Alaska Judicial Council

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1973 SENTENCES OF FIVE YEARS OR GREATER IN LENGTH

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May, 1975

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TABLES

The first sentencing report prepared for the Judicial Council[1] reported that 8% of all 1973 convicted felony defendants received sentences of 5 years or greater.[2] This paper discusses that group of defendants and the sentences meted out to them with two separate and distinct purposes.

The first aim of this report is to describe the criminal circumstances and judicial reasoning that gave rise to these sentences, with special consideration to the Supreme Court's sentencing guidelines, and the Court's recent pronouncement that a sentence should exceed five years only in rare cases. A second reason for studying these sentences derives from the finding of the earlier report that 33% of the defendants receiving such sentences were Black,[3] whereas Blacks composed less that 6% of the entire convicted defendant population.[4] This report will attempt to provide a basis for determining whether the apparent racial disparity in sentencing was in fact justified.

In recent years the Supreme Court has attempted to guide trial court sentencing through its exercise of appellate review over sentences. Although the majority of sentence appeals that have come to the court since the law was passed in 1969 have been affirmed,[5] the court has commented many times on sentencing in its decisions, setting forth criteria that trial judges are to adhere to in selecting future sentences. Recently the court has adopted the American Bar Association's standard that maximum sentences should be given only to "the

worst type of offender" and that sentences greater than five years ought to be given only for "particularly serious offenses, dangerous offenders and professional criminals."[6] The court has expressed the view that violent crimes involving physical injury to innocent people are to be regarded as the most serious offenses.[7]

At the time the first report was compiled, 40 defendants composed the figure of 8% of all convicted defendants who received sentences of 5 years or greater. Since that date several previously open cases have been closed, and 2 of the defendants in those cases received sentences of 5 years or greater. They have been added to the group of persons discussed, which now includes 42 persons.

Thirty of the 42 sentences discussed in this report are from the Anchorage superior court, 11 from Fairbanks, and one from Juneau. Because any attempted statewide picture would be heavily colored by the Anchorage sentencings, descriptions of the sentencings are given area by area. Moreover, the figure indicating possible sentencing discrimination against Blacks derives primarily from Anchorage figures that heavily weighted the statewide computation. (In Anchorage 40% of all convicted Blacks received sentences of 5 years or greater, whereas in Fairbanks the percentage of Blacks receiving such sentences was not significantly different from the percentage of Caucasians or Native Alaskans;[8] in Juneau no Blacks even were convicted.)[9] Thus it seems most fair to examine what lies behind these sentences on an individual area basis.

The report begins with several tables summarizing facts about the defendants, the circumstances of their crimes, and their sentences. Following this overview, descriptions of each defendant's personal history, case history, and sentencing proceeding are given, complete with sentencing recommendations by the attorneys involved and remarks made by the sentencing judge. (These detailed descriptions are given only for Anchorage defendants, however, since it was not possible to research Fairbanks cases in detail.)

In the narratives, names of judges and attorneys involved in the proceedings are used (although names of defendants are not). Although some judges' and attorneys' names appear more frequently than others, it must be remembered that this phenomenon does not necessarily indicate that certain judges or prosecutors recommended long sentences more often, or that certain defense attorneys were less effective in urging short sentences; but it may merely reflect the facts that some judges spend more time on the criminal bench than others, or preside over more serious cases, or that certain attorneys are assigned to the more serious cases by their offices.

Following the narratives, analysis and conclusions are set forth.

Part I - Age, Race, Sex, Prior Record, Crime, Lenth of Sentence, Type of Sentencing, and Sentencing Judge for Defendantns Receiving Sentences of Five Years or Greater in 1973

A. Fairbanks

In Fairbanks all 11 defendants receiving sentences of 5 years or greater were males. Table I below shows their age, race, prior record, the crime of which they were convicted and its circumstances, the length of their sentence, whether or not their sentence was negotiated, and who recommended the sentence, (if it was someone other than the judge).

