointing an interpreter],” and *Clark v. State*, 388 P.2d 816 (Alaska 1966) (court found trial court’s failure to provide an interpreter for a witness to be within the sound discretion of trial court); Berk-Seligson, *THE BILINGUAL COURTROOM: COURT INTERPRETERS IN THE JUDICIAL PROCESS* 29 n.4 (1990).

<sup>98</sup> See *State v. Abraham*, 566 P.2d 267 (Alaska 1977) (defendant with minimal ability to speak and understand English could have exercised his right of allocution, since an interpreter was present at the sentencing); *Kinzey v. State*, MOJ No. 3514 (Alaska App. December 4, 1996) (defendant’s sentence affirmed where defendant did not show that he would have said anything at allocution even if an interpreter had been available).

<sup>99</sup> See *DeJesus v. State*, 897 P.2d 608 (Alaska App. 1995); *Corona v. State*, MOJ No. 3528 (Alaska App. December 26, 1996) (record showed that defendant did fully understand, despite difficulty with English).

<sup>100</sup> See *Nashoalook v. State*, 663 P.2d 975 (Alaska App. 1983).

<sup>101</sup> See *Clark v. State*, 388 P.2d 816 (Alaska 1966) (refusal to provide interpreter was within sound discretion of trial court); *Qualls v. City of Anchorage*, 378 P.2d 405 (Alaska 1963) (failure to appoint interpreter not error where no objection was made and witness understood and was understandable).

non-English-speaking inmate's constitutional right to alcohol rehabilitation.<sup>102</sup> In none of those cases did the appellate courts conclude that the defendants' commands of English were deficient enough to grant the relief requested. For example, in one case the court of appeals affirmed on the grounds that the defendant was "capable of understanding the proceedings."<sup>103</sup> In an earlier decision the court had concluded that the defendant's limited formal education and "his difficulty with the English language were not factors of sufficient significance to preclude him from entering into a knowing and intelligent waiver of his *Miranda* rights."<sup>104</sup>

In a civil case, the supreme court also affirmed the trial court's decision not to order a state agency to provide an interpreter at an administrative hearing.<sup>105</sup> The high court failed to find a violation of the constitutional right to due process in the Commercial Fisheries Entry Commission's refusal to provide the commercial fisherman with an interpreter, where the fisherman did not request one, his wife translated when necessary, and his lack of fluency in English did not appear to be responsible for his incomplete and ambiguous testimony.<sup>106</sup>

**Finding #6: Interpreter competence.** Competent court interpreters must have training in ethics, language and law in addition to bilingual ability.<sup>107</sup> Being bilingual, even fluently so, is insufficient qualification for court interpreting.<sup>108</sup> Interpreters must be able to translate accurately while preserving the speaker's language style and level of formality.<sup>109</sup> In addition, the interpreter must translate the original source material, whether spoken or written, without "editing, summarizing, deleting or adding while conserving the language level, style, tone, and intent of the speaker."<sup>110</sup> Improper interpretation may cause

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<sup>102</sup> *Abraham v. State*, 585 P.2d 526, 531 (Alaska 1978). Concluding that Abraham had a constitutional right to rehabilitative treatment for alcohol addiction, the supreme court remanded to the trial court for a thorough hearing on the issue of whether Abraham could receive that treatment given the fact that he spoke only Yupik. *Id.* at 533.

<sup>103</sup> *DeJesus*, 897 P.2d at 620 n.3.

<sup>104</sup> *Nashoalook*, 663 P.2d at 980.

<sup>105</sup> *See Kalmakoff v. CFEC*, 693 P.2d 844, 847 (Alaska 1985).

<sup>106</sup> *Id.*

<sup>107</sup> Hewitt, *supra* note 88, at 16.

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 16-17. This type of translation is said to preserve the "legal equivalence" of the source message. *Id.* at 17.

defendants to misunderstand, distort the evidence, and result in the English-speaking members of the court and the non-English-speaking litigants or witnesses actually experiencing different proceedings at the same trial.<sup>111</sup>

In addition to highly developed and specialized language skills, court interpreters must adhere to strict codes of ethics and behavior. They at times face unusual problems of law and ethics.<sup>112</sup>

## **B. Language and Culture Subcommittee Findings on Culture**

**Finding #1: Legal and court culture.** The Alaska Court System has not opened its rulemaking process and other administrative processes to the public. In the past, lawyers have expressed the most interest in the court system's rules and administration. Speakers at hearings suggested that members of the public and local community representatives would like to have a voice about processes that affect their communities including CINA rules, use of interpreters, and jury duty.

**Finding #2: Cooperation with community initiatives.** The public often perceives courts as remote institutions, difficult to use and understand. People believe that courts have a responsibility to cooperate with community initiatives that make the courts more accessible and consumer-oriented, and that improve the delivery of justice in the area.<sup>113</sup> Many people in all parts of the state wanted the court to work more closely with local dispute resolution organizations, tribal courts and councils, and to actively help communities solve their problems with justice delivery.<sup>114</sup> Other major reports and task forces in recent years also have called on the Alaska Court System to collaborate with local communities: the Alaska Natives Commission report, Bush justice conference recommendations and the Judicial Council's report on tribal courts and other local dispute resolution organizations.

## **C. Language and Culture Subcommittee Recommendations on Language**

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<sup>111</sup> *Id.* at 17.

<sup>112</sup> *Id.* at 18. For example, interpreters often are asked for legal or behavioral advice, which they can not give. They may overhear private conversations between foreign-language-speaking defendants that contain evidence. Or, the interpreter's translation may be challenged by a juror or witness who speaks the defendant's language. *Id.*

<sup>113</sup> See public comments at pp. B2-B3, B31-B32.

<sup>114</sup> See public comments at pp. B32-B37.

The Language and Culture subcommittee made a special recommendation regarding language interpreters, in addition to other recommendations about language issues and recommendations about cultural issues.

### **Recommendation Regarding Language Interpreters**

**Recommendation #1: The Alaska Court System should provide language interpreters when participants need them to understand criminal and civil in-court proceedings.**

*Commentary:* This is the Language and Culture subcommittee's most important recommendation. The Alaska Court System should pay for language interpreters for parties and witnesses involved in the proceedings when they qualify under the Alaska Court System's indigency guidelines, and using the reimbursement guidelines in Criminal Rule 39.

*Fiscal Impact:* The cost is estimated to be around \$100,000 per year. Some funds could be shifted from the Public Defender Agency and District Attorney interpreter line items, although both agencies will continue to need interpreter funds for interpreter work in out-of-court settings. The Department of Law estimates that prosecutors spent approximately \$6,000 on interpreters in 1996; the Public Defender Agency spent about \$26,000 the same year. The agencies estimated that much of that money went for out of court expenses.

*Cross-references:* Recommendation C to Supreme Court; recommendation A to other institutions.

### **Other Language Recommendations**

**Recommendation #2: All Alaska Court System forms should be written in plain, clear English capable of being understood by someone reading at an eighth grade level.**

*Commentary:* Even people who speak English as a first language have difficulty understanding common forms. Simplified forms also would help people who do not have access to lawyers, particularly people in rural areas. The subcommittee also recommends that judges receive training in the use of plain, clear English. Judges should use plain, understandable English in their written and oral decisions.

*Fiscal Impact:* \$40,000 to \$70,000 for a one-year project to re-write, circulate for comment and finalize new forms. Training for judges, masters, and magistrates would cost \$4,000 to \$6,000 for speaker expenses and materials.

*Cross-references:* Recommendation F(1) to Supreme Court.

**Recommendation #3: The Alaska Court System should translate its forms, instructions, and publications into other languages.**

*Commentary:* After the English version has been simplified, the court system should translate its written materials into the one or two most commonly written or spoken languages in each venue district. Since many court customers understand spoken language better than written, audio or video tapes that “walk” the customer through filling out the forms may help. The Alaska Court System would have to decide whether persons using the forms would complete them in English or in the native language.

*Fiscal Impact:* The Alaska Court System could hire a translator for \$25 to \$40/hour. If the initial project translated only a dozen or so commonly used forms and six publications into Spanish and Yupik, the time required could be about 50 hours, and the cost would range between \$1,250 and \$2,000. Professional videotaping usually costs \$1,000 minimum per minute of videotape. The overall cost would depend on the length of the tape. Audiotaping estimates were not available, but costs may be much closer to the cost per hour for an interpreter.

*Cross-reference:* Recommendation F(2) and (3) to Supreme Court.

**Recommendation #4: The Alaska Court System should create a training program to teach judicial personnel when to appoint and how to use and supervise language interpreters.**

*Commentary:* Judges need training in several areas: at what point in a proceeding an interpreter is needed; determining whether an interpreter is needed for a particular party or witness; assessing the qualifications of an interpreter; understanding the role and ethical standards of interpreters and understanding how to work with and supervise an interpreter in the courtroom.

*Fiscal Impact:* A training program for judges should cost about \$3,000 to \$4,000 for materials and speakers’ expenses.

*Cross-references:* Recommendation C(1) to Supreme Court.

**Recommendation #5: The Alaska Bar Association, the Attorney General’s office, the Public Defender Agency and the Office of Public Advocacy should educate lawyers about when to use interpreters.**

*Commentary:* The training should focus on how to use interpreters for effective attorney/client or victim/witness communication, when to use interpreters to improve client or witness participation in court proceedings, and how to find qualified interpreters.

Individual agencies or the bar association could train attorneys in the use of interpreters. Training for prosecutors and defense attorneys should be done separately because of the distinctly different needs of each group.

*Fiscal Impact:* The cost would probably run about \$3,000 to \$5,000 to train all of the state's public defense attorneys and prosecutors (the Municipality of Anchorage and other communities also might want to share the expenses and receive the training). Existing agency education programs and CLE programs could incorporate ongoing training.

*Cross-references:* Recommendation A(1) to other institutions.

**Recommendation #6: The Alaska Court System should implement a training and recruitment program for interpreters, and should eventually implement a certification program.**

*Commentary:* Ultimately, the court system must ensure that competent court interpreters are available. To minimize the financial impact of meeting this responsibility, the court system could begin with mandatory basic training for interpreters, and then progress to formal certification.

The Alaska Court System should establish and support a committee to further define and implement this recommendation. The committee should explore the National Center for State Courts' interpreter consortium,<sup>115</sup> work with the local federal court, explore the AT&T telephonic interpreter program, and study other states' efforts. The Alaska Court System should collaborate with the University of Alaska to develop a training and certification program for Alaska Native language interpreters.

*Fiscal Impact:* The Alaska Court System could expect to spend \$50,000 to \$70,000 in the first year to staff (in-house or on contract) the establishment of the training and certification program. The University could help estimate the cost of setting up a certification program in Native languages through its programs.

*Cross-references:* Recommendations C(2), (3), (4) to Supreme Court; recommendations A(2) and (3) to other institutions.

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<sup>115</sup> The State Court Interpreter Certification Consortium was established in July 1995 to help state courts educate, test, and certify interpreters and educate judges and lawyers on how to best use interpreters in the courts. Seven states are participating. National Center for State Courts, *State Courts Work to Ensure that Nothing is Lost in Translation*, *supra* note 95, at 1. The standard membership fee is \$25,000. The fee is adjustable for jurisdictions with non-English-speaking populations less than 100,000.



**Recommendation #7: Judges should inform noncitizens of the collateral consequences of a criminal conviction, including deportation.**

*Commentary:* Noncitizens often do not understand that guilty pleas and convictions in state court may affect their immigration status and lead to deportation. Their lawyers generally do not inform them, and judges are not required to inform them, either. The court system should educate judges on this issue and prepare a brief publication explaining the issue for judges to distribute as appropriate.

*Fiscal Impact:* The publication would cost about \$5,000 to write and translate into six commonly used languages.

#### **D. Language and Culture Subcommittee Recommendations on Culture**

**Recommendation #1: The Alaska Supreme Court and court system administration should consider how the Alaska Court System could open its rulemaking and other administrative functions to the public.**

*Commentary:* The subcommittee received information that the public, i.e., non-lawyers, is interested in the court system's rulemaking and administrative decisions. There are at least four ways the Alaska Court System could implement this recommendation: (1) circulate proposed rule changes to interested non-lawyers; (2) appoint non-lawyer members of the public to rules committees (ad hoc or permanent); (3) hold public hearings on rules changes (include teleconferencing where possible); and (4) create local citizens' advisory committees to give input on administrative orders. The Alaska Court System's child support rule committee had significant public involvement, setting a precedent for public participation.

*Fiscal Impact:* Estimated \$2,000 to \$5,000 per year, for coordination of mailing lists, extra printing and postage, and staff time for reviewing the added comments. Setting up citizens' advisory committees could add to the expense, depending on the extent of their involvement and the need for staff support.

*Cross-references:* Rural Access subcommittee recommendation #8.

**Recommendation #2: The Alaska Court System should affirmatively educate the public about the legal system and how courts interact with the legislative and executive branch agencies.**

*Commentary:* The Alaska Court System should work with other justice agencies (CSED, the District Attorney, the Public Defender, the Office of Public Advocacy, the Department of Corrections). The Alaska Court System should consider whether the new judicial education coordinator could organize this effort. The education should include information about how the public can participate in rulemaking processes. (This recommendation is discussed more fully in the consumer user recommendations.)

*Fiscal Impact:* \$10,000 to \$20,000 annually to create and print materials, translate them as needed (or audiotape them), and create radio and TV public service announcements.

*Cross-references:* Consumer Users subcommittee recommendations 1; Rural Access subcommittee recommendation #6; recommendation B(1) to Supreme Court; recommendation F to other institutions.

**Recommendation #3: Judges should be familiar with the different cultural groups within their venue districts.**

*Commentary:* Judges should understand those groups' perspective on the justice system, especially the criminal justice system. To implement this recommendation, judges would need reliable sources of information about the different cultural groups that they serve. Judicial education staff, cultural groups and organizations, the University of Alaska, and training judges all could contribute to developing the fundamental knowledge needed. The Judicial Council could investigate as part of its retention evaluation the degree to which each judge met this goal.

*Fiscal Impact:* Minimal; should be done in the context of other recommended changes.

*Cross-references:* Court as Employer subcommittee recommendation #3; Disparate Confinement subcommittee recommendation #4; recommendation D to Supreme Court; recommendation B to other institutions.

**Recommendation #4: Judges should work with local governments and organizations in their venue districts that can or do serve the justice system.**

*Commentary:* Judges should work with local governments and community groups, including alternative dispute resolution organizations. The subcommittee does not expect the Alaska Court System to lead in these

initiatives, since the community knows better which alternatives its members will use and respect. The Alaska Court System should support the community efforts and use the local resources. The subcommittee also recognized that the Alaska Court System's ability to work with local organizations depends to some extent on cooperation from other justice system agencies. (This recommendation also is discussed with the rural access recommendations.)

*Fiscal Impact:* These efforts should not have any associated costs. If cooperation reduces the number of cases coming to court, the Alaska Court System might realize long-term savings.

*Cross-references:* Recommendation E(1) to Supreme Court.

**Recommendation #5: The Alaska Court System should organize any initiatives related to change around superior court venue districts.**

*Commentary:* The state is so vast, geographically and culturally, that the Alaska Court System (and other state institutions) should be flexible as much as possible in accommodating local needs. This recommendation acknowledges that different cultures exist throughout the state. A program suitable for one venue district may not work for another. Local judicial officers can best decide how or whether to use a particular change or program in their venue districts. The policy of flexibility should be balanced with the need for statewide standards of operation to assure equal protection and administrative effectiveness.

*Fiscal Impact:* The policy of flexibility should not have any fiscal effect on the Alaska Court System.

## **VI. Rural Access to the Court System Subcommittee Findings and Recommendations**

“The assistant district attorneys will ‘dump’ charges in bush communities. They do not want to travel to our town, and their agency does not want to spend the money to send them out to rural areas. Defendants who have been through the system before have an advantage because they know that the DA will not prosecute a case in a rural area. These defendants plead not guilty when others probably would accept a plea bargain because they know that eventually the case will be dismissed.” (Magistrate, Fairbanks area)

“We are concerned with the public appearance of justice and the safety of our community. Habitual offenders who are being awarded sentences and then having them suspended or held off for some other reason are creating other problems in the town. Youth interpret the return of the troublemaker as ‘See? No big deal. Nothing ever happens to anyone who does something wrong.’ Adults, on the other hand, are expressing disgust, and grilling the police about why they don’t do anything about so-and-so. And innocent people are being harmed as habitual offenders return to town and resume their ways. The Council is asking the court system to please consider these issues when passing sentence or, more importantly, when suspending sentences.” (Mayor and Council, City of St. Paul)

“Tribal courts should be viewed as a resource, and most of the real problems with the judicial, criminal and civil justice system in rural Alaska are ultimately resource issues. We have one state social worker who cannot possibly keep up, has 30 referrals a month and is constantly going around putting out fires. The workload of the juvenile probation officer who’s responsible for this area, the chain and the Pribilofs too, is literally impossible to do. It’s not a one-person job, and I don’t see the legislature increasing this funding any time soon. My organization has about 20 children’s service workers in villages in the same region and they are underutilized because of jurisdictional problems. Because of lack of authority, the tribal federally-funded children’s workers just aren’t being used nearly as much as they could be and it doesn’t make any sense at all. It’s a service delivery issue. What’s wrong with the system is you’ve got one social worker who can’t do her job because there’s just too much of it to do, and at the same time you’re attacking alternative systems which are already in place and underused.” (General Counsel for the Bristol Bay Native Association, speaking on his own behalf)

### **A. Rural Access Subcommittee Findings**

**Finding #1: Distribution of justice system resources between urban and rural areas.** The Rural Access subcommittee studied the distribution of justice system resources across the state. It found that Alaskan justice services are provided in several tiers, ranging from full to limited to none.

- a) In the highest tier are the urban locations with sitting superior or district court judges: Thirteen of the sixteen court locations have all or almost all possible attorney, probation, and law enforcement services available.<sup>116</sup> This tier includes roughly 71% of the population of the state. The remaining three court locations (Valdez, Wrangell-Petersburg, and Homer) have full judicial services, but lack the local presence of district attorneys, public defenders, and probation services. An additional 3% of the state's population lives within reach of these three courts.
- b) A number of smaller villages lack judges but have magistrates, and they have local law enforcement of some kind. Sixty-six communities have magistrates or traveling magistrates and a law enforcement presence.<sup>117</sup> Approximately 7% of the state's population lives in these villages.
- c) 173 communities have a law enforcement presence only (a VPSO, a Village Police Officer, or other paid police), but lack court system services. These communities are home to about 5% of the state's population.<sup>118</sup>
- d) About 80 small villages (composing about for 1% of the state's population) lack any local law enforcement. In communities without judges and without law enforcement, magistrates hold court telephonically or not at all, and state troopers come in only as needed. Judges, lawyers, probation officers and social workers may never visit. Residents of these communities may have no access or summer-only access to roads, or may have a several hour trip on poor roads to get to a court.<sup>119</sup>

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<sup>116</sup> The subcommittee looked at the presence of judges, magistrates, prosecutors and public defense counsel, Alaska Legal Services, youth and adult probation parole services, state troopers, VPSOs, and local law enforcement. The appendix contains a chart showing 337 census locations and BIA-designated tribes within Alaska, the 1995 population of each place, and the presence of these services. It also contains a summary of this information by judicial district.

<sup>117</sup> The charts distinguish between villages where magistrates reside or regularly travel and those where the magistrate serves only by telephone, because the lack of a local presence has a number of implications discussed below.

<sup>118</sup> Local law enforcement includes places where there is at least one local police officer, VPSO, public safety officer, or state trooper in residence, using lists supplied by the Alaska Police Standards Council.

<sup>119</sup> Most census areas (with the exceptions of Anchorage, Fairbanks, Juneau and Ketchikan) include one or more of the remote villages. In some census areas, about as many residents lived outside the reach of justice system services as had reasonable access. For instance, in the Prince of Wales census area, 38% of the population had no direct magistrate services, 40% had a magistrate, and 15% were served by a traveling magistrate. In the Northwest Arctic census area, 43% of the population had no magistrate, 49% had reasonable access to a magistrate or judge, and 6% had a traveling magistrate. In Dillingham, the proportions are 49% with magistrate and 51% without; and in Bethel, 62% of the population lives outside the areas regularly served by magistrates. The entire population of the

- e) Finally, a sizeable percentage of the population (13%) lives outside census designated places, particularly in the Mat-Su and Fairbanks North Star Boroughs. It is impossible to say how many of these people are remote from court services under the definition used here.<sup>120</sup>

The Third Judicial District is well-served, with 80% of the population having physical access to the full range of justice services, including judges, public attorneys, and probation services. The First Judicial District is also relatively well-served, with 71% having physical access to most services. The situation is quite different in the Second and Fourth Judicial Districts. Fewer than half the citizens in these districts are in locations with judges, public attorneys, and probation officers. One-quarter of the citizens in the Second Judicial District are served by magistrates only and another quarter have no local court system services at all. In the Fourth Judicial District, 12% of the citizens are served by magistrates only, 11% receive no services, and 27% live in unnamed areas where the subcommittee could not determine if services were available or not.

There is great geographical disparity in the way the Alaska Court System and other justice agencies provide services. Many factors contribute to this disparity, including low density population, distance, cost of transportation, lack of reliable transportation, weather, and inadequate local facilities and telephones. Other factors isolate rural residents from the justice system as well: cultural and language barriers, lack of qualified interpreters, and lack of familiarity and understanding of legal concepts.

**Finding #2: Problems caused by unequal distribution of resources.** A significant number of rural Alaskans lack justice services equivalent to those enjoyed by urban residents. At least 6% of Alaskans do not live within reasonable reach of most court system services, and many receive services only when a clear and serious need becomes apparent. Even within the middle tiers, problems can develop because the full range of services are not available. The lack of local services leads to serious ramifications:

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Aleutians East census area (2,264) lives outside the reach of most justice services.

<sup>120</sup> For purposes of this chart, an accessible town or village was defined as one within the court system's 30-mile or 50-mile radius, if connected to the service location by road. We recognize that this definition of accessibility is somewhat overgeneralized, since some individuals may live off the road system even when their community is on a road, some places are relatively easy to reach even though the distance from an urban center is great, and in some places many residents can use year-round open water. Although small airlines serve many towns, the expense of the ticket effectively restricts access to the court.

- a) Minor criminal offenders receive little official attention until they cause major problems in a village. Juveniles in particular develop a sense that the law does not apply to them.
- b) Prosecutors sometimes dismiss criminal cases because their travel budgets lack funds to pursue many cases in magistrate locations.
- c) Probation officers' budgets are insufficient to provide adequate supervision for offenders in villages. Offenders therefore must stay in cities where they have no support system, and where the village residents cannot participate in the offender's punishment and rehabilitation.<sup>121</sup> Numerous village residents expressed concern about this problem and a desire to participate in the process.
- d) Civil cases are never started, due to lack of knowledge and lack of legal assistance. Civil matters like child support, adoption, probate, and small claims go unattended.
- e) Telephonic hearings often make poor substitutes for personal contact. Judicial officers and lawyers have more difficulty questioning or evaluating a witness without the advantage of eye contact and body language, particularly if the witness has limited English language skills or is working through an interpreter. It is harder to know when a litigant has understood the language and concepts and is making an informed decision.
- f) Villagers remain ignorant of the law because they never see it in operation and never meet anyone who applies it. Increasing centralization of state services only makes this problem worse.

**Finding #3: Underused village resources.** Rural areas have at this time a variety of justice system resources such as tribal courts, child welfare workers, and dispute resolution boards. These resources, often funded by Native corporations or federal programs, are successful and respected in their own areas. However, state law enforcement officers, social workers, and courts are often reluctant to refer cases or use these resources to help meet the needs in their own cases. The state could greatly enhance equality in the effective delivery of justice system services by associating or blending these local resources with the formal court system and other agency actions. Alaska Court System personnel use local resources on an ad hoc basis, but find it more difficult without approval from the

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<sup>121</sup> Offenders may stay in larger communities for other reasons as well, because they need to attend specific rehabilitation programs, or because they are under a court order to stay away from the victim who lives in the village.

court system as a whole. The western justice system is not always the most appropriate model for the problems of many rural areas. Local programs allow judges and magistrates to use services relevant to each area of the state, without the linguistic and cultural barriers, and waiting lists, that state services sometimes entail.

Magistrates and judges can work with local organizations several ways. In criminal cases, they can call upon local groups for testimony about personal and family histories, prior offenses, and sentencing recommendations. They can ask for help in supervising probation, making home visits, and monitoring court orders. Where appropriate, they also can refer cases to a tribal court or dispute resolution board for resolution without state court involvement. Many of the local organizations are still developing and need help with record-keeping, procedures, and defining their interactions with the state system. Once developed, they can provide useful services and insights for the state courts and improve the overall quality of justice services in rural areas.

**Finding #4: Examples of successful local programs.** The myriad of local justice programs across the state has been documented by the Alaska Judicial Council study *RESOLVING DISPUTES LOCALLY* (1993). Members of the rural access subcommittee added current information about effective local organizations, some of which work closely with state agencies:

- a) The Sitka Tribal Court has been handling children's cases in cooperation with state courts for many years.
- b) Twenty ICWA workers serve villages in the AVCP area (the Yukon-Kuskokwim delta). At least thirty villages have tribal courts or dispute resolution boards in various stages of development.
- c) The Tlingit-Haida Court, based in Juneau hears cases involving tribal members as far away as Anchorage and San Francisco.
- d) The Tanana Chiefs Conference has a cooperative agreement with the Department of Health and Social Services to handle children's cases.
- e) The Department of Law has an agreement with villages in the Nome area (Kawerak) for handling adolescent cases.
- f) The Chevak Tribal Court has a formal agreement with DFYS and the VPSO to handle children's cases.



Other state courts and magistrates work cooperatively with local organizations in various cases. Other active tribal courts could begin to interact with the state system.

## **B. Rural Access Subcommittee Recommendations**

**Recommendation #1: Judges and Alaska Court System personnel should encourage the scheduling of hearings, trials, and dispositions (especially sentencings) in local communities, within the Alaska Court System's fiscal constraints.**

*Commentary:* Holding a proceeding locally improves the quality of the proceeding and makes it more useful for the community. The judge and lawyers can assess the comprehension and credibility of litigants and witnesses better when they can make eye contact and observe body language. The judge can see the litigants in their own community, and the community can observe the judge first-hand. Local residents can more easily testify at the proceeding and can understand the consequences of the court's actions. Tribal courts and councils can interact directly with the state court, increasing communication and understanding among all parties.

Budget cuts over the last ten years have led to decreased travel by the courts, the Department of Law, the Public Defender and OPA, and other agencies. These cuts have diminished service to rural areas. Some proceedings that should have been held in person have been downgraded to teleconferences or not held at all. The state should reverse this trend, to restore an adequate level of interaction and communication between the justice system and its rural constituents. (The Consumer User subcommittee also made this recommendation.)

*Fiscal impact:* One way to estimate the fiscal impact of this change would be to express the FY'85 or FY'86 travel budgets for each agency in 1997 dollars; then compare that amount with the actual allocation for FY'97 travel. Staff time did not permit us to accumulate the necessary data to calculate these figures.

*Cross-references:* Consumer/User subcommittee recommendation #5; recommendation A(1) to Supreme Court; recommendation H to other institutions.

**Recommendation #2: The court system should explore the idea of a circuit riding judge or judges to serve rural/village areas as needed.**

*Commentary:* The court system should devote more effort and resources to increasing its presence in rural areas. Good customer service in rural areas

involves providing justice services in outlying communities when feasible. Telephonic hearings do not always lead to sufficient understanding of the case by the parties, the judge, or both. When the court fails to go in person to villages, the citizens begin to feel that the law is irrelevant to their lives, and their access to justice is diminished. Historically, Alaska has used traveling judges in appropriate cases to visit villages.

*Fiscal impact:* Estimated cost of \$200,000 to \$300,000 per year for salary, travel, and benefits if a new judgeship is created. A new magistrate position might cost closer to \$150,000. Estimated cost of \$50,000 to \$150,000 per year for the court system if existing judges travel more. Costs for other agencies (Department of Law, Public Defender/OPA, the Division of Community Corrections and DFYS) will depend on whether they attended hearings telephonically or in person.

*Cross-references:* Recommendation A(1) to Supreme Court.

**Recommendation #3: The court system should appoint special masters to serve rural areas not served by superior or district court judges.**

*Commentary:* Special masters have been used historically in Alaska to handle proceedings in remote locations. To the extent possible, the court system could appoint special masters who reside in the villages as a cost-effective and legally sufficient way to handle certain types of cases, such as domestic violence, probate, marriage commissioner, and children's cases. A judge would retain oversight in the matter, insuring that other agencies recognize the actions taken. Using local people with sufficient training could reduce court costs, and increase local participation and acceptance of decisions.

*Fiscal impact:* The Alaska Court System may save money by reducing the need for court personnel to travel to villages. Villagers would save money by not traveling to court. The amount saved would depend on how often the court used a local master.

*Cross-references:* Recommendation A(2) to Supreme Court.

**Recommendation #4: The Alaska Supreme Court should issue an order requiring judges and other court system personnel to cooperate fully with the legitimate aspirations of tribal courts and councils and other rural justice organizations.**

*Commentary:* State court judges and magistrates should work with tribal courts and councils in appropriate civil and criminal cases. The court system should support greater development of voluntary local dispute resolution processes in

interested communities, as an effective means of arriving at locally acceptable solutions to local problems.

Cooperation and development efforts should include:

- a) **Referring cases and tasks to rural justice organizations.** Judges should encourage parties to use local justice organizations for appropriate cases. Judges also should consider appointing tribal judges and council members as marriage commissioners, guardians ad litem, and to other roles in which the court routinely shares responsibilities with non-state-judicial volunteers or personnel. Other state agencies also should work closely with local organizations to exchange information and support.
- b) **Magistrate training.** The Alaska Court System should train magistrates about ways to work with local justice agencies in small communities. Training materials should include information on possible interactions with tribal courts and councils and alternate dispute resolution. Magistrates often are in an ideal position to work with local organizations in a small community.
- c) **Sharing training resources with tribal courts and local agencies.** The court system should adopt a policy that encourages village courts, village councils, and other local justice resources to use court training facilities, training resources and materials. The Alaska Court System should provide instruction on legally sufficient record-keeping for local justice resources. Providing this training would have many advantages for the Alaska Court System, including increasing the pool of qualified applicants for rural magistrate positions, which often remain vacant.
- d) **Reciprocal invitations to judicial conferences.** State court judges and tribal court judges and council members should invite each other to conferences, to promote mutual understanding.
- e) **Chief Justices' Committee on Jurisdiction in Indian Country.** The court system should participate in the forum project sponsored by the Conference of Chief Justices' Committee on Jurisdiction in Indian Country, to identify jurisdictional issues that need resolution within the state and work toward resolution. In the past, retired Judge Thomas Schulz of Ketchikan has represented Alaska on the national planning body for this project.

Numerous prior reports and bush justice conferences over the past twenty-seven years have recommended greater cooperation with tribal courts, councils and local dispute resolution boards. The subcommittee bases its recommendation on a number of different sources: the work of the Alaska Judicial Council, the Alaska Natives Commission, the Alaska Federation of Natives, the Alaska

Sentencing Commission, and others; the subcommittee members' own experiences as state court judges and magistrates, tribal court judges and administrators; and extensive public comment. The subcommittee heard many public comments supporting a more substantial role for tribal courts and councils in providing justice services to rural areas. Citizens suggested more effective ways to use existing services. Commenters expressed their willingness to build a relationship with the state courts and to take on added responsibility for finding local solutions to local problems.

Implementation of these recommendations would increase communication, build trust, share information, and improve the effectiveness of both the state courts and the local organizations. Overall, these recommendations would cost the court system little, while the potential for state savings and improved service delivery is considerable. Having appropriate cases handled at the local level reduces the court's caseload, reduces travel costs, and allows some small problems to be handled before they become bigger problems.

*Fiscal impact:* \$10,000/year for additional subject matter at magistrate training; little or none for sharing materials and facilities; \$2,000 to \$5,000 for inviting tribal judges to judicial conferences (assuming up to two dozen participate at their own travel and lodging expense; including costs of invitations, materials, larger meeting rooms, meals); \$3,000 for a judge to participate in the Chief Judges' Committee on Jurisdiction in Indian Country (\$3,000 for travel expenses to national meetings, twice annually).

*Cross-references:* Recommendation E to Supreme Court; recommendation C to other institutions.

**Recommendation #5: The court system should create a liaison position within the court system to work with local agencies and maximize use of village resources throughout the state.**

*Commentary:* A liaison position should be established for each of the three regions having the most active tribal courts: Southeast, the Yukon-Kuskokwim Delta, and the Interior. The liaison should facilitate interactions between state courts and village courts or councils, mediate conflicts that may occur between the court and these organizations, and act as a clearinghouse for information on effective local efforts.

*Fiscal impact:* \$300,000 salary, telephone, and travel for three positions.

**Recommendation #6: The court system should establish a continuous educational outreach policy directed towards the lay consumer.**

*Commentary:* The public comments related many instances of citizens who did not understand their rights as litigants, did not understand the court proceedings, and even did not know that they had done something illegal. Distance and cultural barriers make it less likely that rural citizens will have any routine knowledge of the law. The court system should encourage judges and magistrates to speak at community meetings, in schools, and on radio programs. The magistrate services offices can coordinate the outreach effort and area court administrators can assist in setting up judicial speaking engagements. The Alaska Court System should appoint a standing committee to address the problem because of its size and persistence. (The consumer-user recommendations also discuss this recommendation.)

*Fiscal impact:* \$10,000 to \$20,000 annually to create and print materials, translate them as needed, make audiotapes, and create radio and TV public service announcements.

*Cross-references:* Consumer/Users subcommittee recommendation #1; recommendation B(1) to Supreme Court; recommendation F to other institutions.

**Recommendation #7: The Alaska Court System should establish a pilot project to train and use “cultural navigators” or “court facilitators” who help others understand the legal system and their options.**

*Commentary:* People of all cultures need help understanding court procedures, to make the courts more accessible and increase trust in the court’s actions. Similar court worker programs in Canada and Colorado can be used as models. The Alaska Court System recently proposed a pilot project for Bethel to train ten community people as court facilitators for victims and witnesses and coordinate their work. (The Disparate Confinement subcommittee also made this recommendation. The Language and Culture subcommittee made a broad recommendation that the court system cooperate with and support community-based initiatives; the subcommittee discussed court facilitators as one example of a community-based initiative.)

*Fiscal impact:* As proposed by the subcommittee, the cost would be \$120,000 per year for two years to hire and train two court facilitators (one Central Yupik, one Spanish-speaking); \$40,000 per year for two years to design the program, do outreach, and evaluate the program. The total cost would be \$320,000 for a two-year pilot program, plus travel costs, or substantial telephone expenses. The Alaska Court System estimated \$109,000 in its grant application for the Bethel pilot project, using a different format.

*Cross-references:* Disparate Confinement subcommittee recommendation #6; recommendation K to Supreme Court.

**Recommendation #8: The Alaska Court System should circulate proposed court rule changes to interested citizens and groups as well as to the legal community.**

See commentary and fiscal impact at Language and Culture subcommittee recommendation #1.

**Recommendation #9: The Alaska Court System should revise its most commonly used court forms to be more understandable.**

See commentary and fiscal impact at Language and Culture subcommittee recommendations #2, 3; recommendation F to Supreme Court..

**Recommendation #10: All state criminal justice agencies should maintain accurate data with respect to minorities and sentencing and reexamine it periodically for evidence of bias.**

See commentary and fiscal impact at Disparate Confinement subcommittee recommendation #7; recommendation G to Supreme Court; recommendation E to other institutions.

## APPENDICES



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**APPENDIX A**  
**PROJECT STAFF**



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## **APPENDIX B**

### **SUMMARY OF PUBLIC TESTIMONY**

## **APPENDIX B**

### **SUMMARY OF PUBLIC COMMENTS**

This is a summary of the public comments received by the Fairness and Access Committee. The comments are drawn from a number of sources: written summaries of testimony from the public hearings and radio call-in shows, calls to the committee's 800 number, written responses to the letters sent to selected members of the community, and notes from follow-up calls. Altogether, the committee collected comments from 355 individuals and organizations. The committee sought to evaluate the quality of court services, determine the court's accessibility to ethnic and cultural minorities, learn of unfair practices and instances of bias.

The committee held public hearings in Dillingham, Fairbanks, Fort Yukon, Bethel, Napaskiak, Juneau, Angoon, and Kake, and two in Anchorage. The hearings were publicized using radio and television news and public service announcements, press releases, posters, and flyers. The committee invited the mayor of each community and representatives of ethnic and cultural groups. The committee also held a hearing at the 1996 Alaska Federation of Natives convention. Some hearings were fairly formal, while others were an informal roundtable discussion. Judges and committee members answered questions in all locations, and representatives from other agencies were sometimes on hand to answer questions. A total of 75 people testified, and more attended.

The consumer user committee sent letters to 315 individuals and organizations that committee members thought would have an interest in the experience of ethnic and cultural minorities in the court system. Written responses were received from only 30 people, so the committee and its staff made follow-up calls to 227 people, asked questions, and summarized comments. Committee members and staff appeared on radio and TV shows in Bethel, Fairbanks, and Juneau, as well as a regional Southeast call-in show and an hour-long statewide call-in show. Comments from these shows are included as well.

The subject matter of the comments is divided by subcommittee topics: consumer user, court as employer, disparate confinement, jury selection, language and culture, and rural access. There is also a section for comments relevant to agencies other than the court.

## **Public Comments Relevant to the Consumer User Committee**

### **Court outreach efforts:**

The court system should do more outreach to explain the system and to interact with Native groups. There may not be a practical way to change court procedures, given the court's adjudication role and the volume of cases, but judges seem more aloof than necessary. (Private practitioner, Juneau)

I work with rural and Native students when they come to the university in Fairbanks, and occasionally accompany people to court. The court makes a great effort to explain each situation, but the concepts are different from what they have known in village life. We have a large international population who most likely have the same problem. Perhaps the court could have a liaison or ombudsman to explain how things are handled. Even if the court only presented a yearly program at the University, or educated the staff, it would help. (Worker, University of Alaska, Fairbanks)

We fail to educate constituents; in rural locations there are young men who truly do not understand what is legal and what is not. Court should allocate funds to educate rural residents on weapons, sex offenses, domestic violence, alcohol, etc. (OPA contract attorney, Anchorage, with cases in Nome and Kotzebue)

There should be a copy of the videotape "Alaska Natives and the Justice System" in every court library. (Resident, Wrangell)

I know of one case where forms were not available at the court or library for a person who wanted to dismiss a case without prejudice. The forms that were available were out of order and difficult for a novice to use. Forms should be available on disk so people can download them to their own computer. (Fairbanks resident)

The court system should speak to the Filipino community to explain legal terms and concepts. There are 12 Filipino organizations in Anchorage, and we could arrange a gathering of up to 600 people. The court should do ongoing community outreach. It should also encourage people to apply for jobs. (Member of Anchorage Filipino community)

The court should make more of an effort to educate members of the public, particularly members of the African-American community, about the workings of the court. The court should talk to people who are not in trouble. African-Americans need to work in the court system in order to understand it better. I invite you to send someone to a NAACP meeting to talk about the justice system. As a school teacher, I have my classes go to court to see what happens. The court should encourage that. Junior high kids particularly would benefit before they get to high school -- we need to get to kids at the lower levels. (President, Fairbanks NAACP)

Many people do not understand the court process. People in villages and in prisons would benefit by having someone explain what happens in a criminal case and what the defendant and others can expect. (Juneau resident)

People don't understand how the court system works. The court needs to educate citizens about the process, define terms, and explain what the various hearings are about. The lack of knowledge is a drawback to equal access and fair treatment. (Roundtable discussion in Angoon)

Someone from each of the criminal justice agencies should speak to people to explain what the law is. People are always afraid of the law because they do not understand it. It might be effective to have a visiting judge come into the school wearing his or her robe. The lawyers also should stop in the school long enough to explain what they do and how they became lawyers. I never saw a lawyer when I was growing up. (Representative, Substance Abuse Prevention Project, Fairbanks)

We need culturally relevant justice and more education in the villages about the state court system. You could use mock trials in the schools or elsewhere to educate rural residents about what happens in the court system. (Tribal services paralegal, Association of Village Council Presidents)

### **Racism and discrimination in the courts:**

There is a continuing and widespread feeling that Alaska Natives do not get a fair shake in state court. This is based on several factors: a history of discrimination, the court system is part of the white culture and white cultural discrimination, and the feeling that the Alaska Supreme Court is not receptive to Native issues or concerns. (Private practitioner, Juneau)

Most racism is unconscious, but a jury and court of one race does not look at a defendant of another race as they would someone of their own race. (OPA contract attorney, Anchorage)

It's very intimidating to Natives to walk into a courtroom and have everyone be white. (ICWA worker, Bethel)

People have a feeling of discrimination, but it is not based on specific events so much. There is a perception of discrimination and feelings of distrust as a result. Not everyone feels this way, but the feeling is significant. This feeling extends to the DA, the PD, and the police. The cause is probably deep-rooted in history, based on the lack of ability to participate on a decision-making level. A big issue in the Sitka Native community is the case of Pete James, who was shot to death by a police officer. Even though there was a big investigation, Natives still felt the result of the case was racially biased. Many people remember overt discrimination by the white community through the 1960's and beyond. (Attorney, Sitka Tribal Association)

There are many problems in criminal justice, but they are not court problems -- the judges I know are sensitive and go out of their way to get to the root of the difficulty. Laws are written to protect the white, urban base, but most of the laws are appropriate nonetheless. (Public defender, Southeast)

If there is a group who seems to be suffering from lack of access, it is recent immigrants. The court is much more in tune with the Natives than Koreans and Albanians. They don't quite know what to do with them and so they just muddle along. (Attorney in private practice)

Pacific Islanders are a relatively new group in Alaska, and I hear stereotypes of how people think of them as gangsters. Some do not speak either standard English or Samoan, but a kind of pidgin

English. I have had clients yelled at and treated rudely and unfairly because they English was poor. Even the good judges get frustrated. (OPA contract attorney, Anchorage)

There is a much larger number of minority groups in Alaska than it would appear on the surface. I think the court system does a pretty good job responding to them, but these things are very time-consuming, and you need judges and lawyers who really want to do it. It takes time, money, and willingness on everyone's part. (Assistant attorney general, Juneau)

Lawyers respond only to money and otherwise do not take all the steps needed to protect their clients' rights, but their clients are stuck with the results. The courts use this inaction by defense attorneys to later deny appeals based on technical rulings instead of the merits. This is why poorer groups are more likely to be confined for longer periods and minorities are targeted. Laws are being passed to discourage falsely confined minorities from seeking legal relief. Prisoners working for 35 cents an hour (an illegal wage) have to pay their own court costs and lawyer fees from their earnings. The prison system makes it even harder for prisoners to fight for their rights by taking away computers and allowing only cheap typewriters. Racists need to be pushed out of the system and their cases carefully examined. (Inmate, Wildwood Correctional Center)

I am glad to see the court system undertaking this type of self-examination. Racism is a very real problem in the larger criminal justice system, and all agencies should try to reach out and ask these questions, do surveys, compile information, and educate themselves. (OPA contract investigator, Anchorage)

Native children are being adopted by non-Natives, and we are becoming a smaller and smaller part of the population in Alaska. We need to learn to live together, so we are no longer a "people in peril". But the courts haven't helped us out with their rulings on subsistence and other issues. (CIRI shareholder)