It can be seen that over half the defendants (55%) were only 25 years old or younger. Six were Caucasian, 4 were Native Alaskans, and the race of one was not determined.[10] Three of the Native males had cases originating in Barrow, not Fairbanks, but their cases were transferred to Fairbanks for some or all proceedings. (One did have a trial in Barrow.) The fourth Native male was from Fairbanks.

Four of the defendants (36%) had no prior criminal records or had a prior record of a few misdemeanors only; one had a long misdemeanor record. Four had prior felony records, two of which were quite lengthy. (On the chart, prior records are described in terms of the longest jail term received by a defendant in the past, and whether he had previously committed offenses similar in kind to his 1973 offense.)

Only 5 of the defendants were charged with major felonies as defined at common law (murder, rape, manslaughter, robbery, sodomy, larcenty, arson, mayhem, and burglary). However, several other offenses with which these defendants were charged such as "carrying a weapon during a felony" or "sale of

TABLE I

DEFENDANTS RECEIVING SENTENCES GREATER THAN FIVE YEARS - FAIRBANKS

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
CAUC.	21	No prior	Rape*	Broke into house; forced intercourse with 18-year old girl; had knife	8 years	Open	Hepp	D.A.	--
	21	Short misdemeanor record; never been sentenced to jail	Rape	Kidnapped & raped girl age 14 (also charged with kidnap & assault with intent to rob, dismissed as part of plea bargain)	5 years (10 years, 5 suspended)	Open	Hepp	D.O.C. (Presentence report)	--
	38	prior record of 3-4 felonies; had committed offenses similar in violence more than once; had never been sentenced to more than 90 days	five counts of assault with a deadly weapon	Held gun to heads of 4 victims, shot 5th (a state trooper)	10 years (5 years suspended on 4 of counts)	Negotiated	Taylor	--	--
	Unk.	Unk.	Carrying weapon during burg.	Broke into pharmacy carrying gun; on probation from sale of marijuana	10 years	Negotiated	Hepp	--	Court recommended drug treatment at Family House

* Conviction & sentence appealed by defendant

TABLE I - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
CAUC. Cont'd	44	long prior record (greater than 4 felonies); had committed similar offenses more than once; had been sentenced to more than 5 years in past	Passing forged check	Check for $106.50	5 years	Open	Taylor	D.A.	--
	17-1/2 **	No prior	Carrying weapon during burg.	Broke into pharmacy carrying gun	5 years (10 years, 5 suspended)	Open	Hepp	Below recommendation of D.A.	—
ALASKAN NATIVE	21	1-2 felonies; had committed similar offenses more than once; never sentenced to more than one year	Burglary 2 counts; Larceny 2 counts	All offenses committed at same store in Barrow; defendant on probation from previous burglary	5 years	Negotiated	Sanders	--	--
	19	No prior	Manslaughter	Beat & killed girl during attempted rape in Barrow	10 years	Negotiated	Sanders	--	--

** Defendant's juvenile status waived by judge.

TABLE I - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
ALASKAN NATIVE Cont'd	20	Long misdemeanor and short felony record; had committed similar offenses in past; never sentenced to more than 90 days	Hard drug sales (2 counts)	Defendant Charged with 6 counts of heroin sale and 2 of marijuana (others dismissed)	10 years	Open	Taylor	D.A.	--
	37	Long misdemeanor record; never been sentenced to more than 1 year	Lewd & lascivious acts toward children	Crime committed against defendant's 12-year old daughter in Barrow	5 years	Open	Carlson	Against recommendation of D.A. and D.O.C.	Court recommended psychiatric treatment
RACE UNKNOWN ≠	25	Short misdemeanor record	2nd degree murder, 2 counts	Entered house & shot 2 men in Cantwell	30 years (each count)	Negotiated (agreed defendant to serve 1/2 before parole elig.)	Taylor	--	Court recommended psychiatric & alcohol treatment

≠ For one Fairbanks defendant, race was not recorded in the Public Safety files, where race was researched.

heroin" are considered major felony offenses under Alaska law, although the common law did not define them as specific crimes. Only one of the offenses was a "less serious" felony--passing a forged check worth $106.00. Five of the 11 defendants were convicted of offenses that involved harm to victims.