The Alaska Native Justice Center, Inc., was incorporated in 1993 due to the inequities facing Alaska Natives and the justice system. It educates and assists approximately 800-1,000 clients a year. Although Alaska Natives comprise of only 16% of the State's population, Alaska Natives fill the state's prison population at a rate exceeding 250% of their numbers in general population. In addition to the high prison rate, 46% of children in the State's custody are Alaska Native children. The statistics of Alaska Natives are alarming in many areas in the Justice System. (Native advocate, Alaska Native Justice Center)

African-Americans believe that African-American men do not get a fair trial in the Fairbanks courts. I have seen cases in which two people with the same criminal history admit to the same crime but the African-American receives a higher bail or a harsher sentence. The court should be more aware of these perceptions. (President, Fairbanks NAACP)

Minorities and whites do not get the same trials. Juries in Anchorage are always predominately white. Because of cultural differences, selecting a jury for minority defendants takes time to do properly. Some judges allow questionnaires to explore issues related to racism, which helps to weed

out problems. Juries do not believe Native and black witnesses the way they would a white banker. We'd like to think racism doesn't exist, but that's dangerous. (OPA contract attorney, Anchorage)

Black people do not perceive the court and its employees to be free from bias. Court employees are not trained to understand ethnic groups and are not sensitive to language and culture issues. They are not familiar with minorities, because the court's workforce lacks diverse representation. The court has an affirmative action plan but it appears to be just a plan. Blacks are underutilized and I am not aware of any plan to correct the situation. (Executive director, NAACP)

There is a general perception by black defendants in the valley that they are not treated fairly by the courts. This perception extends beyond the courts; they feel whole valley is not very race-tolerant, especially to blacks. (Assistant public defender, Palmer)

I am a chaplain at Cook Inlet Treatment facility, and I hear many complaints from inmates that sentences for blacks are much harsher than for caucasians. This difference is a major concern to the black community as a whole. One out of four black males in the U.S. is incarcerated or on probation or parole. Something is very wrong here and we need to look at these statistics. (Eagle River minister)

I think in Kodiak we are treated fairly and have every opportunity to make a good defense. Sometimes I even think the court is too lenient, especially with regard to drug problems. I don't think there are any ethnic or racial overtones. There are many ethnic groups here and no group seems to be targeted. I have sat on two juries and judges seem to bend over backwards to take care of language differences. In Kodiak area we have been involved in the western lifestyle for longer. I would hate to go on record as saying that there are NO problems, since there are problems in understanding each other's cultures, but these are problems of evolution, and we are all evolving. (Kodiak Area Native Association)

Whatever action is taken arising out of this report, it is essential that minority people be included. The way to select participants is to call Native organizations and ask them to send representatives. (Attorney, Sitka Tribal Association)

**Effect of poverty:**

Poverty is as much a factor as racial and cultural issues. (3 OPA contract attorneys, Kodiak and Anchorage)

Too many budget cutbacks have created a situation where decisions by judges, attorneys and caseworkers (mostly white) are made arbitrarily, without time to understand the lives of people involved. Bureaucratic pressures for judges to handle more cases limits their ability to ask questions and explore a case. This isn't racism, but it's poor policy. (2 OPA contract attorneys, Anchorage)

Poor and lower-class people are at a disadvantage in the court system. Justice shouldn't depend on your ability to pay a lawyer. (Anchorage resident)

The wait for free services is too long and affects the way cases turn out for poor clients, because they cannot take advantage of counseling, treatment, etc. (OPA contract attorney, Anchorage)

Public defenders sometimes don't meet with their clients until five minutes before court. There should be more time. (ICWA worker, Andreafsky)

Public Defenders are overloaded. When they come out to St. Mary's from Bethel the defendant only has a few minutes to speak to his lawyer before court. It is not enough to me and not fair. (ICWA Assistant Administrator, Andreafsky)

Lawyers in Bethel encourage Natives to plead "no contest" even when they are innocent. The lawyers want to rush things through the courts. They use scare tactics. Our people do not get an adequate defense. (Council President, Bethel area village)

When Legal Services pulled out of Nome, we started referring people to their office in Fairbanks. Now that office has a five-month backlog. People are very frustrated and often do not attend to their problems with custody, divorce, child abuse, etc. A new problem is being created. (Court clerk, Nome)

#### **ICWA and other children's cases:**

I see the need for more Native and African American guardian ad litem. (DFYS employee, Fairbanks)

I am concerned about the disproportionate number of Native children in child abuse and neglect cases. (Private practitioner, Juneau; OPA contract attorney, Anchorage)

One black client was required to pay child support even though he was proved not to be the biological father of the child -- it seemed there was a feeling on the part of the court that all black fathers are deadbeats, so if one shows up in court he should be made to pay. (OPA contract attorney, Anchorage).

Parents required to pay child support may not have been well-represented or understood in court. Sometimes they are not included in the decisions of the child support agency. This is especially true where a man is contesting paternity. They should also give people a timeline for when they should appear in court. Some people have never been informed. (ICWA worker, Tuntutuliak)

There is reticence on the part of Natives to get involved with the court system, but if a Native father does not respond when child support obligation is established, he may be assigned an amount which is higher than if he responded. (Fairbanks attorney)

In ICWA cases, especially in Anchorage, judges do not ensure that tribal advocates participate. There is a large percentage of Native children in foster care and a disproportionate adjudication rate. The perception is that judges are part of the majority community, and like that community are biased. (Private practitioner, Juneau)



Judges and attorneys need ICWA training, to understand the placement preferences and the need for visitation. Parents are separated from their children and not allowed to visit, and then judges rely on the fact that the children have “bonded” with their foster parents, although they are also bonded with their family as their primary bond. (ICWA worker, Bethel)

Notices in children’s cases are only given a day or two before the hearing, which isn’t enough time for us to prepare -- they should notify us sooner. The judge should ask if we are related to one of the parties -- it’s hard for us to testify against a relative. We try not to have relatives participate in cases, but sometimes the court requires us to do so. (ICWA worker, Bethel area village)

We have had several complaints regarding custody cases. There have been custody cases in which a court custody investigator has been assigned to a case but does not meet with the client until shortly before trial. Most Alaska Natives don't communicate well with professionals because they feel intimidated so this does not give the custody investigator adequate time to fully explore and recognize what is in the best interest of the Native child. Another issue that has been raised is that custody investigators deal with Alaska Native children on a daily basis, making vital decisions about our children' future, but have little or no education on the Alaska Native culture. (Native advocate, Alaska Native Justice Center)

ICWA is routinely violated by social workers; due to these violations, some judges also routinely violate ICWA. These violations include the willful and unlawful termination of parental rights, the routine placement of Alaska Native children in non-Native foster homes, unlawful adoptions of Native children by non-Native families, and unequal treatment and financial support of Native grandparents caring for their grandchildren. These violations are rampant, especially in Anchorage and Southcentral Alaska. In my case, DFYS and the court have caused great emotional harm and great financial hardship. (Parent, Anchorage)

I read the Judicial Council study that found Native children are adjudicated children in need of aid more often than non-Native children in Alaska. One reason for this disparity is that DFYS case workers do not make efforts to go out and service families who live in rural villages. DFYS policies that require once a month face-to-face meetings between social workers and families in serious cases, but DFYS workers do not follow this rule. Case workers do not get penalized for failure to follow Indian Child Welfare Act placement preferences. I know of Native children who were placed with non-Native foster parents who then turned them out of the house when they turned eighteen. The children’s relatives now are asking AVCP to pay for their airfare back home to the village. There are also problems with courts’ treatment of tribes who want to intervene in child protection cases involving Native children. Although ICWA permits tribes to intervene at any time, tribes often are told that they can not intervene because they waited too long. The court should investigate whether judges follow ICWA’s rules about tribal intervention. (Social Services Director, Association of Village Council Presidents, Bethel)

DFYS employees either don’t know about ICWA or maybe they ignore it. (ICWA worker, Y-K delta village)

I was not called for an adoption hearing because the master thought there was no need for me to participate, since we had already filed a resolution supporting the adoption. However, we want to be included in any proceedings we have intervened in to know how our cases are resolved, even if there is no need for us to comment. (Tribal court liaison, Mekoryuk).

We as advocates of the Indian Child Welfare Act feel the court needs to increase its knowledge of ICWA, and to provide educational training to all parties involved, including the judges, lawyers, and guardian ad litem. In our experience it appears that the court has not supported the basic premises that native children should be raised in native homes. For example, when DFYS placed a native child in a non-native home, the court has not required DFYS to follow the placement preference order of the statute, even when we have presented alternatives and options. The court appears to rule in favor of the State regardless of ICWA. We believe that with more training on ICWA and cross cultural awareness that fairness and access will ensure compliance. We therefore request that the Alaska State Court System make better efforts to recognize Tribal authority in children's matters regarding foster placement and adoption. (Chairman, Orutsararmuit Native Council, Bethel)

**Other forms of bias:**

About 300 seriously mentally ill people reside in Fairbanks. Mentally ill defendants are kept incarcerated longer than others for similar crimes, due to a lack of resources. For example, mentally ill defendants are not given bail because they have nowhere to go. I had one client who kept going back to court over a six-month period because the client kept getting new public defenders and the competency issue kept arising. Fairbanks Community Mental Health provides some respite housing but cannot handle more dangerous people. Halfway houses cannot handle mentally ill people. The court has worked with FCMH and listened to our concerns, but bail is still a big problem. Community support director, Fairbanks Community Mental Health)

The courts are biased against men in child custody cases. My child was abused by her mother. The court told me I had to have an attorney, but my wife didn't have to have one. (Talkeetna resident)

My child was placed in foster care and abused there, when I was ready to take care of her. Judges and attorneys discriminate against male parents and against people who are not like themselves. (Fairbanks resident)

Many divorced women are below poverty level and have no access to the courts. (Fairbanks resident)

I have been discriminated against because of my transvestism. When I was living in Dutch Harbor, employees stole money and property from me. The local police force documented the theft, but the decision was made not to prosecute. After my wife filed for divorce in Alaska, the judge took my children away from me because of my transvestitism. When I moved to Anchorage, I was involved in a car accident and the lawyers I consulted would not take my case because they could not convince a jury that I was not just trying to get the money for sex-change surgery. Most transvestites, who are not homosexuals, live in fear of being put in jail with men. I have not had justice and have no hope of justice in the future. (Anchorage resident)

I believe I have been discriminated against by the court system because of my musculoskeletal disability. After I served a 20-day sentence for DWI, I couldn't find an inpatient Veteran's Administration alcohol treatment program in Anchorage or Hawaii. The judge told me I would have to serve another 90 days if I didn't complete a program, even though I tried hard to find one. (DWI defendant, Kenai)

I saw one incident in court that was very disturbing. An elderly woman who said she could not hear was told by the judge to sit on a small chair up near the judge's bench in the middle of the court room. This treatment seemed humiliating and unnecessary. (Bethel resident)

## **Public Comments Relevant to the Court as Employer Committee**

### **Hiring, promotion, and retention:**

There should be greater minority hiring in the court system. (many comments statewide)

There should be more ethnic people in decision-making positions to make the system less white. One thing we could do is build an Alaska law school. (Law enforcement officer, Anchorage)

It's very intimidating to Natives to walk into a courtroom and have everyone be white. (ICWA worker, Bethel)

Most racism is unconscious, but a jury and court of one race does not look at a defendant of another race as they would someone of their own race. (OPA contract attorney, Anchorage)

We, the undersigned, believe that our justice system would work better for Natives if we had Native people at all levels, police, dispatchers, jail guards, lawyers, judges, parole officers, clerks, and halfway house workers. We would like to see our people hired in direct proportion to the average Native incarceration rate of the State of Alaska. If you do not involve us, how do you think we will be able to make a difference. (signed by 85 Wrangell residents)

Black people do not perceive the court and its employees to be free from bias. Court employees are not trained to understand ethnic groups and are not sensitive to language and culture issues. They are not familiar with minorities, because the court's workforce lacks diverse representation. The court has an affirmative action plan but it appears to be just a plan. Blacks are underutilized and I am not aware of any plan to correct the situation. (Executive director, NAACP)

Most of the people who work in the court are white, while most of the defendants in Bethel are Native. We need Native and Filipino judges and attorneys. (District attorney, Bethel)

I would like to see more minorities working for the court. Asians are afraid to apply for jobs with the court system because they feel intimidated. I have encouraged members of my own Filipino community to apply for jobs but they say they will not apply because they think they won't be hired. They think that they will be labeled. The Filipino community tries to encourage them. The court system should include a statement on its position announcements that minorities are encouraged to apply. About 2,000 Asians reside in Fairbanks -- there is an Asian-American group and a Korean-American group. (Fairbanks resident)

Disparate confinement of blacks is a reason that more minority magistrates are needed. I have been contacted by two people who unsuccessfully applied for jobs as magistrates. National data from the Harvard Law Review suggests that blacks get longer sentences than whites and that whites do better at plea bargaining than blacks. (Executive director, NAACP)

There should be more affirmative action in hiring and employment practices. It has been mentioned for Natives in the past, but all groups need to be integrated into the system. (OPA contract attorney, Anchorage)

Alaska Natives are 15% of the population, but only 4% of state employees. The government needs to give this some attention. (Representative, Alaska Native Foundation)

There should be a real effort to increase the visible number of minorities in the court system. When I visit jails, I see that we have incriminated and incarcerated many minorities, but when I visit the courts it is just the opposite -- everyone is white. Just seeing minorities would be a comfort. (Employee, Alaska Native Health Board)

Our staff has approximately thirty years of combined experience in the justice field in the State. It has been their experience that the employment rate of Alaska Natives is extremely low. This is very alarming considering the statistics of Alaska Natives that are involved with the court system. I also believe that due to the lack of visibility of Alaska Natives employed at the Alaska Court System, there is a lack of interest in employment within the judicial system. This is very intimidating to the Alaska Natives that apply for positions at the Alaska Court System. (Native advocate, Alaska Native Justice Center)

**Need for more training:**

We need to look at some cross-cultural training for the state justice system. (Chief of Choggiung Tribal Council, Dillingham)

There needs to be cultural awareness training for everyone in power in court system. (OPA contract attorney, Anchorage)

I'd like to see judges and court personnel trained to understand body language and nonverbal communication. (District attorney, Kotzebue)

One of my clients had a bad experience with a rude court staff person (shoving papers at him and jabbing him in the shoulder). However, the court responded to this problem with promptness and sensitivity. (Public defender, Barrow)

The court should present cultural awareness classes to judges and other employees and invite community members to be presenters. Judges need to be more aware of cultural differences and language barriers. They should not reprimand or demean anyone because of their lack of language skills. (Spanish interpreter, Fairbanks)

Court system employees need cultural awareness training. Employees should understand the complex social aspects and how Yupik people perceive things. (Tribal services paralegal, Association of Village Council Presidents)

I would like to see someone from the Asian Island community address the judges at one of their meeting. This is a relatively new group in our community and there are many stereotypes about them. Some speak a kind of pidgin English that is very difficult to understand, and I have had clients treated very rudely and unfairly because of it. (OPA contractor, Anchorage)

I would like the court staff to have more training in cultural awareness, particularly for dealing with Native customers, so there will be fewer misunderstandings of body language and behavior. It is an ongoing problem. (Court clerk, Valdez)

A number of clients have complained about the court personnel's willingness to assist Alaska Natives. Cultural awareness appears to be lacking. We have had several complaints regarding how Alaska Natives are treated by the employees at the Alaska Court System when researching a matter or requesting assistance in locating a file. Whether these problems exist due to Alaska Natives' unwillingness to speak out or court personnel's lack of education, clearly there should be some mandatory cultural sensitivity training among all court personnel that work with Alaska Natives on a daily basis. Perhaps the court system may want to aggressively seek cultural awareness training for all levels in the system. (Native advocate, Alaska Native Justice Center)

Natives don't say things directly, often telling stories from which the listener has to draw the meaning. They won't necessarily respond to a direct accusation because they don't want to call someone a liar. I saw a Native mother lose her child because the white father would say anything to win and the Native mother wouldn't say he was lying. The same thing can happen to a criminal defendant and the jury will not understand his silence. Judges need to be more aware of this so they can ask Natives do you have any response to this, do you understand it and think it's true, etc. They need to learn how to work with an individual to get the whole story. (Juneau attorney)

[for comments on the need for ICWA training, see consumer user subcommittee comments]

## **Public Comments Relevant to the Disparate Confinement Committee**

### **Disparate confinement:**

I am concerned that numbers of African-Americans, Hispanics, and Natives in the criminal justice system seem to be rising. (OPA contract attorney, Juneau)

I am concerned that more Native people per capita are involved in the criminal justice system. We need to take a better look at this situation, although I do not think it is the result of a deliberate design. Even if Natives have a propensity toward substance abuse, the number of Natives in the criminal justice system is still alarming. Natives are not hostile or aggressive when not drinking. (Employee, Kodiak Area Native Association)

Recently, a Caucasian white male was charged with three counts of a class C felony assault, received a sentence of 18 months in jail with 15 months suspended, no fine and 3 years probation. This white male Caucasian had a prior misdemeanor assault conviction. On the other hand, an Alaska Native came to our office after being arrested, charged and convicted of his second DWI. The Alaska Native received 18 months in jail with 17 months suspended, a \$500.00 fine, and five years probation. Whether or not there is legal grounds for the above sentences, there is clearly a disparity in sentencing within the two above case scenarios. Clearly, the Caucasian individual received less jail time and a lower fine than the Alaska Native. Based on our experience in working with clients, Alaska Native inmates are likely to spend 1 1/2 times the amount in jail than a Caucasian. (Native advocate, Alaska Native Justice Center)

I've read that minorities are overrepresented in the correctional system here in Anchorage. Unless people get out of their comfort zones and start speaking up when they witness bias, nothing is going to change. Unless police officers stop operating from stereotypes and start seeing a young African-American man as somebody's son and not a criminal, we will not see fairness in the system. Until prosecutors start questioning police when they notice red flags of prejudiced descriptions in police reports, nothing is going to change. Until judges start being unbiased participants in the legal system, nothing is going to change. Until we begin to offer fair alternatives to minorities, the same alternatives that we offer to Caucasians, nothing is going to change. I am encouraged to see there is a committee which is concerned about fairness in the court system. (Citizen, Anchorage)

I recently filed a motion in superior court which I believe raises serious fairness issues and which impacts minority perceptions of the court system. The state has applied the statute providing automatic waiver of some juveniles to adult court in an arbitrary and/or racially discriminatory manner. The state has repeatedly manipulated its charging decisions in comparable cases to avoid waiver for minors similarly situated. African-American minors are feeling the full brunt of the new law, while non-African-Americans are not. (OPA contract attorney, Anchorage)

Race-based statistical analysis for DNA groups is unreliable and should not be used. (OPA contract attorney, Anchorage)

I have noticed a much higher than average Native ratio of young clients over the years and they seem to receive harsher sentences. (Salvation Army, Booth Memorial Home)

I am concerned about having trials for subsistence cases in urban location, because they do not understand our way of life out here. Also, investigations are not adequate -- only the trooper's word is taken and no other investigation is done. (Representative, Southcentral Native Corporation)

People in our village believe that Natives get harsher sentences than white people. (ICWA Assistant Administrator, Y-K delta)

Thank you for including our village. Our Tribal Elders and other people here in the village met to discuss your letter. These are some of the questions asked: We know of one case where a Native family was killed by a drunk driver and the drunk driver was given probation, but when white people are killed the drunk driver is out in jail for a long time. When Native people commit crimes the Trooper come and get them right away, but we had a terrible crime committed by a person who was not Native, and it took the Troopers a few days to arrive. Also, Native people going to court in Bethel are told what happens to them depends on which judge they get and what mood he is in. These are just a few of the concerns that were voiced. (Resident, Red Devil)

[for comments regarding language problems and interpreters, see language & culture committee]

**Cultural differences and lack of legal knowledge:**

Native people don't know what it means to plead guilty. (many comments statewide)

My brother-in-law has a limited command of English; his primary language is Yupik. He didn't understand how he should plead at his trial. (ICWA worker, Sheldon Point)

Natives seem to be more likely to confess -- they seem to need to explain and tell someone about what they've done. (Law enforcement officer, Anchorage)

Some natives do not understand court proceedings. For older people it is a language problem; for younger people it is a comprehension problem. People say yes when asked if they plead guilty, but they often do not understand. Sometimes Natives think they pay stiffer fines or get longer sentences, but I do not believe this is the case. People need to be educated about the sentencing process. (Tribal court judge, Sitka)

Most of the young Natives speak and understand English, but they don't understand the state laws and regulations whenever they are subjected to them. If they commit a crime, then they have to deal with the complicated jargon that comes with the state court system. This situation is made worse by the fact that they cannot afford to hire their own lawyers to defend them. The caseload of the Public Defender interns or attorneys are so immense that this does not allow for attorneys in the agency to provide adequate defenses for their clients. This is especially a big disadvantage to the Native defendants because they don't get enough consultation time with their attorneys. (President, Kipnuk Traditional Council)

The adversary system is foreign to most Yupik, and difficult to understand. It is hard to understand the concept of work roles and personal roles, not a distinction that is recognized in the villages. So Yupik people tend to deal with everyone the same way, which may cause problems in a legal setting.

If a Yupik trusts someone personally, they may not understand that that person's role as a policeman, DA, judge, etc. requires them to act as someone who is not a friend. (Anthropologist, Fairbanks)

I understand that there is no Yupik word for "guilty", and the concept is different. It seems to me that Native culture does not emphasize individual rights. (OPA contract attorney, Anchorage)

A Native woman (alcoholic) with deteriorating health was ignored and pushed aside in the Native Medical Center and died. A hearing took place but the family was not informed. Years later the family is still trying to get answers. Perhaps judges, court personnel, attorneys and maybe even juries should have regular cross cultural training. People from different cultures think differently, look at things differently and often behave differently. Even our Native people who are educated often trade off value-based thinking for the thinking of the group they are in. The corrections program has very good counseling and training for sex offenders - they now understand sexual offenses - but nothing has reached their spirit - and that is where the real understanding and healing takes place. Lawyers and courts are so linear in their thinking and speaking that this type of discussion escapes them. But in truth have we reached people - have we really been able to change them as a people? Have we helped them to heal? The criminal lawyers with all their talk and education sometimes mask over the real crime because they don't get to the bottom or root of things. (Alaska Native from Native Ministry of Archdiocese of Anchorage)

Our ancestors and God are always present. People should realize that there is always a higher consciousness present. Maybe there should be prayer at the beginning and end of court. (Alaska Native from Native Ministry of Archdiocese of Anchorage)

A number of Alaska Natives are arrested and charged in the villages where there is no legal representation available. If they cannot afford an attorney, a public defender is appointed. A public defender or attorney's entry into the process is often delayed due to the fact that they are not in every rural village. A large majority of these people admit to the crime before they have been charged or informed of their legal rights. Alaska Natives are generally raised to be honest. When entering the legal system, Alaska Natives are immediately taught to be dishonest and deny guilt. This is contrary to their culture. (Native Advocate, Alaska Native Justice Center)

Natives go to court and plead "no contest" because they do not understand the language. (Tribal Court Liaison, Traditional Council of Mumtraq)

I don't think that racial bias in the court system is intentional, but rather unintended. I spent 20 years in and out of the court system and successfully completed treatment ten years ago. Criminal defendants do not know that they should plead not guilty, at least at first. The public defenders are too busy to work the cases, and they can only do what they can with the time available. Criminal defendants also do not understand the consequences for future sentencing of guilty pleas. They think that it doesn't really matter to plead to something a little worse than what they really did, and are too accepting of recommendations sometimes. This acceptance explains disparate incarceration rates, at least somewhat. At sentencing, the Native defendant may not know the response that will make the judge the happiest. The Native defendant may be misinterpreted by the judge, who then may



inadvertently give a somewhat higher sentence to a Native defendant than a non-Native defendant. (Bethel resident)

A lot of Native people still don't understand or comprehend English very well, especially when it comes to the courtroom. Alaska's population is increasing, and there's a lot of pressure on our hunting and fishing out here. A lot of the Native elders can't understand that if you shoot a moose or an animal out of season you go to jail for that, compared with these guys who are selling drugs and get a lot shorter sentence. (Chairman, Bristol Bay Native Corporation)

I work with 150-170 village-based employees, and it is not uncommon for me to get a call from an employee who has been charged with a crime. When I ask if the employee has talked to an attorney, the answer is often no. The employee then may end up pleading guilty or otherwise being convicted of a felony. A felony on an employee's record has serious, job-related consequences, and I don't think people understand the effect of a felony on their record should they decide one day to leave the Y-K delta region. (Bethel resident)

Not only language is a problem, but people don't know how the court works, how to address a judge, how to plead. Their language use can be considered rude because they don't know. Attorneys should have someone like me work with clients so I can instruct my people how to behave in court. Thank you for doing this survey. (ICWA worker, Alakanuk)

Clients do not always understand their attorneys, nor do they understand what's going on in court. (ICWA worker, Platinum)

Explanations are not enough; examples must also be given. Just because the public defender explains our rights doesn't mean it's really clear. We have little urban contact, so we need an explanation of your ways and meaning. (ICWA worker, Tuntutuliak)

### **Sentencing:**

Tribal members would rather deal with tribal courts than state or federal courts. Most charges brought against tribal members are for laws that were passed by a different race in a faraway land. If the local people were involved in the passage of the laws that affect them, some of the punishments would be a lot softer and some would be a lot harsher. Some of the punishments might differ a lot from one tribe and another neighboring tribe. Most of the people charged with crimes do not understand their rights and cannot afford a good attorney. A tribal court would be more trusted than a state court, probably because you can see yourself sitting on the defendant's place. Sentencing would be a lot softer and less demeaning, since the sentencing body would have similar life experiences and would understand how the defendant came to commit the crime. (Kotzebue resident)

Judges do not seem to have much understanding of fetal alcohol syndrome. FAE defendants have less potential for rehabilitation than many others, and they and the community do better if they are placed in structured probation arrangements rather than incarceration. (Public defender, Barrow)

We are concerned with the public appearance of justice and the safety of our community. Habitual offenders who are being awarded sentenced and then having them suspended or held off for some other reason are creating other problems in the town. Youth interpret the return of the trouble maker as “See? No big deal. Nothing ever happens to anyone who does something wrong.” Adults, on the other hand, are expressing discust, and grilling the police about why they don’t do anything about so-and-so. And innocent people are being harmed as habitual/repeat offenders return to town and resume their ways. The Council is asking the court system to please consider these issues when passing sentence or, more importantly, when suspending sentences. (Mayor and Council, City of St. Paul)

Children of junior high age do not show respect for elders and are responsible for an inordinate number of problems. Perhaps juvenile offenders could be required to spend time with an elder, in order to receive guidance in cultural and community norms and to receive compassion and understanding. (Roundtable discussions, Angoon and Kake residents)

The state court should at least consider releasing minor offenders to the supervision of the tribal council. The elders and the tribal council then could counsel the offenders. Tribal councils would be willing to take on the responsibility of third party supervision, and would feel comfortable reporting violations to the judge. Many councils in other villages in the region would feel the same way. The tribal council could send the offender back to the state court system if they did not cooperate. (Napaskiak resident)

Rural residents rarely have the cash to pay fines, and mandatory fines like DWI are very hard to pay. (Napaskiak resident)

The court should examine subtle types of bias that may exist in the system. When I was a DA, I noticed differences in sentences imposed when the trooper stood with the DA in court as opposed to when the trooper was not present. In criminal sentencing, subsistence activities are not given as much credibility as activities that bring in a paycheck, even though unemployment in the region is very high. (Former district attorney, now in private practice, Bethel)

Alternative sentencing is important. Everyone in the system needs to be more creative with sentencing misdemeanants. Villages, AVCP, tribal courts and the local council all can play a role in imposing meaningful consequences on convicted offenders. Alternative sentences should bridge the cultural gap between the court system and the rural residents’ concepts of justice. (Anchorage lawyer with cases in Bethel)

Presumptive sentencing works to the disadvantage of Natives and African-Americans. (OPA contract attorneys, Anchorage)

Grandparents have problems with the courts. Elders who can impart wisdom may not be consulted by the courts when children are incarcerated in places like Mary Conrad Center. Much of the wisdom they could impart is lost. (Social worker, Mary Conrad Center)

Explore a more creative approach to rehabilitating Natives with alcohol problems. For example, Arctic Village has a house in Fairbanks where their people can stay while they are drying out. They are watched and helped by their friends but they can throw chairs, tear up rooms, act out their frustrations, etc., until they're exhausted and work it out of their system. (Council President, Kotlik)

Well over 90% of criminal cases in the Bethel area are alcohol related. Treatment services are stretched to the absolute limit and are physically accessible only to people near the coast. (Former district attorney now in private practice, Bethel)

A Native defendant in court had eyes pointed down and seemed to realize something serious had happened. He had already sentenced himself. The jury instructions were to separate the drunkenness from the crime, but this is not right. Defendants should be held responsible for their drunkenness and their behavior. (Alaska Native from Native Ministry of Archdiocese of Anchorage)

Application of justice needs to be uniform. A few years ago nine Eskimos were convicted of killing 90 walrus and were sentenced to time in jail. The newspapers gave much coverage to the vicious and wanton slaughtering of animals by the Natives. Also a few years ago, a group of white men was given permission to hunt caribou on an island (permission that had been denied to a Native group), and the white men slaughtered 750 caribou. Carcasses were rotting all over the place, but these men received only a reprimand. This is injustice. Our people still respect the court, but these type of decisions seem very unfair to them. (Representative, Alaska Native Foundation)

Many Natives who are incarcerated are not really criminals. They need mandatory drug & alcohol treatment -- 6 months or more. (ICWA Council President, Crooked Creek)

Natives incarcerated for alcohol related offenses don't get proper rehabilitation or treatment and are taken away from the village. The court needs to work with the tribe so healing can take place, they can learn from their mistakes and receive community rehabilitation. There also needs to be better supervision and management of community work service. (ICWA Assistant Administrator, Andreafsky)

Rural felony victims sometimes are not notified of sentencing hearings. Better coordination between state agencies is needed to make sure notice is given of hearings. (Angoon resident)

### **Probation and parole:**

Native people are brought up in villages where they are supported by family and friends. When they have to remain in town to serve their probation, they have no resources and cannot be forced by their villages to deal with their problems. (Employees of Koniag and Nana)

People taken out of the community by the police should be returned to the same community by the police. One of our people served his time in Bethel and was released to the streets there. He didn't know the community and had nowhere to go. He was found dead in the streets. (ICWA worker, Aklachak)

In the past eight years I have seen probation officers come to Fort Yukon only twice. Convicts return and reoffend, and many offenders never get charged. (Health director, CATG, Fort Yukon)

Alaska Native village people need to be involved in rehabilitation. People are taken out of the village by police, and the village is never involved in the proceeding, so the conditions that fostered the problem are never addressed. Reconciliation for the villages is very important. The courts appear to be fair within their limits, but they do not help us deal with our problems and find solutions. (Representative, AFN)

We have a serious problem with how Native men are treated by the corrections department. Recidivism is high. Natives lose faith when they are on probation and have to remain in Anchorage where they have no roots or support system. (Representative, AFN)

The local prison's classification as a pretrial facility should be reconsidered. Pretrial facilities typically have less to offer in the way of vocational and educational opportunities. Treatment programs are available, but inmates are not encouraged or coerced to accept them. (Bethel resident)

With regard to bootlegging, law enforcement should go after both sides, sellers and buyers. I don't know of anyone who has ever been arrested for trying to buy a bottle of alcohol. Sting operations are needed. (Bethel resident)

One villager was picked up for public drunkenness and was sentenced and told that he had to pay his way back to Dillingham to serve his time. When he got there the jail was full and he couldn't get in. To keep him from drinking again I called the courthouse and the jail and he finally got in. That bothered me quite a bit. Elders from other villages who come to town are picked up for such actions and want to serve their time and don't understand all the things they have to do like phone in if there is space available. (Chief of Choggiung Tribal Council, Dillingham)

Many Alaska Natives are released from prison with probation conditions. These probation conditions cannot be met in the villages so they are forced to stay in the rural areas where they have no financial stability, family or community support which is necessary for rehabilitation. In addition, many Alaska Natives are agreeing to lesser charges and lesser jail time in lieu of a jury trial. Once their jail time is served, they are released with conditions of probation or parole. Not being able to integrate back into their communities is detrimental to their successful rehabilitation as they often violate conditions and are remanded back to prison to serve the remainder of their time. (Native Advocate, Alaska Native Justice Center)

Many inmates just want to do the time because many feel that intentionally or unintentionally, either way, they are targeted. Any minor offense or misunderstanding is enough to get them put back into the institution, and have parole revoked. Most inmates do not realize that the information in presentence reports can be challenged. The inaccuracies in these reports mostly go unchallenged and then become the script for people's lives even after their incarceration. These reports are passed from agency to agency and are accepted as fact. (Staff comments, correctional institution)

A young native man had been incarcerated and was on parole. He requested permission to attend a family ceremony, a naming ceremony. The officer denied the request and made derogatory

remarks about the naming ceremony since he did not realize its importance. Names are given by the elders and signify a milestone or achievement in one's life. Many/most parole officers are unfamiliar with the family, social and cultural interactions that occur in Native culture. This lack of understanding causes many problems and bad feelings and frustration. (Staff comments, correctional institution)

I support some sort of prison in Anchorage. The farther away the prisons are from home, the more problems are created for those incarcerated. (Salvation Army, Booth Memorial Home)

## **Public Comments Relevant to the Jury Selection Committee**

### **Jurors called too often:**

Bethel residents feel they are called too often for jury service. (many comments)

As a major employer in Bethel, I have a problem when several of my employees have to be gone for jury service at the same time. The last time a jury convened I lost three vice presidents. Please continue to exercise common sense when reviewing requests to be excused. (President, Yukon-Kuskokwim Health Corporation)

Barrow seems to be the only place around here where people are called for jury duty, since there is no budget to bring people in from the villages, so Barrow bears the entire burden. (Employee, North Slope Borough)

The court system should have a mechanism to award people who serve on juries. If a member of a jury pool is selected for jury service and serves throughout a trial, that person should be exempted from service for the next five years. Members of the pool who do not serve would only be exempt for a year as usual. This way, people would be less inclined to make up excuses to get out of serving, knowing they could serve and be done with it for five years. (Sitka juror)

Are you sure jurors are being called randomly? Some people are called all the time and some people never get called. You could give a questionnaire to jurors after they serve and ask them if they would welcome serving on a jury. If they say yes, they could be added back on to the list to be selected again. (Anchorage resident)

I was summoned for jury duty. During a break I told the judge I was on there for three years and he didn't believe me. He checked the record and excused me. Sometimes we get on so long we can't get off without being dismissed by the judge. I think a year is long enough. (Chairman, Bristol Bay Native Corporation)

Jury service puts a burden on our corporation, which employs twelve people. Our employees frequently are called (sometimes two at a time) and that they generally are happy to serve but are needed at work. Please study the frequency with which people are called. The length of time for which people serve (three months) adversely impacts our business, mainly because of the uncertainty

of having to come back every day. It would help if the court gave deferments to serve in the winter instead of the busy summer season. (CEO, Bethel Native Corporation)

Jury service is a great burden on the school system in Napaskiak. We sometimes lose teachers for three months at a time, and we do not have adequately trained substitutes. This is very difficult for the children's education. The hardest part is not knowing whether a juror will have to go to Bethel on any given day. Teachers also get called for federal jury duty, which is an added burden. (School principal, Napaskiak)

There is a difference of opinion in Angoon about the appropriateness of having felony jury trials there. Some believe Angoon is too small and the burden is too great; others feel that Angoon problems should be handled by Angoon people. (Angoon roundtable discussion)

**Jurors not called:**

There are 128 communities in Alaska whose members are essentially blacklisted from jury service -- they are never called because of their distance from a court location. If it is too expensive to provide transportation to these areas, this is a good argument for letting tribal courts handle more matters. (Executive director, AKPIRG)

I am concerned about the small number of minority persons who serve on juries. (Spanish translator, Juneau)

Judges need to be sensitive to perceptions a jury might have, such as a negative perception of Koreans. (OPA contract attorney, Anchorage)

Minorities and whites do not get the same trials. Juries in Anchorage are always predominately white. Because of cultural differences, selecting a jury for minority defendants takes time to do properly. Some judges allow questionnaires to explore issues related to racism, which helps to weed out problems. Juries do not believe Native and black witnesses the way they would a white banker. We'd like to think racism doesn't exist, but that's dangerous. (OPA contract attorney, Anchorage)

I am a life-long Alaskan who lives in village about 100 miles away from Bethel. No one from my village has ever been called for jury duty. I feel left out of the justice system because I would not understand court proceedings if I ever had to go to court. I would not know what to do if I were called to court. (Village resident)

Togiak is a large community (900 people), with a generally Native population, 70 miles from Dillingham. Trials should be held there. (Attorney with cases in Togiak)

We need to hold jury trials in Togiak to improve jury pool system. Togiak is a large community 70 miles away and quite a number of cases tried in Dillingham originate in Togiak. They are not in this jury pool--some bureaucratic reasons why jury trials are not held there, maybe some problem with hotel accommodations or some standard used to determine where jury trials are held. This is very specific glitch in this region that proposes additional burdens on local people and dozens of Togiak people. (General Counsel for the Bristol Bay Native Association, speaking on his own behalf)

Jury pools are not representative of Natives in Juneau, and more trials should be held in the villages. (OPA contract attorney, Juneau)

Some people use lack of knowledge of English as an excuse to get out of jury service. (OPA contract attorneys in Dillingham and Kodiak)

I agree that it is not fair for jurors to be called from some villages but not others. I don't think villagers clearly understand their responsibilities when they are asked to serve. I try to avoid jury duty, because trials take a long time, and the uncertainty of knowing how much time will be required makes serving difficult. The court system should work with tribal courts to take a load off the state court system. (Bethel resident)

I have some concerns about juries when blacks are on trial. Can the courts monitor lawyers who routinely remove blacks from juries? Blacks seem to be summoned but never serve. Personally, I've been summoned three times but never served. (Executive director, NAACP)

**Difficulties of jury service:**

Sometimes jury duty ends at 11:00, but the flight back to the village doesn't leave until late afternoon. Jurors should get a lunch slip for those days, because many people can't afford to buy lunch. (Napaskiak juror)

Some Yupik people don't like to serve on juries, because they don't feel right judging other people. It is hard to make a decision to indict, especially if you know the person or their family. It is also hard for Yupik people to talk in court. (Napaskiak residents)

The court demands more of juries in villages than of juries in urban communities. Jurors are expected at times to meet into the late evening or on weekends to finish court business. These practices affected Natives disproportionately. (District attorney, Juneau)

Jury duty is difficult for many people. Few employers are supportive of jury service, because of the lack of advance warning -- not knowing until the night before whether you will be required to come in. (Fairbanks resident)

I have served on juries a number of times. The last case was a rape case. All twelve of the jurors thought the defendant was guilty, but after the trial everyone in Fort Yukon acted as though I was the only juror who thought the defendant was guilty. In a small town like Fort Yukon, it is tough to serve on a jury and find someone guilty. There were about nine Natives on that jury, and everyone understood the instructions. The court is doing a good job here. (Fort Yukon resident)

A disproportionately high number of whites serve on juries where the defendant is Native. Native people do not want to serve on a jury if they will have to judge a friend or relative. People serve for one year, but can fulfill their service by serving for thirty days on a jury. Fort Yukon seldom has trials. About 60% of those summoned appear -- to get twelve jurors seated, I send out 170 questionnaires. (Magistrate, Fort Yukon)

Jury service is too time consuming and interferes with subsistence activities. Few Natives like to be put on the spot to judge a person. My grandmother taught me that if I judge someone, I in turn would be judge even more harshly. I understand that the law requires people to serve on juries, however. (Tribal services paralegal, Association of Village Council Presidents)

The Bethel court's halls and waiting rooms are packed when people are brought in for jury service. I think that the court brings in too many people. The court should pull jurors from the defendant's area or village. (Yupik interpreter, Bethel)

Jurors need more explanation of their role in the process. Court and other justice system employees could be friendlier and do a better job of educating jurors. We all have a responsibility to serve as jurors, but it should be a comfortable responsibility. The legislature has a responsibility to ensure that the court has funds for an adequate facility. The population in Bethel had increased tremendously just in the six years since I have been here. (District attorney, Bethel)

I was recently on jury duty and found that being required to call in at 4:30 every afternoon for three months adversely impacted my ability to perform my job. Maybe jurors could be allowed to call on a Sunday or Monday to hear whether they were needed for the remainder of the week. Another problem with jury service is the physical conditions at the courthouse. The overcrowding is degrading and there is no access to water. (Bethel resident)

I was called for the first time last year to serve on a grand jury panel. I am concerned that some defendants did not get a fair hearing before the grand jury because they were not physically present. The witnesses were present but the defendants were not. The cases were pushed or rushed through. I am concerned also about the fairness of telephonic testimony to defendants. Grand jurors cannot see the body language and facial expressions of people who testified by telephone and it therefore was difficult to know what was going on. (Bethel grand juror)

The court should conduct a public relations campaign to let people know how important it is to come for jury service. (DFYS employee, Fairbanks)

Many people in small towns cannot afford to go to jury duty because their employers won't pay them. (Homer resident)

## **Public Comments Relevant to the Language and Culture Committee**

### **Greater use of interpreters needed:**

I once saw an attorney interview an elderly lady who was hard of hearing and had difficulty understanding English. He wrote down the exact opposite of what she was saying, and made decisions for her without asking questions. The court had no way of knowing that this was a problem. The court should provide an interpreter so dealings between attorney and client are done correctly. (ICWA worker, Y-K delta village)



I witnessed two elderly Yupik people who did not understand English being arraigned. They were forced to rely on a fellow defendant to interpret the proceedings for them. (Tribal services paralegal, Association of Village Council Presidents)

It's important to have interpreters in the courts and on the police force. When Dillingham first got a police officer, there was a guy in town drinking, a nuisance but not committing any serious crimes. The police chief got tired of him and told him he better get out of town, in the middle of winter. He proceeded to walk to his village. It was 20-25 below, probably wind chill even colder, and he wound up losing both feet. (Chairman, Bristol Bay Native Corporation)

The Juneau Hispanic community numbers over 800 people at present. There is one attorney and one investigator for the Public Defender agency who speak Spanish. We sometimes hear of people who went to jail without having any idea of why they had been arrested. We have offered to serve as volunteer interpreters, but have only been called a couple of times in the past seven years, and never in a juvenile case. The federal courts do a better job of certifying and paying interpreters. We have heard an interpreter give defendants legal advice, including advising them about what to plead. Translating properly requires an understanding of court procedures and the appropriate role of the translator, as well as an ability to speak the language. (2 Hispanic Juneau residents)

I recently received my citizenship without any problems because I had someone who could help me. Many people come who cannot speak English and without court help they cannot do certain things. Without language interpretation they cannot understand what is happening. (Fairbanks resident)

When people who do not speak English show up at arraignment, they are detained for another 24 hours and then assigned a public defender. Sometimes the court never does explain their rights to them. (Public defender, Anchorage)

Prosecutors talk people into changing their pleas on the spot, when they should use interpreters. (OPA contractor)

Many Native adults in their 40s and 50s speak English adequately, but their comfort level in times of stress is much higher in their native languages. Judges should ask people what language they prefer to speak, not just if they speak English. (OPA contract attorney, Anchorage)

I've represented people who were fluent in English when talking about fish, but comfortable only in their own language when talking about themselves. (OPA contract attorney, Anchorage)