Five of the sentences were "negotiated". Of the remaining 6, a district attorney's recommendation was followed 3 times, a sentence harsher than the district attorney's recommendation was meted out twice, and a more lenient sentence was given once. Out of all 11 sentences, the judge recommended treatment for psychological problems in only 2 of them, and treatment of a drug problem only once; alcohol treatment was recommended only once also (for a defendant who received one of the recommendations for psychological counseling).

Only 2 of the 3 Fairbanks, Superior Court judges were responsible for these sentences, although all three sat on the criminal bench during 1973 (and 1974, when many of these sentencings for 1973 cases occurred). The 2 other judges who sentenced in Fairbanks were "visiting judges" from other judicial districts.

Seven of these 11 sentences (64%) were sentences greater than 5 years, 6 of these 7 (55%) being sentences of 10 years or greater.

One of the defendants appealed his conviction and sentence, and one applied for executive clemency. The first defendant's conviction and sentence were affirmed by the Supreme Court, and no information is available about the appeal for executive clemency.

B. Juneau

There was only one 1973 Juneau case that resulted in a sentence of 5 years or greater. The defendant in question was a Native male, age 23. He had a prior record of misdemeanors and had never been sentenced to more than 120 days in jail. He was convicted of first degree arson at a trial before Judge Carlson. The arson involved the burning of the Haines Elementary School.

Judge Carlson sentenced him to 5 years, against the recommendation of the defendant's attorney, who had asked for 5 years with 4 suspended. Judge Carlson did not set any limitations on parole eligibility. No transcript of the judge's remarks at sentencing was available, and none of his comments are recorded in the Minute Orders.

C. Anchorage

Thirty defendants in Anchorage received sentences of 5 years or greater.[11] Table II summarizes facts relevant to these defendants. Fourteen (47%) were Caucasian, 12 (40%) were Black, and 4 (13%) were Native Alaskans. Two of the Caucasians were females. All the rest were males (93%). Nineteen of these defendants, or nearly two-thirds, were only 25 years old or younger.

Over half the defendants (17 or 57%) had no prior record or had a record of a few misdemeanors only. Thirteen defendants, or 43%, had prior felony records. Four of these 13, or 13% of the defendants, had committed 3 or 4 felonies in the past, and an additional 3 defendants, or 10%, had com-

mitted more than 4 felonies in the past. Thus 7, or 23%, had "serious" felony records.

Twenty-one of the 30 defendants, or 70%, were sentenced for one of the common-law major felonies (defined on p. 8 supra). Two of the other 9 were sentenced for negligent homicide, two for possession of heroin, one for "shooting with intent to kill", and the other 3 for check forgery, assault with a deadly weapon, and lewd and lascivious acts toward children. Ten of these offenses (one-third) involved harm to victims.

Fourteen of the sentences, or nearly half, were "negotiated". In 13 open sentencings in which the district attorney made a specific recommendation, the recommendation was followed 7 times (54%). Sentences more harsh than the district attorney's recommendation were given out only twice (15%) and sentences more lenient 4 times (31%). Judges in Anchorage recommended that the defendant have some kind of treatment during the serving of his sentence nearly half the time, 14 out of the 30 sentences (47%). All of the Anchorage superior court judges who sat on the criminal bench during the period studied meted out some of the sentences.

Sixteen of the sentences, or over half, were sentences of greater than 5 years (53%). Only five, or 17%, were 10 years or greater. This figure may be compared to the figure for Fairbanks, where 55% were 10 years or greater.

Eight of the defendants (27%) appealed either their conviction or sentence, or both. There were 6 sentence appeals altogether. Two sentences were modified by the trial judge.