Language is always a barrier, but particularly with the elderly and the uneducated. (Employee, North Slope Borough)

I am an Eskimo elder who wishes to share some concerns that should get the attention of all agencies who come to the village to hold meetings, get public opinion, etc. Lots of us elders grew up in the turn of the century when the education system did not exist. The subsistence life in itself was a good education, but now we are often asked to reply to questions and issues that we don't understand. I feel that there needs to be help in place for us elders who don't fully understand English, can't read well, and generally can't understand what is going on. Someone needs to take the time to translate

and make issues clear for us so that we could understand and give meaningful replies and comments. I feel that we, the elders, have much to share and to teach our younger generations. (Elder, Golovin)

Native people who have not been educated or who have dropped out of school early do not understand language in court. They often give wrong answers and are thrown in jail. (ICWA worker, Aklachak)

The court should provide telephonic interpreters. They should use this and perfect it for each area because it is very expensive for people to come in from villages. (Bethel attorney)

One parent had a child removed from the home in an ICWA case. The mother didn't speak English and no one explained to her what was happening and that she would be allowed no further contact with her child. (ICWA worker, Bethel)

Interpreters are needed in the following languages:

Yupik (mentioned by ICWA workers in Bethel, Sheldon Point, Tuluksak, Aklachak, Akiak) (one noted that there are several dialects)

Inupiat (mentioned by North Slope Borough employee in Barrow)

Korean: (mentioned by 2 OPA contract attorneys in Anchorage)

Samoans and Tonganese (mentioned by OPA contract attorney in Anchorage)

Spanish (mentioned in Anchorage and Juneau)

American sign language (mentioned by OPA contract attorney in Anchorage)

Last September we created a Samoan Affairs Association in Anchorage to reunite the Samoan Community. We have an on-call list of members who can be called by the police, school officials, and others for an emergency, and we are working closely with the mayor's office and the police. There are about 5,000 Samoans living in Alaska now. (President, Samoan Affairs Association)

I grew up in San Diego where it was natural to hear Spanish and English all the time. When I first moved to Alaska in the 1970s, I was impressed with its diversity. Alaska should accommodate, not assimilate, the different ethnic groups that live here. There are about 20,000 Hispanics in Alaska, and they constitute the fastest-growing group in Anchorage. (Member, Latino Lions)

In the summertime, a number of Spanish- and Russian-speaking people come into town. (Former district attorney, now in private practice, Bethel)

The court should employ more bilingual people, and keep an interpreter available at all times. (ICWA worker, Sheldon Point)

Interpreters should be used earlier in the process, when defendants make crucial decisions about their rights. (OPA contract attorney, Kodiak)

Some of the things that are said in court I do not understand, maybe because I didn't graduate from high school. (ICWA worker, Y-K delta village)

Sometimes juveniles involved in the court system understand English, but their parents do not, or do not understand court procedures well enough to help their children. (OPA contract attorneys, Kodiak, Anchorage)

Most of the young Natives speak and understand English, but they don't understand the state laws and regulations whenever they are subjected to them. If they commit a crime, then they have to deal with the complicated jargon that comes with the state court system. This situation is made worse by the fact that they cannot afford to hire their own lawyers to defend them. (President, Kipnuk Traditional Council)

The court needs interpreters schooled in Yupik and English translating. Interpreters must understand the English meaning very well, because it is so important that the meaning not be altered at all. (Yupik interpreter, Bethel)

I am concerned about language barriers. I am a doctor, and English is my first language, and even I have a hard time understanding the justice system when I serve on a jury. Competent interpreters are necessary to fair trials in Bethel. (Bethel resident)

**Training and role of interpreters:**

The federal court routinely encounters problems in the area of language. The complaints usually come in the form of concerns by court-appointed defense counsel that interpreters do not adequately understand and therefore cannot adequately translate technical legal concepts into another language where the foreign country has a very different legal system. When we are able to use a federally-certified translator, these problems seem to be minimal. It is my understanding that a number of people who are quite fluent in Spanish have not succeeded in obtaining federal certification, probably because of difficulty in translating legal concepts. The problem is of course more acute when we are dealing with other languages. (Judge, U.S. District Court)

Alaska Rule of Evidence 604 requires qualified interpreters; the court shall inquire into the ability, impartiality and understanding of the interpreters. This never, or rarely happens, and there are interpreters who are completely unqualified translating in criminal cases all the time. If there is not a test to become a qualified court interpreter, there ought to be. The federal courts have an interpreter program that is simultaneous verbatim translation. These people have to be certified by the courts in order to work there. The benefit to the system is enormous: judges understand the speakers, attorneys can ask questions without fear of misinterpretation, and the speaker can be confident that his or her words are understood. The legal system is one of communication. Without effective communication there is certainly unfairness. I suggest that the committee review the federal evidence rules and local practice rules. (Private attorney, Anchorage)

The state court should work more closely with the Interpreter Advisory Group initiated by the federal district court. The rules on interpreters need to be changed to require qualified interpreters through the court. We should be working together to make sure interpreters are qualified and that they are provided at court expense whenever necessary. (Public defender, Anchorage)

Legal interpreters should be trained and/or certified. (OPA contract attorney, Anchorage; ICWA worker, Platinum; North Slope Borough employee, Barrow; social worker, Anchorage)

Interpreters need to be truly bilingual. (ICWA worker, Kotlik)

Because of the significant cultural differences in the state, the court needs people who can do more than just interpret language - they need to explain concepts as well. (OPA contract attorney, Ketchikan)

There is more to language than just words; interpreters need to be trained to explain legal concepts as well, in simple language. (North Slope Borough)

There should be simultaneous translation with headphones for defendants. (Akiak Native Community)

You can get a translator to translate words but you don't know if they are translating the nuances. Set up an interpreter system through the court so that there is a minimal standard for their competency. Court employees need to remain sensitive to cross-cultural situations, and sensitive to the fact that it is not all language. Continuous training may be necessary for awhile. (Assistant Public Defender, Ketchikan)

Many people stated that Natives do not always understand the legal system, how it works, what is expected of them. The court needs a translator not only for the language but to explain what is going on and what they are supposed to do. (Council President, Marshall)

There are many kinds of interpretation errors:

- Literal translation, when the interpreter translates without presenting the crucial concept;
- Inadequate language proficiency, when the translator can not translate at the right speed without communication breakdowns;
- Lexical errors, where the translator lacks a good grasp of vocabulary, connotations, jargon and shades of meaning (for example, the difference between famous and notorious);
- Register conservation, where the translator cannot reproduce a variety of speaking styles ranging from colloquial, slang and informal to formal;
- Distortion, where the translator can not conserve every idea and feature of the source message, for example, if they seem irrelevant or involve profanity or sexually explicit words;
- Omission;
- Added information, where the translator is unsure of the source message or can not retain all the ideas in the source message and therefore adds information;
- Protocol, procedures and ethics, when the translator misunderstands his or her proper role. Instead of translating precisely, they mask or generalize;
- Non-conservation of paralinguistic elements, when the translator does not conserve fillers, hesitation words and interruptions.

This kind of error analysis demands attention, and we must understand the process better so that we can better train interpreters. (Member, Catholic Social Services Immigration Advisory Board, speaking on her own behalf)

The court system currently has no way of knowing qualifications or ability to correctly translate for the translators hired. Many local translators in this area do not have in-depth training. The court system should require that translators have a license indicating that they have enough knowledge of both language systems to adequately translate in court. (Staff, University of Alaska Fairbanks, Bristol Bay Campus)

I have a list of names of interpreters I can call, but I have no way of knowing whether these people are qualified to communicate the meaning behind the words. Qualifying interpreters needs to be done at another level and is more than just supplying a list of names. (Court clerk, Ketchikan)

I trained in '73-'74 with Kuskokwim Community College as a court interpreter for a one year program under Irene Reed. I've been called to this court only five times in over twenty years. I believe the interpreter program should be looked into more. Young folks who graduate from Anchorage or Edgcombe high schools don't fully understand the court lingo--I sure didn't when I first studied the court interpreter program. I went in-depth studying with Irene Reed, a white person, and another Yup'ik-speaking Native, and we'd finally come up with a word that would most likely parallel with the white man's way of thinking. It should've been a longer study or a follow-up to better that interpreter's program. (Translator and Manokotak, Clark's Point and Aleknagik representative)

Having bilingual but untrained people to interpret in court is a problem. These people do not have the legal background to translate accurately. They do not often have backgrounds in social work or other disciplines necessary to translate accurately in children's proceedings. Interpreters should be trained to know specific technical words. (Social Services Director, Association of Village Council Presidents, Bethel)

**Recruiting and paying for interpreters:**

The court should keep a list of interpreters. (OPA contract attorneys in Anchorage and Kodiak)

The court should be responsible for the active recruitment of interpreters, regardless of who ultimately pays for them, rather than individual agencies. (OPA contract attorney, Ketchikan)

The court should pay for interpreters:

in criminal cases (OPA attorneys in Kodiak, Bethel, Anchorage)

in civil cases (ICWA workers in Andreafsky, Scammon Bay)

in children's cases (OPA contract attorney, Anchorage)

in all cases (Member, Catholic Social Services Immigration and Refugee Advisory Board)

Currently a defendant's attorney has to provide a translator, and the Public Defender agency spends a great deal of money on this. Yupiks in Bethel and Spanish people in Anchorage really need help. We need qualified translators throughout the system. (Assistant Public Defender, Anchorage)

The court rule on interpreters was changed several years ago to make defendants responsible for their own interpreters. It almost offends me that before the court can even advise the person, the person has to pay for an interpreter. Placing this burden on the defendant or on the Public Defender is ill-advised. (OPA contract attorney)

In all my years I have not been able to get the court to assume part of the cost for translators. When clients can't pay I usually pay the cost myself, so the \$40 an hour the court is paying for my time doesn't go very far. (OPA contract attorney, children's cases, Anchorage)

Court administrative rules require the parties to pay for interpreters, unless it has to do with a physical disability, in which case the court pays. Often parties bring friends or family to help interpret because that is the best we can do. These people do not necessarily translate everything in court to the client, either because they do not understand themselves, or because they may be "editing". The lack of a uniform plan to hire interpreters who are qualified denies foreign language speakers access to our courts. In criminal cases, it can deprive them of their freedom because they cannot effectively understand the process or communicate their positions. (Private attorney, Anchorage)

The new immigration laws are causing unequal treatment of many ethnic groups. I know of one man who has been incarcerated for 14 months at Cook Inlet Pretrial and has had seven different public defenders, none of whom spoke Spanish. He cannot express himself adequately in English. He has not yet been tried. He does not want to sign summary deportation papers because he says he is innocent. The court system should provide translators, at its own expense. I am aware of several people who could be certified, although some people who translate in court suffer from lack of legal training. (Member, Latino Lions)

People who do not understand English are intimidated by the language as well as by the court process. The current court rule on appointment of interpreters is inadequate because interpreters should be easily accessible to anyone who needs one, and the court should supply them (Spanish interpreter, Fairbanks)

Highly qualified interpreters are a big help, but they are not cheap. We need guidance from the courts on when, if ever, we can hire them. (Magistrate, Sitka)

I worked on a case involving a child custody dispute and a mother from Thailand. The judge called several times to get an interpreter but could not. The trial lasted more than three months because they could not find an interpreter, and the mother's rights were affected by the lack of an interpreter. In the end, they found a volunteer interpreter and had to hold the trial on Labor Day when the interpreter was not at work. I also saw a domestic violence proceeding in which the opposing party had a former coworker assisting him. The translator was advocating for him, not just interpreting. He had no idea what was going on. I pointed the problem out to the court, but the judge did not know what to do about it. The opposing party eventually lost custody of his children. These examples show that the court must pay for interpreters when people's rights are being affected. (Attorney, Alaska Legal Services, Anchorage)

**Translating court materials:**

Court system written and audio materials should be translated, especially arraignment tapes and domestic violence petitions and handbooks. (OPA contract attorneys in Kodiak, Anchorage)

Presentence reports do not always portray the lives of defendants from minority cultures. (Juneau resident)

In federal court, for one group of Spanish-speaking criminal defendants, the judge ordered the presentence reports to be translated into Spanish for the defendants to review. (Juneau judge)

The arraignment tape with Judge Andrews is too sophisticated. Criminal procedure should be explained in a comic book, geared to a sixth grade education, with pictures or perhaps an interactive format. (District attorney, Kotzebue)

We need to have the arraignment video translated into the Eskimo language. (Court clerk, Kotzebue)

The court should maintain a library of tapes in several languages to advise defendants of their rights. Spanish, Tagalog, Russian, Korean, and perhaps Vietnamese are needed in Juneau. If possible, those making the tapes should consider the need for tapes in Spanish dialects. I have never seen anyone read the Spanish written materials on rights that judges can give out at arraignments. People coming to court often cannot read in any language. (Juneau district attorney)

We need a Yupik arraignment video. (District attorney, Bethel)

The court may want to investigate using CDs for translation. Our interpreters worked with a fellow from Florida to make CDs for things we needed in Aleut, Athabaskan, Yupik, and Inupiaq. They are wonderful; you can almost learn the language from them. (Alaska Native Medical Center)

**Cultural differences in the legal setting:**

Yupik people feel intimidated when they have to go to court. They will often answer in ways they think their questioner wants them to, so as not to cause trouble. When asked if they understand they will say yes, even if they don't understand. They know that if they answer no, the judge and the lawyers will all focus on them. (Anthropologist, Fairbanks)

The adversary system is foreign to most Yupik, and difficult to understand. It is hard to understand the concept of work roles and personal roles, not a distinction that is recognized in the villages. So Yupik people tend to deal with everyone the same way, which may cause problems in a legal setting. If a Yupik trusts someone personally, they may not understand that that person's role as a policeman, DA, judge, etc. requires them to act as someone who is not a friend. (Anthropologist, Fairbanks)

Natives come to court and speak forthrightly, as if talking to elders in their communities, but sometimes this works to their disadvantage in court. (2 Juneau residents)

Yupik people have a very indirect way of communicating. They do not like to say bad things about other people, even in the middle of a nasty divorce. One woman had a hard time describing the physical abuse she had suffered, and the judge couldn't tell whether she really was abused. It takes someone who understands the culture to know how to bring things out. (Attorney, Alaska Legal Services, Juneau)

The judge and magistrate in Bethel are very sensitive to language and cultural issues, but it is harder when outsiders come in. (Bethel attorney)

The court system should be open to other, less hierarchical ways of doing things -- like ADR, the Navajo peacemaker courts, etc. It should also provide cultural navigators for people from other cultures when they have to use the courts. (Member, Catholic Social Services Immigration and Refugee Advisory Board)

Alaska Natives have an oral tradition, and have a hard time understanding the importance of signatures and papers. We are also sensitive to nonverbal cues and body language. Sometimes our people respond to the body language of a strong, aggressive-mannered person rather than to the person's words. The nonverbal cues, hesitations, glances, etc., come across very strongly to us. (Employee, Alaska Native Health Board)

In Sitka, the issue is not language so much as culture. Natives pause in conversation, which can be misunderstood. Also, Natives are generally averse to direct conflict, so the court system is not comfortable for them. (Attorney, Sitka Native Association)

Traditional Natives have more of a culture problem than a language problem, because court proceedings are fast and difficult to understand. (Private practitioner, Juneau)

I understand that there is no Yupik word for "guilty", and the concept is different. It seems to me that Native culture does not emphasize individual rights. (OPA contract attorney, Anchorage)

Cultural misunderstandings are common with Korean clients, who are litigation-averse and hesitant to make direct confrontational statements about another person, even in cases where child custody is at issue. (OPA contract attorney, Anchorage)

Judges and lawyers don't always understand Native cultures -- it isn't just our language that's different. Judges need to be sensitized to our way of life and customs. For instance, we don't see many appeals, because Yupik people will just accept things as decided and take it. Any service provider should understand it may need help (as, for example, a hospital understands it needs help to communicate for diagnosis). (Employee, Akiak Native Community)

I question the present system's fairness when concepts in English cannot be translated into the local language, translators are not trained, and employees do not know how to deal with different cultural groups. Cross-communication styles may result in miscommunication. For instance, "yes" or nodding the head up and down can acknowledge that people are taking in the information, not necessarily that they are in agreement with the information being presented. They may respond with "yes" so the situation does not become confrontational. The court system should ensure that ongoing



training is provided to employees focusing on cross-cultural communication differences, grammatical rules, use of words, non-verbal signals, stress and tone, silence and pauses, and the different ways of asking questions. (Staff, University of Alaska Fairbanks, Bristol Bay Campus)

People may be treated most fairly in court, but the things that happened before the court's involvement have already set the course. For example, stereotypes unconsciously predispose us against a person and make majority culture people less accepting. Cultural differences can lead a person to ascribe negative judgments to those different from oneself. This is true of juries as well as judges and attorneys. The majority culture may, through lack of understanding of cultural values, misinterpret minority behavior to the detriment of the cultural minority. For example, the Navajo culture values silence. Other cultures have more fluid ideas of time, different systems of measurement, and different ways of identifying parts of the body. Another example involves central American and Asian groups who have suffered through authoritarian regimes and may feel afraid when dealing with the authorities or may feel pressure to agree with whichever authority is asking the questions. Many people do not understand the concepts underlying American law, especially regarding constitutional rights, like the right to remain silent. (Member, Catholic Social Services Immigration Advisory Board, speaking on her own behalf)

Translators are needed for members of the Korean community in Bethel, to help Koreans understand what is happening to them in court. Members of the Korean community might benefit from having things in writing, particularly an explanation of their rights. A third issue is cultural: in Korean culture, a person "gets credit" for saying "yes" or admitting that they did something, even if they did not. People in the criminal justice system should be more aware of that cultural difference. (Bethel resident)

#### **Lack of legal knowledge:**

Some natives do not understand court proceedings. For older people it is a language problem; for younger people it is a comprehension problem. People say yes when asked if they plead guilty, but they often do not understand. Sometimes Natives think they pay stiffer fines or get longer sentences, but I do not believe this is the case. People need to be educated about the sentencing process. (Tribal court judge, Sitka)

Not only language is a problem, but people don't know how the court works, how to address a judge, how to plead. Their language use can be considered rude because they don't know. Attorneys should have someone like me work with clients so I can instruct my people how to behave in court. Thank you for doing this survey. (ICWA worker, Alakanuk)

Misunderstanding court procedures and legal consequences is as big a problem as language. (OPA contract attorney, Kodiak)

Not only are there differences in Native languages, but people also have difficulty in understanding legal terms such as "litigation". A Native person on a panel asked the meaning of the term. Later other members said they did not know the meaning either but were afraid to ask the question. (Bethel juror)

The “legalese” language is a problem for everyone, not just Natives. Language is a problem, particularly for older people, and especially in Barrow. I think the judge in Barrow is very sensitive to that and does a good job. Also legal language is more sophisticated than regular language and some attorneys do use that, it seems inappropriately. Some lawyers seem to take advantage of the language differences. (Fairbanks attorney)

When elders go to court they get confused. A child in another village was taken away from its grandparents because the grandparents didn’t understand the language and became confused in front of the judge. (Council President, Marshall)

Judges should do all business in a public forum. When business is conducted in chambers the results can be misunderstood. (Tribal Court Liaison, Toksook Bay)

Clients do not always understand their attorneys, nor do they understand what’s going on in court. (ICWA worker, Platinum)

Explanations are not enough; examples must also be given. Just because the public defender explains our rights doesn’t mean it’s really clear. We have little urban contact, so we need an explanation of your ways and meaning. (ICWA worker, Tuntutuliak)

Many Natives don’t know they have the opportunity to speak in court. The judge should tell them they have the right to speak. (ICWA worker, Russian Mission)

There should be a “people’s advocate” to guide citizens through the court system, to meet with participants and explain what they are facing and what their options are. This person would not be a lawyer, but someone from the local area and familiar with the local culture. (Several residents, Kake)

Grand jurors do not always understand the court process or the words used by lawyers. The lawyers and court should do a better job of explaining. If they used more understandable words, the interpreters could do a better job too. Also, attorneys and judges sometimes talk too fast or mumble. (Napaskiak resident)

Filipinos do not understand the American Legal System. Many Filipinos cannot afford a lawyer or feel they are charged too much when they can. Many still think in their native tongue. It is a comfort to them to have an interpreter, but also a cultural interpreter. (Member of Anchorage Filipino community)

Well over 90% of criminal cases in the Bethel area are alcohol related. Treatment services are stretched to the absolute limit and are physically accessible only to people near the coast. Cultural access is the biggest problem. Culture is language based, and many who come into the system are completely lost. (Former district attorney now in private practice, Bethel)

As a defense attorney, I get frustrated trying to bridge the cultural gap in explaining the criminal justice system to clients. Language is a barrier, but so is the way people perceive legal concepts.