TABLE II

DEFENDANTS RECEIVING SENTENCES GREATER THAN FIVE YEARS - ANCHORAGE

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
CAUC. FEMALES	20	One felony plus juvenile record; never been sentenced to jail	Hard*** drug poss.;	Heroin	8 years*	Open	Occhipinti	Above D.A.'s	--
	25	None	Embezzlement	$28,000 from employer	5 years (10 Years, 5 suspended)	Open	Buckalew	D.A.	--
CAUC. MALES	29	One misdemeanor conviction (driving while intoxicated)	Manslaughter	Shot victim (alcohol-related)	10 years**	Open	Kalamarides	--	Court recommended alcohol treatment
	32	Had committed more than 4 felonies; had never been sentenced to over 5 years	Robbery; Assault with intent to rob	Beat victims; also recidivated on bail	7 years (both counts concurrent)	Negotiated	Occhipinti	--	--
	23	3-4 felonies; never sentenced to over 1 year; had committed similar offense once	Robbery	Beat victim; defendant on probation; committed further offenses while on bail. Drug problem.	6 years	Negotiated	Moody	--	--
	20	3-4 felonies; had committed similar crimes before; had never been sentenced over 1 year	Check forgery (2 counts) Burg. (2counts)	Offenses committed while on probation & on bail. Drug addict.	5 years* (all counts concurrent)	Negotiated	Occhipinti	--	Court recommended drug treatment at Family House

* Sentence appealed ** Sentence later reduced *** Conviction appealed

TABLE II - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
CAUC. MALES Cont'd	19	Unknown	Lewd & lascivious acts	Additional original charges of ADW(2 counts) & assault & battery. Psychiatric problem.	5 years (in psychiatric facility)	Open	Hanson	--	Psychiatric treatment
	21	Short felony record; had been sentenced to over 5 yr.	Armed robbery	Took $150; no harm to victim; drug addict	7 years	Negotiated	Occhipinti	--	--
	26	Short felony record; had not been sentenced to over 5 yr.	Negligent homicide	Drunk driving	7-1/2 years	Open	Moody	D.A.	Court recommended job training & church
	26	No prior	Assault with a Dangerous Weapon	Shot girlfriend severely	6 years	Open	Occhipinti	Below D.A.'s	--
	26	3-4 felonies; had committed similar offenses before; never sentenced to over 5 years	Burg. (2 counts)	Stole property worth $3,417; drug addict.	5 years (both counts concurrent)	Negotiated	Burke	--	Court recommended Family House

TABLE II - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
CAUC. MALES Cont'd ≠	18	Juvenile record	Robbery, Attempted Robbery	Victim shot in back; premeditation.	5 years (both counts concurrent)	Negotiated	Burke	--	Court recommended psychiatric treatment
	19	No prior	Burglary, Malicious Destruction	Alcohol related; took cars, smashed & burned some; violated bail conds.	6 years (5 on burg., 1 on malicious destruction, consecutive)	Negotiated	Burke	--	Court recommended psychiatric treatment
	21	1 prior felony; had committed similar offense; never sentenced to over 1 yr.	Burglary	Stole gun & ammunition. Recidivated while on bail and on probation	5 years	Open	Kalamarides	D.A.	Court recommended psychiatric treatment
	≠ There was one additional Caucasian male who received a sentence greater than 5 years, but the D.A. recommended this sentence only to induce the defendant to "turn state's evidence." The defendant cooperated and the sentence immediately was drastically reduced. State v. Edmundson, 73-793 CR, Anchorage Superior Court.								
ALASKA NATIVE MALES	28	Short misdemeanor record; never sentenced to over 90 days	Shooting with intent to kill	Shot girlfriend's male friend; alcohol related	7 years	Negotiated	Kalamarides	--	Court recommended alcohol treatment
	49	Short misdemeanor record; had committed violent offense before; never sentenced to over 90 days	Negligent homicide	Shot man while drunk	5 years (10 years, 5 suspended)	Negotiated, but sentence below negotiations	Occhipinti	--	--