Many go through the system, despite efforts of counsel, without really understanding and without seeing a real effect. (Anchorage lawyer with cases in Bethel)

## **Public Comments Relevant to the Rural Access Committee**

### **Tribal courts and local control:**

The state and the courts should encourage greater use of tribal courts. More local input is needed in criminal cases and ICWA/family cases. (ICWA workers in Bethel, Tuluksak, Arctic Village)

There should be greater coordination between the tribal courts and the state court system. (ICWA workers in Aklachak and Arctic Village)

We can be a “friend to the court” in ICWA cases. The state needs to recognize tribal authority and work with us on a government to government basis. If your laws are broken, we can also hold people accountable in tribal court. Subsistence should be co-managed by the state and the tribes. (ICWA worker, Tuluksak)

Tribal courts should be viewed as a resource, and most of the real problems with the judicial, criminal and civil justice system in rural Alaska are ultimately resource issues. We have one state social worker who cannot possibly keep up, has 30 referrals a month and is constantly going around putting out fires. The workload that the juvenile probation officer who’s responsible for this area, the chain and the Pribilofs too, is literally impossible to do. It’s not a one-person job, and I don’t see the legislature increasing this any time soon. My organization has about 20 children’s service workers in villages in the same region and they are underutilized because of jurisdictional problems. Because of lack of authority, the tribal, federally funded children’s workers just aren’t being used nearly as much as they could be and it doesn’t make any sense at all. I think a lot of the controversy in the press in Juneau over Indian country and all that stuff is not really a liberal or conservative issue or anything--it’s a service delivery issue. Ive talked about tribal authority with every single state trooper who’s been through here in the last 15 years and they tend to be pretty conservative people and I’ve never run into one of them who wasn’t in favor the Native communities in the villages handling petty misdemeanors level cases and children’s cases and so forth at home. In the territorial days a lot of things were just referred back to the council to begin with. Something has happened in the last 30 years--there’s a feeling a disempowerment in the villages and a lot of things that should be taken care of at home and could be because they’re not really legal issues--common sense things--people don’t think they can take action anymore. I wish it was the Legislature coming around holding hearings on these sorts of problems. What’s wrong with the system is you’ve got one social worker who can’t do her job because there’s just too much of it to do, and at the same time you’re attacking alternative systems which are already in place and underused. (General Counsel for the Bristol Bay Native Association, speaking on his own behalf)

The cost of transportation into a community with a magistrate is prohibitive, so local ordinances (curfew, dog ordinances, minor misdemeanor offenses) are not promptly and adequately addressed by the justice system. This breeds a disregard for the law and disrespect for the institutions --the city and tribal councils-- that promulgate ordinances. Other social breakdowns happen when there is a

disrespect for proper authority. The State of Alaska should recognize tribal courts in our smaller communities.. If tribal courts and municipal ordinances were drawn similarly, law enforcement officers were cross-deputized, many smaller offenses could be dealt with in the local community in a manner that brings swift, fair and equitable justice to the offender and to the community. If state of Alaska would recognize tribal courts as a legitimate element of our court system it would enable us address some of these issues in a cost-effective manner, a manner that respects local tradition and local ordinances. (Chief Executive Officer, Bristol Bay Native Association)

The state should let the villages solve their own problems. (Law enforcement officer, Anchorage)

More local control of certain aspects of the justice system would be a good thing -- not necessarily felonies or major civil issues, but misdemeanors would be OK. The village council could then use traditional methods like social control and admonishment. (Anthropologist, Fairbanks)

Greater local control in some areas would allow for agreements between the court and local tribes. This arrangement would allow the court system to take justice to the bush and relieve it of an expensive responsibility. There might be occasional concerns about how things are done, but overall it would be beneficial to the state. (Private practitioner, Juneau)

Tribal courts have more understanding of non-English speaking Yupik people, and can provide a more fair and just proceeding. (Akiak Native Community)

Tribal members would rather deal with tribal courts than state or federal courts. Most charges brought against tribal members are for laws that were passed by a different race in a faraway land. If the local people were involved in the passage of the laws that affect them, some of the punishments would be a lot softer and some would be a lot harsher. Some of the punishments might differ a lot from one tribe and another neighboring tribe. Most of the people charged with crimes do not understand their rights and cannot afford a good attorney. A tribal court would be more trusted than a state court, probably because you can see yourself sitting on the defendant's place. Sentencing would be a lot softer and less demeaning, since the sentencing body would have similar life experiences and would understand how the defendant came to commit the crime. (Kotzebue resident)

Traditional law is ingrained in Yupik people. My grandmother told stories about the times before white people came. She spoke of "courts" that were established by elders in the villages to keep harmony in the village. People watched their neighbors, and if they saw someone who hurt another person or hurt himself, they would send the person to the court. After missionaries came, the elders felt they were not needed anymore. Laws were not written; they were ingrained in people. While tribal courts need written laws, they also can apply unwritten laws. If tribal courts handled an offense, the people in the village would see what consequences were given to the offender. The villagers can not see what happens to offenders who go to prison elsewhere. (Bethel resident)

I don't usually have any problems with the Bethel court. I talk to the judge in Bethel (by telephone) if I have any problems, or do not understand something. We have an open court here in Akiachak, and we have a good relationship with the court in Bethel. I would like to see an open relationship with the federal, state and village courts. If we work together we will accomplish a lot for all our people, Natives and whites and everyone. (ICWA Council President, Akiachak)

When a Native is arrested, the court should contact the village council what might be best and fair. The people in the village always know what is going on and will give you an honest opinion for punishment. (Rural resident)

There is a need for more local control. The magistrate should be able to act as an elder or father figure, and hold informal meetings with juveniles to resolve problems. A magistrate could also act as a mediator rather than a judge in small claims matters. Small claims matters are too expensive and time-consuming, and mediation would be more effective. (Roundtable discussion, Kake)

Smaller misdemeanor cases should be turned over to tribal courts. Possibly the state could help fund a village jail house. (Council President, Tuntutuliak)

I would like the tribal government to get more involved with the court. We know our people better than the government does -- we know their life habits and are better able to judge them. (ICWA Council President, Kotlik)

Problems now are referred to the state rather than the tribal court, and we have less recognition because of the state and municipal government. We are trying to organize our tribal court so we can be better able to work on these problems. We have dissolved our regular city in order to be recognized -- in order to control the traditional subsistence lifestyle and the traditional council, and tribal court system. Now we own the land and our system. It is easier that way -- there is no interference. (Tribal Council President, Newtok)

The Alaska Court System must embrace tribal courts, especially at the misdemeanor level. District attorneys often are too busy to contact people in the community to get their comments. (District attorney, Bethel)

The state court should at least consider releasing minor offenders to the supervision of the tribal council. The elders and the tribal council then could counsel the offenders. Tribal councils would be willing to take on the responsibility of third party supervision, and would feel comfortable reporting violations to the judge. Many councils in other villages in the region would feel the same way. (Napaskiak resident)

Most of the crimes committed by Natives from this community are considered misdemeanor in nature, and can be taken care of by the Tribal Court here in the village. A working relationship needs to be established between the State Court and the Tribal Courts in our villages, and should be considered as a possible solution to the complex problems that most defendants run into when they have to deal with state laws and regulations. (President, Kipnuk Traditional Council)

Native people believe in justice and the courts because they have their own tradition of tribal law. I know there are good people in the judiciary, and the legal system is a good one. But in order for it to be the best it can be, we need to have it grow. We need village courts (not necessarily tribal courts), so that we can struggle with our own problems and try to find solutions. Crime and reconciliation are important to the villages, and we would like to deal with them, but right now we are not allowed. It costs all of us that these problems are not addressed. Native people are filling

up the prisons and the answer should not be to just build more prisons. We need solutions so the problems will end. Unwillingness by the state to address these problems harms all of us and undermines belief in the whole system. The court system should be an important vehicle for change and healing. (Representative, AFN)

The court should let go of smaller cases. The courthouse is tremendously burdened. People feel alienated because the court is a factory where people are processed. There is too much pressure to handle high caseloads. Tribal courts must work hard to ensure that misdemeanor and small cases get prosecuted, if the state court lets them go. Thus, the villages must come forward with proposals, and the court must be willing to bend in response. (Anchorage lawyer with cases in Bethel)

### **Extending court services to rural locations:**

Twenty-five per cent of Alaskans do not have access to a court system -- they live in rural Alaska away from the road systems. The court is not readily available to them. Young people get in trouble with local authorities and don't come to the attention of the court system until they commit a violation of law that is serious in nature. They are sent to a correctional institution. If court services were available closer to home, young people could be involved in the justice system earlier and might not find themselves being incarcerated or sent to McLaughlin. (Chief Executive Officer, Bristol Bay Native Association)

The assistant district attorneys from Fairbanks will "dump" charges in bush communities. They do not want to travel to our town, and their agency does not want to spend the money to send them out to rural areas. Defendants who have been through the system before have an advantage because they know that the DA will not prosecute a case in a rural area. These defendants plead not guilty when others probably would accept a plea bargain because they know that eventually the case will be dismissed. (Magistrate, Fairbanks area village)

The district attorney's reluctance to do trials in rural areas seemed to start at the same time that the Department of Law's budget was being cut. (Fairbanks judge)

In the villages, the troopers often can not come out for small crimes. Juveniles thus are not corrected until they do something serious. (Bethel resident)

I feel handicapped by having to do so much of my work over the phone. It is hard to interview people without being able to look them in the eye, and hard to gauge things at a telephonic hearings. It would be good if we could go out to the villages more. (Assistant public defender, Nome)

We should pay physical visits to the communities we serve. Outreach to the community, to make the courts more accessible, would be good. The small courts like to feel ownership, and the more familiar they are with the system, and its expectations, the better things will be for everyone. (Court administrator, Fairbanks)

The court should use venues other than Bethel for misdemeanor and felony trials, since it is more costly to bring jurors into Bethel than to send the parties and the judge out to the villages. Having

more trials in the villages also would help educate rural Alaskans about the criminal justice system. (Anchorage lawyer with cases in Bethel)

I represent criminal defendants in Nome, Kotzebue, Selawik, etc., because it's hard for clients to find an attorney there. (OPA contractor, Bethel)

We are concerned with the public appearance of justice and the safety of our community. Habitual offenders who are being awarded sentenced and then having them suspended or held off for some other reason are creating other problems in the town. Youth interpret the return of the trouble maker as "See? No big deal. Nothing ever happens to anyone who does something wrong." Adults, on the other hand, are expressing disgust, and grilling the police about why they don't do anything about so-and-so. And innocent people are being harmed as habitual/repeat offenders return to town and resume their ways. The Council is asking the court system to please consider these issues when passing sentence or, more importantly, when suspending sentences. (Mayor and Council, City of St. Paul)

The court should improve access to rural communities. When defendants are brought to hub cities to be arraigned, there is no involvement from the community. Tribal courts could handle many of these local offenses. We sent a questionnaire that went out to villages in the region asking whether the current system is working. The answer was "no." Isolation, remoteness, large geographical jurisdictions and clashes between Native and western ideas of justice were cited as problems. Also mentioned were language bias, lack of control, dependence on outside justice services and lack of coordination between villages and state agencies. (Tribal services paralegal, Association of Village Council Presidents)

It is important for trials to be held in Fort Yukon. I know how difficult and expensive it is, but trials are an important way for residents to learn about the legal system. The reason people do not want to serve on juries is because they are close to other members of the community. Family comes before everything. Testifying makes many people nervous. People would be more willing to come to a hearing if they knew they could just sit in a circle and talk, like in circle sentencing. (Fort Yukon representative)

## **Public Comments Relevant to Other Agencies**

### **Health and Human Services:**

DFYS has a shortage of Native foster homes. (Social services worker, Fairbanks)

API is disproportionately Native, but that may be because there are no similar services in the bush. (OPA contract attorney, Anchorage)

Parents required to pay child support may not have been well-represented or understood in court. Sometimes they are not included in the decisions of the child support agency. This is especially true where a man is contesting paternity. They should also give people a timeline for when they should appear in court. Some people have never been informed. (ICWA worker, Tuntutuliak)

DFYS employees either don't know about ICWA or maybe they ignore it. (ICWA worker, western village)

[see other comments about ICWA under consumer/user committee]

I have ten prevention workers in ten villages and the problem is huge. Substance abuse is just too prevalent. We try to work with the school to educate kids about the dangers of drugs and alcohol. Sometimes I do not feel safe in Fort Yukon. Successful prevention programs are nipping at the heels of substance abuse, and it is causing a lot of unrest in this town. (Representative, Substance Abuse Prevention Project, Fort Yukon)

Many of my patients are under the influence of alcohol, and many of their injuries are alcohol-related. It is difficult to get Troopers to come to the village to remove a person who is a danger to himself or others. We can not take custody of a person under Title 47 because I do not have a doctor on staff and Fort Yukon does not have a resident judge. I have to get a police officer to issue an emergency order and accompany the person to Fairbanks. The police do not have time to do that. Someone who is dangerous because of intoxication almost has time to sober up by the time they get to the hospital in Fairbanks. The Fort Yukon police are not trained how to de-escalate a violent situation. So sometimes mental health practitioners are asked to go into situations where a resident has a gun and is threatening suicide. Fort Yukon needs a detoxification facility. The law should be changed to reflect the needs of bush residents. The law should not require a doctor to sign a certificate to send someone to Fairbanks for involuntary commitment. A physician's assistant is equally qualified. Also, commitment laws for alcohol treatment should be changed. The laws are so restrictive that it is next to impossible to get a person committed to alcohol treatment. (Health director, Fort Yukon)

**Law enforcement:**

Our Tribal Elders and other people here in the village met to discuss your letter. These are some of the questions asked: We know of one case where a Native family was killed by a drunk driver and the drunk driver was given probation, but when white people are killed the drunk driver is out in jail for a long time. When Native people commit crimes the Trooper come and get them right away, but we had a terrible crime committed by a person who was not Native, and it took the Troopers a few days to arrive. Also, Native people going to court in Bethel are told what happens to them depends on which judge they get and what mood he is in. These are just a few of the concerns that were voiced. (Resident, Red Devil)

In the villages, the troopers often can not come out for small crimes. Juveniles thus are not corrected until they do something serious. (Bethel resident)

With regard to bootlegging, law enforcement should go after both sides, sellers and buyers. I don't know of anyone who has ever been arrested for trying to buy a bottle of alcohol. Sting operations are needed. (Bethel resident)

**Corrections:**



Native people are brought up in villages where they are supported by family and friends. When they have to remain in Anchorage to serve their probation, they have no resources and cannot be forced by their villages to deal with their problems. (Employee, Koniag Inc.)

People taken out of the community by the police should be returned to the same community by the police. One of our people served his time in Bethel and was released to the streets there. He didn't know the community and had nowhere to go. He was found dead in the streets. (ICWA worker, Aklachak)

The local prison's classification as a pretrial facility should be reconsidered. Pretrial facilities typically have less to offer in the way of vocational and educational opportunities. Treatment programs are available, but inmates are not encouraged or coerced to accept them. (Bethel resident)

We, the undersigned, believe that our justice system would work better for Natives if we had Native people at all levels, police, dispatchers, jail guards, lawyers, judges, parole officers, clerks, and halfway house workers. We would like to see our people hired in direct proportion to the average Native incarceration rate of the State of Alaska. If you do not involve us, how do you think we will be able to make a difference. (signed by 85 Wrangell residents)

For the amount of Natives in the overcrowded Alaska prison system, we are certainly not seeing very many Native correctional officers. Sometimes seeing a Native officer would help relieve mental stress. It would help to talk over some important issues facing the incarcerated Native inmate, like issues at his home, his hometown, or within Corrections. It would be of great help if there were enough Native hired staff. (Inmate, Spring Creek)

I support some sort of prison in Anchorage. The farther away the prisons are from home, the more problems are created for those incarcerated. (Salvation Army, Booth Memorial Home)

**Legislature:**

Fish and Game regulations impose unfair restrictions on Natives that non-Natives don't understand. This keeps us from living our traditional lifestyle. (Rural resident)

Alaska Legal Services provides a great service for Native people and should be better funded. (Employee, Copper River Native Assn; law enforcement officer, Anchorage)

The DA's office here is well-represented, but the Public Defender's office seems to have very little support. There is limited money for them to do investigations and prepare their cases properly. They need interpreters, or a Native ombudsman, or both. (Employee, Maniilaq Corporation, Kotzebue)

**Public defender:**

Public defenders sometimes don't meet with their clients until five minutes before court. There should be more time. (ICWA worker, Andreafsky)

Public Defenders are overloaded. When they come out to St. Mary's from Bethel the defendant only has a few minutes to speak to his lawyer before court. It is not enough to me and not fair. (ICWA Assistant Administrator, Andreafsky)

Public defenders need to be more concerned about their clients as people, not just represent them in name only. All people are innocent until proven guilty, but it seems that many public defenders look at it just the opposite. (Minister, Eagle River)

Lawyers in Bethel encourage Natives to plead "no contest" even when they are innocent. The lawyers want to rush things through the courts. They use scare tactics. Our people do not get an adequate defense. (Village Council President)

It's hard on our people to keep switching public defenders through the course of a trial. I realize funds are limited, but it would help a great deal if a defendant could have only one attorney. (Employee, Bethel Native Corporation)

## **APPENDIX C**

### **ESTIMATED FISCAL IMPACT OF IMPLEMENTING RECOMMENDATIONS**

## APPENDIX C

<b>SUPREME COURT ADVISORY COMMITTEE ON FAIRNESS AND ACCESS ESTIMATED FISCAL IMPACT ON ALASKA COURT SYSTEM OF IMPLEMENTING RECOMMENDATIONS</b>		
<b>Recommendation</b>	<b>Low Cost Estimate</b>	<b>High Cost Estimate</b>
A. Implementation of recommendations	\$20,000	\$120,000
B. Ongoing cross-cultural training (per year)	\$20,000	\$30,000
C. Local resources and cooperation with state courts	potential savings	
D. Diversifying the court system workforce: Develop and update affirmative action plan & outreach (\$5,000 - \$35,000); new position (\$70,000)	\$10,000	\$105,000
E. Language Interpreters: Judicial officer training (\$3,000 - \$4,000), paying for indigents (\$100,000 - \$150,000 per year), legal workshop for interpreters (\$5,000 - \$7,000)	\$108,000	\$161,000
F. Expanding sentencing alternatives	?	?
G. Study of effects of ethnicity on criminal justice process	\$300,000	\$350,000
H. Expanding the jury pool: reduce burden of serving (\$48,454 - \$72,120 per year), decrease peremptory challenges (potential savings)	\$48,454	\$72,120
I. Public education program (per year)	\$10,000	\$20,000
J. Increased services to rural areas (per year): judges travel more (\$50,000 - \$150,000), circuit rider (\$150,000 - \$300,000)	\$200,000	\$450,000
K. Cultural navigator program (two-year pilot)	\$109,000	\$320,000
L. Simplified forms & translated materials: form revisions (\$40,000 - \$70,000), translations (\$1,250 - \$2,000), videotaping (\$1,000/minute)	\$41,250	\$72,000
M. Child in Need of Aid proceedings	no additional funding	
<b>Grand Total</b>	<b>\$866,704</b>	<b>\$1,700,120</b>

**APPENDIX D**

**LANGUAGES AND CULTURE GROUPS  
BY COURT LOCATION**

**APPENDIX D**  
**LANGUAGE AND CULTURE GROUPS BY COURT LOCATION**

LANGUAGES COMMONLY SPOKEN BY COURT LOCATION						
	Yupik	Inupiaq	Spanish	Tagalog	Russian	Other
<b>First Judicial District</b>						
Angoon			X			
Craig			X		X	German
Haines			X			
Hoonah			X			
Juneau			X	X		Asian
Kake	X		X	X		Lithuanian, Haida
Ketchikan			X	X		
Pelican				X		
Petersburg			X	X		
Sitka			X	X	X	
Skagway						summer - worldwide
Wrangell			X			Japanese, Asian
Yakutat			X	X		
<b>Second Judicial District</b>						
Ambler		X				
Barrow		X	X	X		Korean, Thai, Yugoslavian
Gambell	X					Siberian Yupik
Kotzebue		X	X			Asian, Korean
Nome	X	X	X		X	Korean, Vietnamese, Sib.Yupik
Unalakleet						
<b>Third Judicial District</b>						
Anchorage	X	X	X	X	X	Eastern European, Asian
Cordova			X	X		Vietnamese
Dillingham	X		X	X		Asian
Glennallen						
Kenai			X	X	X	Asian
Kodiak			X	X		Aleut, Polish, Asian
Naknek	X	X	X	X	X	Asian
Palmer					X	Polish
Unalaska			X	X	X	Asian

<b>LANGUAGES COMMONLY SPOKEN BY COURT LOCATION</b>						
	<b>Yupik</b>	<b>Inupiaq</b>	<b>Spanish</b>	<b>Tagalog</b>	<b>Russian</b>	<b>Other</b>
<b>Fourth Judicial District</b>						
Aniak	X					
Bethel	X					Chupiiit, Korean, Albanian
Chevak	X					
Delta Junction					X	Korean
Emmonak	X					
Fairbanks	X	X	X	X	X	
St. Mary's	X					
Tok			X			

COMMON CULTURAL GROUPS BY COURT LOCATION						
	Yupik	Inupiat	Hispanic	Filipino	Tlingit	Other
<b>First Judicial District</b>						
Angoon			X		X	African-American
Craig			X		X	Russian, Haida, Tsimshian, German
Haines			X		X	Canadian
Hoonah			X		X	
Juneau			X	X	X	Asian
Kake			X	X	X	Tsimshian, Lithuanian, Haida
Ketchikan			X	X	X	Haida, Tsimshian
Pelican				X	X	
Petersburg			X	X	X	Haida
Sitka				X	X	Russian
Skagway					X	Canadian, summer-worldwide
Wrangell			X		X	Haida, Aleut, Tagish, Asian
Yakutat			X	X	X	
<b>Second Judicial District</b>						
Ambler		X				
Barrow		X	X	X		Korean, Thai, Yugoslavian
Gambell	X					Russian Yupik
Kotzebue		X	X			Asian
Nome	X	X	X			Korean, Vietnamese, Russian
Unalakleet						
<b>Third Judicial District</b>						
Anchorage	X	X	X	X	X	Asian, Eastern European
Cordova			X	X		Aleut, Vietnamese
Dillingham	X		X	X		Aleut, Asian
Glennallen						Athabaskan
Kenai			X	X		Asian, Kenaitze, Russian
Kodiak			X	X		Aleut, Laotian, Asian
Naknek	X		X	X		Asian, Russian
Palmer						Polish, Athabaskan, Russian
Unalaska			X	X		Asian, Aleut, East African, Russian



<b>COMMON CULTURAL GROUPS BY COURT LOCATION</b>						
	<b>Yupik</b>	<b>Inupiat</b>	<b>Hispanic</b>	<b>Filipino</b>	<b>Tlingit</b>	<b>Other</b>
<b>Fourth Judicial District</b>						
Aniak	X					Athabascan
Bethel	X					Chupit, Korean, Albanian, African-American, Yugoslavian
Chevak	X					
Delta Junction						Korean, Russian
Emmonak	X					
Fairbanks	X	X	X	X	X	Asian, Eastern European
St. Mary's	X					
Tok			X			Athabascan

**APPENDIX E**

**PROBATION CONDITIONS AND REVOCATIONS  
BY ETHNICITY**

**APPENDIX E**  
**PROBATION CONDITIONS AND REVOCATIONS BY ETHNICITY**

**MEMORANDUM**

**TO:** Disparate Confinement Subcommittee  
**FROM:** Staff  
**DATE:** August 15, 1997  
**RE:** Probation Conditions and Revocations

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The Disparate Confinement Subcommittee of the Alaska Supreme Court Advisory Committee on Fairness and Access decided to collect data on felony probation revocation cases to determine whether Alaska Native offenders received different dispositions on probation revocation than did persons with other ethnic backgrounds.

**I. Methodology**

Staff designed a database in Microsoft Access, and a data entry form. Due to extremely limited resources, the subcommittee limited its data collection to a selected sample of offenders (described below). The Department of Law provided lists of offenders from its PROMIS database.

Data collectors selected specified numbers of defendants with different ethnic backgrounds in each community, and if time permitted selected additional cases to use in the study. Data collectors included Council staff and one subcommittee member. Data collectors examined pre-sentence reports and court case files for each case, then entered the information on the Council's computer.

## **II. Data Sample**

The database included only male offenders convicted of selected B or C felonies, from five Alaskan communities (Anchorage, Bethel, Fairbanks, Juneau and Nome). All offenders had their probation revoked in 1994, 1995 or 1996.<sup>1</sup>

### **A. Offenders**

#### 1. Communities

Altogether, 154 cases were collected: 50 from Anchorage, 32 from Juneau, 30 from Fairbanks, 26 from Bethel, and 16 from Nome.<sup>2</sup> Of the cases in the Bethel court, 85% involved defendants who lived outside Bethel. Of the cases in Nome, 94% involved defendants who lived outside Nome.

#### 2. Ethnicities

The sample was intentionally skewed to include more Natives proportionately than are found in the corrections population. Thus, a total of 89 defendants were Alaska Native or American Indian, 16 were African American, and 44 were Caucasian. The remaining five were characterized in the pre-sentence reports as one Asian, two “other” ethnic origin, and one “unknown.”

All of the Bethel and Nome defendants were Native. The African-Americans had case files in Anchorage (11), Fairbanks (4), and Juneau (1). Caucasians had case files in Anchorage (22), Fairbanks (12), and Juneau (10).

#### 3. Other defendant characteristics

For each defendant, staff compiled information about marital status, years of education, city of permanent residence, city of current residence, number of prior adult convictions, presence of a juvenile record, and number of prior probation revocations. The resulting portrait was of a single man without significant educational achievement who had one or more prior adult convictions but who did not necessarily have prior probation revocations.

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<sup>1</sup> In Anchorage, pre-sentence reports were available only for cases that originated in 1991 or after (all probation revocations had occurred in 1995 or 1996). In the other communities, all of the pre-sentence reports were available in the court files. The probation revocations studied all had been filed in cases originally opened between 1985 and 1994.

<sup>2</sup> The original goal was to collect 50 files from Anchorage, 20 from Fairbanks, and 10 each from Bethel, Juneau and Nome. Time permitted staff to collect additional cases in most of the communities.

Two-thirds of the defendants were single, 15% were married, and 9% were divorced (marital status was unknown for 8%). About 56% of the defendants had a high school diploma, GED, or some higher education; 39% did not. About 27% of the defendants had no adult prior record of either felonies or misdemeanors. Twenty-nine percent had one to three prior convictions, and nearly half (44%) had four or more priors. Nearly three-quarters (71%) had no juvenile record.<sup>3</sup> A little over half (55%) of the defendants had no previous probation revocations. About one-third (31%) had one earlier probation revocation, and 14% had two or more.

Each of these defendant characteristics was cross-tabulated with the ethnic origin variable. The cross-tabulation failed to reveal any significant differences in defendant characteristics by ethnic origin.

**B. Offenses**

The offenses of which the defendants were originally convicted included Sexual Assault II (2), Sexual Abuse of a Minor II (27), Theft II (24), Criminal Mischief II (15), Burglary I (11), Burglary II (29), Assault II (4), Assault III (28), and Other (14). These were re-coded for more useful analysis into “violent” (N= 65), “property” (N = 84), and “other” (N = 5) (see Table 1, below).

**Table 1: Offense of Conviction**

<i>Value Label</i>	<i>Value</i>	<i>Frequency</i>	<i>Percent</i>	<i>Valid Percent</i>	<i>Cum Percent</i>
Violent	1	65	42.2	42.2	42.2
Property	2	84	54.5	54.5	96.8
Other	3	5	3.2	3.2	100.0
Total		154	100.0	100.0	

Offense of conviction was one variable that did show statistically significant differences by ethnic origin.<sup>4</sup> About 52% of the Native defendants in this group had been convicted of a violent B or C felony, as compared to 25% of the African-Americans and 29% of the Caucasians. This relationship is consistent with findings from other studies that Alaska Natives have a higher rate of conviction of violent offenses than do other ethnic groups. The actual percentages in this sample may not be the same as in the overall population of convicted offenders because we selected only males, in specific communities, and only those with B and C felonies.

<sup>3</sup> Research outside this study indicates that juvenile offenses are inconsistently reported throughout the state; the individual juvenile probation officer decides whether report an offense. As a result, juvenile criminal behavior may be significantly under-reported.

<sup>4</sup> Significant at .023.

**C. Sentences**

All defendants had received sentences for class B or C felonies. The sentences recorded in the pre-sentence reports varied somewhat by type of offense and other offenses sentenced at the same time. Sentence length on the original offense ranged from no time to serve (21% of the sample) to 108 months, with 32% receiving one to six month sentences (“short”), 22% receiving seven to twelve month sentences (“medium”), 20% receiving 13 to 36 month sentences (“long”), and 5% receiving 37 to 108 month sentences (“longest”).

Information also was collected on conditions of original probation. Frequently imposed conditions included alcohol treatment, drug treatment, mental health treatment, sexual offender treatment, anger management treatment, restrictions on drinking, and restrictions on movement (e.g., no contact with victim, stay away from a certain location or community). No drinking restrictions were imposed on about 58% of defendants, while movement restrictions were imposed on about 36% and anger management treatment was imposed on about fourteen per cent.

**III. Violation for which Probation Was Revoked**

Nearly half (45%) of the current probation revocation petitions had stemmed from a new offense, usually a misdemeanor. The other three primary reasons given by probation officers were not reporting to the probation officer (20%), alcohol or drug use (16%), and not complying with treatment conditions (15%). Table 2 below shows the reasons for probation revocation; Table 3 gives the same information sorted by ethnicity of the defendant.

**Table 2: Violation for which Probation Was Revoked**

<i>Value Label</i>	<i>Value</i>	<i>Frequency</i>	<i>Valid Percent</i>	<i>Cum Percent</i>
	0	1	.6	.6
New Felony	1	13	8.4	9.1
New Misdemeanor	2	57	37.0	46.1
Non-Compliance w/Treatmnt Cndt	3	23	14.9	61.0
Alcohol/Drug Use	4	25	16.2	77.3
Violate Movement Restrictions	5	3	1.9	79.2
Other	6	2	1.3	80.5
No Report PO	7	30	19.5	100.0
	Total	154	100.0	

<b>Defendant's Ethnicity</b>	AK Native/ Indian	African- American	Caucasian	Other
<b>Offense</b>				
New felony	7 (8%)	1 (6%)	4 (9%)	1
New misdemeanor	<b>29 (33%)</b>	<b>9 (56%)</b>	<b>17 (39%)</b>	2
Non-comp. treatment	13 (15%)	1 (6%)	9 (20%)	0
Alcohol/drug use	18 (20%)	1 (6%)	6 (14%)	0
Movement restriction violation	2 (2%)	0	0	0
Other	0	0	1 (2%)	1
No report	19 (21%)	4 (25%)	7 (16%)	0

To get a better sense of the statistical significance of differences among groups, much of the remaining analysis reported in this memo was done only with the subset of all Alaska Native, African-American and Caucasian defendants (N = 149). Five defendants with other ethnic origins were excluded. Reviewing the current violations of these 149 defendants, no statistically significant differences appeared by ethnic origin. African-Americans were somewhat more likely to have a new offense (63% did, compared to 41% of Natives and 48% of Caucasians). African-American offenders in this group were less likely to have been revoked for not complying with treatment conditions or using alcohol or drugs than were Natives or Caucasians. Again, these differences were not statistically significant.

#### ***IV. Conditions of Original Probation***

Data on defendants' ethnic origin were compared to frequently imposed probation conditions to see if minority defendants received different kinds of probation conditions than their Caucasian counterparts. Three probation conditions were significantly related to ethnicity, while two fell just short of significance and two were not significant.

The conditions that lacked statistically significant differences were drug treatment (required for 29% of Native defendants, 43% of Caucasian defendants and 44% of African-American defendants), and mental health treatment (required for 24% of the Native defendants, 23% of the Caucasian defendants, and 6% of the African-American defendants).

The two conditions that fell just short of significance were alcohol treatment and sexual offender treatment.<sup>5</sup> Alcohol treatment was required for 70% of the Native defendants, 44% of the African-American defendants and 55% of the Caucasian defendants. No African-American defendants were required to obtain sexual offender treatment. Judges required it for 9% of the Caucasian defendants and 19% of the Native defendants.

Three probation conditions *in this group of cases studied*<sup>6</sup> showed statistically significant relationships with the ethnic background of the defendant. First, more African-Americans were required to attend anger management training than were Caucasian defendants or Native defendants.<sup>7</sup> Second, judges imposed no drinking restrictions on Native defendants more often than other defendants. Third, movement restrictions were imposed more often on Native defendants than on defendants of other ethnicities.

**Anger Management Treatment.** Only 21 of the cases reviewed contained an order to obtain anger management. However, about 38% of African-American defendants were ordered to obtain anger management, compared to only 16% of Caucasians and 8% of Natives.

Cross-tabulations of type of offense by the anger management probation condition for each ethnic group showed noticeable differences among ethnic groups. For example, very few Native defendants were required to obtain anger management treatment, even for violent offenses, as compared to African-American defendants, about one-third of whom were required to get anger management treatment for property offenses and 50% of whom were required to obtain it for violent offenses. However, the strength of this finding is undermined somewhat by the small number of African-American offenders in the group.<sup>8</sup> Figure 1 shows the percentages of offenders ordered to attend anger management, broken down by ethnicity and type of offense.

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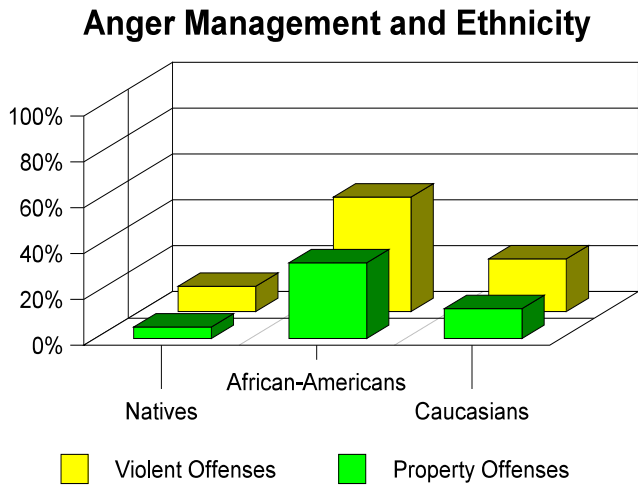
<sup>5</sup> The p values for each were .06; the standard generally used for statistical significance is .05.

<sup>6</sup> Keep in mind that these cases were selected to contain non-representative numbers of certain types of offenses, ethnic background of offenders, and certain communities. The data cannot be used to prove that the same conditions exist throughout the general offender populace. However, the offenses selected are among the most common B and C felonies, and the offenders selected resemble the overall offender population in prior records, education and marital status.

<sup>7</sup> Significant at p = .005.

<sup>8</sup> Only four African-American offenders were convicted of violent offenses, too small a group from which to draw any conclusions. The number in the property offender group was 12, also small, but slightly more reliable.



**Figure 1**

violent offenses, but was imposed much more frequently on Native defendants convicted of property offenses (65%), as compared to African-American defendants (25%) or Caucasian defendants (42%). One staff person who collected data from case files in Bethel and Fairbanks hypothesized that the difference might have been due to the lack of alcohol treatment programs in small villages, leaving the judge with the choice of simply saying “no drinking.”<sup>10</sup>

Analysis of the “no drinking” restriction by location of the case showed statistically significant differences among the communities. The restriction was most common in communities with larger numbers of Native residents. Thus, forty percent of Anchorage cases and 47% of Fairbanks cases had this restriction, as compared to 92% of Bethel cases, 63% of Nome cases and 66% of Juneau cases.<sup>11</sup>

**Movement Restrictions.** 51% of the Native defendants, 18% of the Caucasian defendants and 13% of the African-American defendants had movement restrictions (e.g., do not contact victim, do not go to place where alcohol is served) imposed on them by the court. For violent offenses, judges applied movement restrictions to 67% of Native defendants, 50% of African-American defendants,<sup>12</sup> and 39% of the Caucasian defendants. For property offenses, the movement restrictions applied to 38% of the Native defendants, none of the African-American defendants, and 10% of the Caucasian defendants. Again, the data collectors hypothesized that the differences could be due to limitations on the choices

<sup>9</sup> About 9% of Juneau defendants were ordered to attend anger management.

<sup>10</sup> Recall that 85% of the Bethel cases involved defendants who lived outside of Bethel.

<sup>11</sup> Significant at .00023.

<sup>12</sup> Again, this represents only two defendants to whom the restriction applied, of a total of four.

available to judges for treatment programs; if appropriate treatment programs were not available, the judge might impose probation conditions restricting movement or drinking.

The movement restrictions appeared to be related to the offense of conviction. While 57% of the defendants originally charged with a violent offense had a movement restriction, only 21% of those charged with a property offense had movement restrictions.<sup>13</sup>

These data should be interpreted in the context of the earlier variable reported, reason for current probation revocation petition. Nearly all of the probation revocations in this group were granted, so we cannot use the data to test whether the presence of certain types of conditions made a difference in the likelihood that one group or another would get probation revoked. Within the group studied, staff cross-tabulated type of offense, by ethnic group, and by reason for the current probation revocation.<sup>14</sup> Few large differences appeared.

Across the board, defendants originally convicted of a property offense were more likely than those convicted of a violent offense to have committed a new felony or misdemeanor. Caucasian defendants were somewhat more likely than Native defendants to have failed to comply with treatment conditions, but the difference was not statistically significant. Offenders convicted of violent crimes were less likely to have complied with treatment conditions than those convicted of property offenses where there was no new criminal offense. Caucasian and Native defendants were more likely than African-American defendants to have the primary reason for the revocation listed as “used alcohol or drugs.”<sup>15</sup> The data available in this study, then, suggest that even though some types of conditions may be imposed more frequently on one ethnic group than another, the differences may not affect the likelihood of a certain type of probation violation.

## ***V. Disposition of Petition to Revoke Probation***

Virtually all of the probation revocation petitions in this group of cases were granted by the court. At sentencing on the probation revocation, the judge could have imposed additional time to serve, could have continued the probation supervision, could have imposed additional conditions of probation, could have combined these actions, or could have taken no new action. For the majority of defendants, the judge imposed additional incarceration (68% of Caucasian defendants, 81% of African-American defendants, and 82% of Native defendants; not statistically significant). For a small number of defendants, judges required residential treatment as a condition of the probation revocation. In fourteen cases, the residential

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<sup>13</sup> Significant at .00003.

<sup>14</sup> Probation officers may have listed more than one reason. Staff recorded the most serious reason listed, as shown on the data coding form, Attachment A.

<sup>15</sup> Twenty per cent of Natives were revoked for alcohol/drug use, compared to six per cent of African-Americans and 14% of Caucasians.

treatment appeared to be in lieu of incarceration, and in seven cases, it appeared to be in addition to incarceration.

As the final step in the analysis, staff re-coded the number of months of incarceration imposed after the probation revocation into five categories (none, 1 - 6 months, 7 - 12 months, 13 - 24 months, and over 24 months), and cross-tabulated the number of months against the offense of conviction and ethnic background of the defendant. Among ethnic groups and types of offenses, some differences appeared, but none tested as statistically significant. While 13% of Native defendants received no incarceration, 19% of African-American defendants did not serve additional time after probation revocation, and 27% of Caucasian defendants did not. Native defendants (28%) appeared more likely to receive short terms of incarceration (1 to 6 months) than did African-Americans (13%) or Caucasians (16%). Very few notable differences appeared in the overall analysis by type of offense.

Only one table showed statistically significant differences within an ethnic group. Native defendants convicted of violent offenses were less likely than Native defendants convicted of property offenses to have additional incarceration imposed after a probation revocation. Among Caucasian defendants, the opposite pattern occurred. Those convicted of property offenses were less likely to have incarceration after a probation revocation (32%) than those convicted of a violent offense (17%).

## **VI. Conclusion**

This study described a group of 154 defendants for whom probation revocation petitions were filed in 1995 and 1996. Over half had a high school education or better and about two-thirds were single. Most (73%) had a prior record of felonies or misdemeanors, but fewer than half (45%) had a record of prior probation revocations.

The most significant differences among groups appeared in the offense of original conviction and the conditions of the original probation. Native defendants (52%) were significantly more likely to have been convicted of a violent offense than were African-American defendants (25%) or Caucasian defendants (29%). African-American defendants were significantly more likely to have anger management imposed as a condition of probation, while Native defendants were significantly more likely to have a “no drinking” or a “movement” restriction imposed. One hypothesis to explain this relationship is that judges used these conditions of probation instead of sentencing Native defendants to treatment programs in villages, where no treatment programs are available.

The study did not support the hypothesis that petitions to revoke probation are filed against minority defendants for different reasons than they are filed against Caucasian defendants. Nearly half of the probation revocation petitions listed a new offense (most likely a misdemeanor) as the reason for the petition. Nor did the study support the hypothesis that judges imposed harsher sentences against minority defendants who violated probation than against their Caucasian counterparts. Judges imposed additional incarceration after the

probation revocation for most defendants, along with some residential treatment requirements and other conditions.

**APPENDIX F**

**DISTRIBUTION OF JUSTICE SYSTEM RESOURCES  
BY LOCATION**

**APPENDIX F**  
**Alaska Distribution of Justice System Resources**  
**December 1996**

	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
<b>First Judicial District</b>											
<b>Haines Borough (2,310 Total Population) 746 Living in Remainder of Census Area</b>											
Covenant Life CDP	63										
Haines	1,120	X	X	X							
Chilkat Indian Village ☉											
Chilkoot ☉	243										
Lutak	50										
Mosquito Lake	88										
<b>Juneau Borough (29,228 Total Population)</b>											
Douglas Indian Association ☉											
<b>Juneau*</b>	29,228	X	X	X	X	X	X	X	X	X	
<b>Ketchikan Gateway Borough (15,082 Total Population) 6,131 Living in Remainder of Census Area</b>											
<b>Ketchikan* ☉</b>	8,557	X	X	X	X	X	X	X	X		
Saxman ☉	394		VPSO								
<b>Prince of Wales - Outer Ketchikan Census Area (6,934 Total Population) 472 Living in Remainder of Census Area</b>											
Annette CDP	43	MST	X								

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 CDP - Census Designated Place  
 ☉ Native entities within the state of Alaska recognized and eligible to receive services from the United States Bureau of Indian Affairs.  
 V - Vacant magistrate position

TM - Traveling magistrate  
 MST - Magistrate serves telephonically  
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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Coffman Cove	254	MST									Cost (129)
<b>Craig</b> ☉	1,946	X	X								
Edna Bay CDP	79	MST									Cost (48)
Hollis CDP	106	MST									
Hydaburg ☉	406	TM	VPSO								
Hyder CDP	138										Cost (71)
<b>Kasaan</b> ☉	41	MST	VPSO								Cost (15)
<b>Klawock</b> ☉	759	MST	X	X							
Labouchere Bay CDP	9										
<b>Metlakatla CDP</b> ☉	1,540	MST	X								Cost (951)
Meyers Chuck CDP	35										Cost (34)
Naukati Bay CDP	147	MST									
Point Baker CDP	62	MST									Cost (76)
Polk Inlet CDP	69										
Port Alice CDP	22										
Port Protection CDP	64	MST									
Thorne Bay	650	TM	VPSO								
Whale Pass CDP	92	MST									Cost (10)
<b>Skagway - Hoonah - Angoon Census Area (3,816 Total Population) 141 Living in Remainder of Census Area</b>											

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Angoon ☉	601	X	X VPSO								
Cube Cove CDP	166	MST									Distance (2)
Elfin Cove CDP	48										Cost (46)
Game Creek	76										
Gustavus	328										Cost (244)
Hobart Bay CDP	58	MST									Distance (4)
Hoonah ☉	903	X	X								
Klukwan CDP ☉	165	MST									
<i>Neets Bay</i>											Distance (2)
Pelican	209	X	VPSO								
Skagway ☉	811	X	X								
Tenakee Springs	107		VPSO								Cost (88)
<i>Water Fall</i>											Distance (1)
Whitestone Logging Camp CDP	203										
<b>Sitka Borough (9,194 Total Population)</b>											
<b>Sitka* ☉</b>	9,194	X	X	X	X	X		X	X		
<b>Wrangell - Petersburg Census Area (7,303 Total Population) 322 Living in Remainder of Census Area</b>											
Kake ☉	696	X	X VPSO								

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Alaska Court Advisory Committee on Fairness and Access - December 1996



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Kupreanof	24	MST	X								
<b>Petersburg*</b> ☉	3,350	X	X	X							
Port Alexander	98										
Rowan Bay CDP	55										
<b>Wrangell*</b> ☉	2,758	X	X								
<b>Yakutat Borough (801 Total Population)</b>											
Yakutat ☉	801	X	X VPSO								
<b>Second Judicial District</b>											
<b>Nome Census Area (8,991 Total Population) 77 Living in Remainder of Census Area</b>											
Brevig Mission ☉	265	TM	VPSO								Phantom Court (122)
Council ☉	8										Distance (3)
Diomedede ☉	154	TM	VPSO								Phantom Court (58)
Elim ☉	281	TM	VPSO								Phantom Court (145)
Gambell ☉	628	X	X								
Golovin ☉	148	TM	VPSO								Phantom Court (82)
King Island Native Community ☉											
Koyuk ☉	258	TM	VPSO								
Native Village of Mary's Igloo ☉											

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<b>Nome*</b> ☉	3,576	X	X	X	X	X	X	X	X		
Port Clarence CDP	24										
St. Michael ☉	332	TM	VPSO								Phantom Court (158)
Savoonga ☉	604	TM	VPSO								
Shaktolik ☉	199	TM	X								Phantom Court (132)
Shishmaref ☉	536	TM	VPSO								Distance (301)
Solomon ☉	6										Phantom Court (2)
Stebbins ☉	475	TM	VPSO								Phantom Court (225)
Teller ☉	274		VPSO								Phantom Court (144)
Unalakleet ☉	764	X	VPSO								
Wales ☉	173	TM	VPSO								Phantom Court (84)
White Mountain ☉	209	TM	VPSO								Phantom Court (118)
<b>Northwest Arctic Borough (6,694 Total Population) 130 Living in Remainder of Census Area</b>											
Ambler ☉	309	X	VPSO								
Buckland ☉	415	MST	VPSO								Phantom Court (174)
Deering ☉	153		VPSO								Phantom Court (88)
Kiana ☉	417	TM/V	X								
Kivalina ☉	349		VPSO								
Kobuk ☉	80	MST	VPSO								
<b>Kotzebue*</b> CDP ☉	2,947	X	X	X	X	X	X	X	X		

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Noatak ☉	418		VPSO								
Noorvik ☉	586	MST	VPSO								
Selawik ☉	648	MST	VPSO								
Shungnak ☉	242	MST	VPSO								
<b>North Slope Borough (6,989 Total Population) 113 Living in Remainder of Census Area</b>											
Anaktuvuk Pass ☉	283	MST	PSO								Distance (148)
Atqasuk	233	MST	PSO								Distance (114)
<b>Barrow*</b> ☉	4,234	X	X	X	X	X	X	X	X		
Deadhorse CDP	25										
Inupiat Community Arctic Slope☉											
Kaktovik ☉	210	MST	PSO								Phantom Court (136)
Nuiqsut ☉	410	MST	PSO								Distance (180)
Point Hope ☉	723	MST	PSO								
Point Lay CDP ☉	178	MST	PSO								Distance (97)
Prudhoe Bay CDP	47		PSO								Distance (37)
Wainwright ☉	533	MST	PSO								
<b>Third Judicial District</b>											
<b>Aleutians East (2,283 Total Population) 19 Living in Remainder of Census Area</b>											
Akutan ☉	436	MST	VPSO								

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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Belkofski Native Village ☉											
Cold Bay	107	MST		X							
False Pass ☉	73	MST	VPSO								
King Cove ☉	716	MST	X								
Nelson Lagoon ☉ CDP	88	MST	VPSO								
Sand Point ☉	844	MST/V	X VPSO								
<b>Aleutians West (Total Population 6,086) 17 Living in Remainder of Census Area</b>											
<i>Adak Station (closed)</i>	874										
Atka ☉	103	MST	VPSO								Distance (48)
Attu CG Station	16										
Eareckson AFS	48										
Dutch Harbor			X	X							
Nikolski CDP ☉	27	MST									Distance (20)
St. George ☉	151		VPSO								Distance (94)
St. Paul ☉	767	V	X								
Unalaska ☉	4,083	X	X								
<b>Anchorage Borough (257,780)</b>											

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<b>Anchorage*</b> (Bor.)	257,780	X	X	X	X	X	X	X	X	X	
Eklutna ☉	(439)		APD								
Girdwood			APD	X							
<b>Bristol Bay Borough (1,305 Total Population) 3 Living in Remainder of Census Area</b>											
King Salmon CDP	539	MST	X	X							
Naknek CDP ☉	617	X	X								
South Naknek CDP ☉	146	MST									
<b>Dillingham Census Area (4,421 Total Population) 32 Living in Remainder of Census Area</b>											
Aleknagik ☉	182		X								
Clarks Point ☉	63	MST	VPSO								
<b>Dillingham*</b> ☉	2,243	X	X	X	X	X		X	X		
Ekuk ☉	3										
Ekwok ☉	86	MST	VPSO								Cost (76)
Koliganek CDP ☉	208	MST	VPSO								Distance (109)
Manokotak ☉	402	MST	VPSO								
New Stuyahok ☉	421	MST	VPSO								Cost (247)
Portage Creek ☉	6										
Togiak ☉	700	MST	X VPSO								

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Twin Hills CDP ☉	75										Cost (39)
<b>Kenai Peninsula Borough (46,759 Total Population) 8,388 Living in Remainder of Census Area</b>											
Anchor Point CDP	1,137										
Beluga											Distance (10)
Clam Gulch CDP	94										
Cohoe CDP	583										
Cooper Landing CDP	283			X							Cost (241)
Crown Point CDP	91			X							
Fox River CDP	423										
Fritz Creek CDP	1,740										Distance (199)
Grouse Creek	640										
Halibut Cove CDP	78										Cost (37)
Happy Valley CDP	388										
<b>Homer*</b>	3,836	X	X	X							
Hope CDP	170										Distance ( 120)
Jakolof Bay CDP	32										
Kachemak	404										
Kalifonsky CDP	327										
Kasilof CDP	497										

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<b>Kenai*</b> ☉	7,006	X	X	X	X	X		X	X		
Moose Pass CDP	119										
Nanwalek CDP ☉	162		VPSO								Cost (84)
Nikiski CDP	3,087										
Nikolaevsk CDP	501										
Ninilchik CDP ☉	597										Cost (546)
Port Graham CDP ☉	170		VPSO								Cost (109)
Primrose CDP	62										
Ridgeway CDP	2,312										
Salamatof CDP ☉	1,090										
Seldovia ☉	415		X								
Seward	3,034	X	X	X							
Soldotna	3,990		X	X							
Sterling CDP	4,949										
Tyonek CDP ☉	154	MST	VPSO								Distance (121)
<b>Kodiak Island Borough (15,400 Total Population) 3,829 Living in Remainder of Census Area</b>											
Afognak ☉											
Akhiok☉	80	MST	VPSO VPO								Cost (44)

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Chiniak CDP	83										Distance ( 61)
Karluk CDP ☉	58	MST									
<b>Kodiak*</b>	7,620	X	X	X	X	X		X	X		
Kodiak Station CDP	2,049										
Larsen Bay ☉	130	MST	VPSO								Cost (94)
Lesnoi Village (Woody Island)☉											
Old Harbor ☉	310	MST	VPSO								Cost (195)
Ouzinkie ☉	259	MST	VPSO								Cost (161)
Port Lions ☉	233	MST	VPSO								Cost (161)
Women's Bay CDP	749										
<b>Lake and Peninsula Borough (1,839 Total Population) 44 Living in Remainder of Census Area</b>											
Chignik ☉	141	MST	VPSO VPO								Distance (79)
Chignik Lagoon CDP ☉	65	MST									Distance (51)
Chignik Lake CDP☉	154	MST									Distance (83)
Egegik ☉	143	MST	VPSO								
Igiugig CDP ☉	50										Distance ( 24)
Iliamna CDP ☉	99	MST									Distance (164)
Ivanof Bay CDP ☉	28										Distance (10)

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Kokhonak CDP *	161		VPSO								Distance (94)
Levelock CDP *	116		VPSO								
Newhalen *	170	MST	VPSO								
Nondalton *	237		VPSO								Distance (144)
Pedro Bay CDP *	45	MST	VPSO								Distance (41)
Perryville CDP *	104										Distance (68)
Pilot Point *	74	MST	VPSO								Distance (62)
Port Alsworth CDP	77										Distance (52)
Port Heiden *	126		VPSO								Distance (80)
Ugashik *	5										
<b>Matanuska-Susitna Borough (50,601 Total Population) 28,508 Living in Remainder of Census Area</b>											
Alexander Creek	30										Distance (16)
Big Lake CDP	2,057			X							
Butte CDP	2,528										
Chase CDP	50										
Chickaloon CDP *	200										
Houston	956										
Knik CDP *	462										
Lazy Mountain CDP	1,038										

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Meadow Lakes CDP	4,576										
<b>Palmer*</b>	4,141	X	X	X	X	X		X	X		
Skwentna CDP	90										
Sutton CDP	328										
Talkeetna CDP	330			X							Distance (725)
Trapper Creek CDP	304										
Wasilla	4,635		X								
Willow CDP	368										Distance (929)
<b>Valdez-Cordova Census Area (10,657 Total Population) 738 Living in Remainder of Census Area</b>											
Chenega Bay CDP ☉	96		VPSO								Distance (49)
Chistochina CDP ☉	58	MST									
Chitina CDP ☉	64	MST									
Copper Center CDP ☉	494	MST									
Cordova ☉	2,568	X	X	X							
Gakona☉	90	MST									
Glennallen CDP	493	X		X							
Gulkana CDP ☉	100	MST									
Kenny Lake CDP	460										

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Data from 1995 Census and 1993 Solicitor's list of recognized tribes

Alaska Court Advisory Committee on Fairness and Access - December 1996

	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
McCarthy CDP	31										Distance (7)
Mendeltna CDP	57										
Mentasta Lake CDP☉	115	MST									
Paxson CDP	33										Distance (150)
Slana CDP	61										Distance (118)
Tatitlek ☉	124		VPSO								
Tazlina ☉	280	MST									
Tonsina	42										
<b>Valdez</b>	4,469	X	X	X							
Whittier	284	V	X								
<b>Fourth Judicial District</b>											
<b>Bethel Census Area (15,367 Total Population) 86 Living in Remainder of Census Area</b>											
Akiachak ☉	542	MST	VPSO								
Akiak ☉	320	MST	VPSO VPO								
Aniak ☉	581	X	VPSO	X							
Atmautluak ☉	279	MST	VPSO								
<b>Bethel* ☉</b>	5,195	X	X	X	X	X	X	X	X		
Chuathbaluk ☉	125	MST	VPSO								

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Chefornak ☉	371	MST	VPSO								Phantom Court (186)
Crooked Creek CDP ☉	138	MST	VPSO								Cost (61)
Eek ☉	283	MST	VPSO								Distance (166)
Flat											Distance (4)
Goodnews Bay ☉	253	MST	VPSO								Distance (155)
Kasigluk ☉	506	MST	VPSO								
Kipnuk CDP ☉	544	MST	VPSO								Distance (311)
Kongiganak CDP ☉	336	MST	VPSO								Distance (174)
Kwethluk ☉	649	MST	X								
Kwigillingok CDP ☉	326	MST	VPSO								
Lime Village CDP ☉	61	MST	VPSO								Distance (2)
Lower Kalskag ☉	308	MST	VPSO								
Mekoryuk ☉	212	MST	VPSO								
Napaimute ☉	3										
Napakiak ☉	326	MST	VPSO								
Napaskiak ☉	404	MST	VPSO								
Newtok ☉	275	MST	VPSO								Phantom Court (145)
Nightmute ☉	189	MST	VPSO								Phantom Court (100)
Nunapitchuk ☉	456	MST	VPSO								

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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Oscarville CDP	42	MST	VPSO								
Platinum	44	MST	VPSO								Distance (29)
Quinhagak	549	MST/V	X VPSO								
Red Devil CDP	61	MST	VPSO								Distance (32)
Sleetmute CDP	116	MST	VPSO								Distance (89)
Stony River CDP	44	MST	VPSO								Distance (78)
Tooksook Bay	485	MST	VPSO								Phantom Court (287)
Tuluksak	380	MST	VPSO								Cost (188)
Tuntutuliak CDP	340	MST	VPSO								Distance (1)
Tununak	354	MST	X								
Upper Kalskag	184	MST	VPSO								
<b>Denali Borough (1,972 Total Population) 204 Living in Remainder of Census Area</b>											
Anderson	626										
Cantwell CDP	145			X							
Ferry CDP	69										
Healy CDP	605	X									
Lignite CDP	123										
McKinley Park CDP	200										
<b>Fairbanks North Star Borough (84,380 Total Population) 30,297 Living in Remainder of Census Area</b>											

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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
College CDP	12,548										
Eielson	4,373										
Ester CDP	211										
<b>Fairbanks*</b>	32,655	X	X	X	X	X	X	X	X	X	
Fox CDP	310										
Harding Lake CDP	29										
Moose Creek CDP	691										
North Pole	1,649		X								
Pleasant Valley CDP	579										
Salcha CDP	384										
Two Rivers CDP	654										
<b>Southeast Fairbanks Census Area (6,522 Total Population) 2,073 Living in Remainder of Census Area</b>											
Alcan CDP	25										
Big Delta CDP	503										
Delta Junction	828	X		X							
Dot Lake CDP ☉	78	MST									Distance (50)
Dry Creek CDP	104										
Eagle	139	MST	VPSO								
Eagle Village CDP ☉	29	MST									

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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Fort Greely CDP	945										
Healy Lake CDP ☉	60	MST									
Northway CDP	133	MST		X							
Northway Junction CDP	113	MST									
Northway Village CDP ☉	123	MST									
Tanacross CDP☉	88	MST									
Tetlin CDP ☉	77	MST	VPSO								
Tok	1,204	X		X							
<b>Wade Hampton Census Area (6,670 Total Population) 18 Living in Remainder of Census Area</b>											
Alakanuk ☉	604	TM	VPSO								
Bill Moore's Slough ☉											
Chevak ☉	682	X	VPSO								
Emmonak ☉	762	X	VPSO								
Hooper Bay ☉	996	TM	X								
Kotlik ☉	543	MST	VPSO								
Marshall ☉	298	TM	VPSO								Distance (-)
Mountain Village ☉	758	TM	VPSO								
Pilot Station ☉	523	TM	VPSO								Cost(-)

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Alaska Court Advisory Committee on Fairness and Access - December 1996

	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Pitkas Point ☉	147	MST	VPSO								
Russian Mission ☉	295	MST	VPSO								
St Mary's ☉	479	X	X	X							
Scammon Bay ☉	434	TM	VPSO								
Sheldon Point ☉	131	MST	VPSO								
<b>Yukon-Koyukuk Census Area (6,516 Total Population) 536 Living in Remainder of Census Area</b>											
Allakaket ☉	147		VPSO								Phantom Court (115)
Anvik ☉	96	MST	VPSO								Distance (61)
Arctic Village CDP ☉	132										Distance (84)
Beaver ☉	103		VPSO								Cost (72)
Bettles											Phantom Court (56)
Birch Creek ☉	39		VPSO								Distance (2)
Central	58										
Chalkyitsik ☉	83										Cost (51)
Circle ☉	94										Cost (63)
Circle Hot Springs	32										
Evansville ☉	64										Phantom Court (-)
Ft. Yukon ☉	597	X	X								
Galena ☉	527	X	X	X							Phantom Court (326)

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	1995 Census	Magistrate	Police	Troopers	District Attorney	Public Defender	Legal Services	Youth Probation Office	Adult Probation Office	Office of Public Advocacy	Excluded Villages (Court Jury Count)
Grayling *	212	MST	VPSO								Distance (111)
Holy Cross *	289	MST	VPSO								Cost (148)
Hughes *	62		VPSO								Distance (50)
Huslia *	255		VPSO								Cost (146)
Kaltag *	234		VPSO								Cost (137)
Koyukuk *	125		VPSO								Phantom Court, Cost (78)
Lake Minchumina CDP	36										Distance (26)
Manley Hot Springs CDP *	99										Phantom Court (108)
McGrath *	479	TM	VPSO								
Minto CDP *	245		VPSO								Distance (180)
Nenana *	361	X	X	X							
Nikolai *	125										
Nulato *	359		VPSO								Cost (203)
Rampart *	77		VPSO								Phantom Court (52)
Ruby *	187		VPSO								Phantom Court, Cost (123)
Shageluk CDP *	144	MST	VPSO								Distance (45)
Stevens Village CDP *	95		VPSO								Phantom Court (62)

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Takotna ☉	51		VPSO								
Tanana ☉	312	X	X								
Telida ☉	9										Distance (37)
Venetie ☉	224										Cost (154)
Wiseman	28										Distance (193)
<b>Total Population of Locations With Services in this Chart</b>	<b>534,221</b>										
<b>Total Population in State, 1995</b>	<b>615,900</b>										

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**APPENDIX G**

**ACCESS TO JUSTICE SERVICES  
BY JUDICIAL DISTRICT**

## APPENDIX G

### ACCESS TO JUSTICE SERVICES BY JUDICIAL DISTRICT

Judicial District	Full Service <sup>1</sup>	Partial Service <sup>2</sup>	Magistrate Only <sup>3</sup>	Law Enforcement Only Remote Area <sup>4</sup>	No Services Remote Area <sup>5</sup>	Population not in Village or Community <sup>6</sup>	Total Population of Judicial District <sup>7</sup>
First	47,373 (63%)	6,108 (8%)	9,387 (13%)	1,714 (2%)	2,274 (3%)	7,812 (10%)	74,668
Second	10,763 (47%)	0 --	5,752 (25%)	5,782 (26%)	57 --	320 (1%)	22,674
Third	317,373 (80%)	12,898 (3%)	14,341 (4%)	8,795 (2%)	2,146 (1%)	41,578 (10%)	397,131
Fourth	59,278 (49%)	0 --	14,443 (12%)	13,407 (11%)	1,085 (1%)	33,214 (27%)	121,427
<b>Total</b>	<b>434,787 (71%)</b>	<b>19,006 (3%)</b>	<b>43,923 (7%)</b>	<b>26,698 (5%)</b>	<b>5,562 (1%)</b>	<b>82,924 (13%)</b>	<b>615,900</b>

<sup>1</sup> Full service locations are superior court locations with a judge or judges, most attorney services (district attorney, public defender, Office of Public Advocacy, Attorney General and Alaska Legal Services), probation officers, and local law enforcement. There are 13 communities in this category.

<sup>2</sup> The four communities in this category are Wrangell and Petersburg in the First Judicial District, which are regularly served by a traveling superior court judge, and Valdez and Homer in the Third Judicial District which have sitting district court judges. There are no public attorneys or probation officers in these locations.

<sup>3</sup> Approximately 49 communities have magistrates who live there or who travel there on a regular basis. Magistrate locations always have a local law enforcement presence.

<sup>4</sup> Remote villages were identified as those not on a road system or more than 50 miles from the nearest magistrate location or court. Villages to which magistrates indicated they traveled routinely were not considered remote. Local law enforcement includes Village Public Safety Officers, Village Peace Officers, municipal police, and local State Troopers. There are no local court system services in these areas.

<sup>5</sup> These villages have no local justice system services.

<sup>6</sup> Every person who did not live in a census designated place was included in this category. For some census areas (e.g., Mat-Su Borough, Fairbanks, North Star Borough) a significant percentage of the population lived outside any census designated place. We did not have enough information to determine how many of those census area residents were remote from court services, by our definition.

<sup>7</sup> These population figures are from the Alaska Department of Labor, 1995 Census Estimates.



**APPENDIX H**

**RATES OF INCARCERATION  
BY CRIME CATEGORY AND ETHNICITY**

## APPENDIX H

### RATES OF INCARCERATION BY CRIME CATEGORY AND ETHNICITY

Rates of Incarceration for Inmates - Per 100,000 Residents by Crime Categories and Ethnicity									
Ethnicity	Sex Offenses	Other Violent Offenses	Property Offenses	Alcohol Offenses	Drug Offenses	Parole & Probation Violations	Other Offenses	Total	Population Estimates
White	56	127	42	25	19	52	48	367	415,492
Native American	315	406	97	57	22	209	126	1,232	85,698
Black	165	748	160	36	343	428	249	2,129	22,451
Asian/Pacific Islander	20	157	14	0	35	41	20	289	19,728
Other/Unknown	165	509	45	90	420	120	315	1,663	6,874
All Races	101	201	54	30	38	92	71	587	550,043

Number of Alaska Inmates by Crime Categories and Ethnicity								
Ethnicity	Sex Offenses	Other Violent Offenses	Property Offenses	Alcohol Offenses	Drug Offenses	Parole & Probation Violations	Other Offenses	Total
White	232	527	173	102	77	214	201	1,526
Native American	270	348	83	49	19	179	108	1,056
Black	37	168	36	8	77	96	56	478
Asian/Pacific Islander	4	31	3	0	7	8	4	57
Other/Unknown	11	34	3	6	28	8	21	111
All Races	554	1,108	298	165	208	505	390	3,228

The tables showing rates of incarceration per 100,000 population and numbers of inmates were provided by the Alaska Department of Corrections, based on its count of inmates on December 31, 1996. The Department of Corrections arrived at its rates of incarceration using Alaska population estimates from the Alaska Department of Labor, Alaska Population Overview, 1990 Census and Estimates.

The 1990 U.S. census categorizes the Alaska population by race (White, Native American, Black, Asian Pacific Island, and Other/unknown), noting that persons of Hispanic origin may be of any race. It also takes a separate count of Hispanics, counting 17,803 persons of Hispanic origin in Alaska in 1990.

The Alaska Department of Corrections does not have a systematic way of categorizing persons of Hispanic origin. Some are counted as white or black based on their appearance. Those recognized as Hispanic (based on their surname, language or other response to the interview questions) are categorized under "Other/unknown."

**APPENDIX I**  
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