TABLE II - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
ALASKA NATIVE MALES Cont'd	24	1-2 felonies, had been sentenced to over 5 years	Burglary, Robbery	Stole gun, marijuana	5 years (each count, concurrent)	Negotiated	Moody	--	Court recommended psychiatric treatment
	21	Short misdemeanor record; never sentenced to over 90 days	Burglary	Apartment burglarized; stole TV set; returned stolen property; alcohol problem	6 years* (10 years, 4 suspended)	Open	Occhipinti	above D.A.'s recommendation	--
BLACK MALES	26	Minor prior record; never sentenced to over 90 days	Robbery	Had knife; no harm to victim; heroin addict.	5 years	Negotiated	Occhipinti	--	Court recommended Family House
	24	No prior	Armed Robbery	Had gun; no harm to victim. Defendant a student.	5 years	Open	Occhipinti	D.A.	--
	35	Misdemeanor only; never been sentenced to jail	Possession of Hard Drug***	Heroin; presentence report says a longtime heroin dealer	6 years*	Open	Occhipinti	below D.A.	--
	34	Greater than 4 felonies; had committed similar offense; never been sentenced to over 2 years	Burglary, 2 counts	Heroin addict. Stole gun during one burglary.	10 years (8 on 1st count, 2 on 2nd, consecutive)	Open	Burke	D.A.	Court recommended Family House

* Sentence appealed *** conviction appealed

TABLE II - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
BLACK MALES Cont'd	23	3-4 felonies; had committed similar offenses in past; had been sentenced to over 5 years	Robbery	Robbed a home. Defendant a recidivist while on parole, bail & probation. Drug related	15 years	Open	Kalamarides	D.A.	Court recommended job training
	24	Misdemeanor record; no prior jail.	Possession hard drug	Heroin. Drug user, but not serious addict. Also received SIS on 4 counts of heroin sale)	5 years	Negotiated	Occhipinti	--	--
	19	No prior	Robbery (3 counts)	3 liquor store robberies, all with a gun	9 years** (each count concurrent)	Negotiated≠	Kalamarides	--	--
	19	No prior	Robbery***	3 liquor store robberies, all with a gun	5 years	Open	Burke	D.A.	
	19	No prior	Robbery (2 counts)	1 liquor store robbery; 1 robbery of jail inmate	5 years (each count concurrent)	Negotiated but sentence below negotiations	Kalamarides	--	--
	28	More than 4 felonies; similar past offenses; had been sentenced to over 5 yr.	Attempt to pass a forged check***	$345; recidivated on bail	6 years	Open	Burke	--	--

** Sentence later reduced *** Conviction appealed ≠ On 2 counts; argued on third

TABLE II - Continued

	Age	Prior Record	Crime	Circumstances	Sentence	Type of Sentencing	Judge	Recommendation Followed	Treatment
BLACK MALES Cont'd	23	No prior	Rape*** (2 counts) Robbery	2nd rape was recidivism on bail	10 years*	Open	Kalamarides	below D.A.'s	Court recommended psychiatric treatment
	21	Prior misdemeanors; juvenile record; prior violent offenses; never sentenced over 90 days	Robbery*** 2 counts	Recidivated on bail	20 years* (10 years each count, consec.)	Open	Kalamarides	below D.A.'s	

* Sentence appealed *** Conviction appealed

Comparative Analysis of Sentencing in Anchorage

In Anchorage there were an equal number of Caucasian males and Black males sentenced to 5 years or more (12 each). Four Native males and 2 Caucasian females also received "long" sentences. Because of the small number of defendants, it is impossible to provide statistically significant comparison among all races, or both sexes. However, some interesting contrasts between the Caucasian and Black males can be pointed out.

TABLE III

RACIAL COMPARISON OF
ANCHORAGE DEFENDANTS

Caucasian	Black
1. 7 of the 12 had prior felony records.	3 of the 12 had prior felony records
2. 7 of the 12 did physical harm to their victims (2 victims died, 2 were seriously injured, 3 more were injured in the course of robberies)	1 of the 12 did physical harm to his victims (raped 2 women).
3. 4 of the 12 sentences were for robbery, 3 involving physical harm.	8 of the 12 sentences were for robbery, none involving physical harm.
4. Only 1 defendant received a sentence of as much as 10 years (it was a 10-year sentence).	2 defendants received 10-year sentences, 1 a 15-year sentence, and 1 a 20-year sentence.
5. 8 of the 12 were recommended by the judge for psychiatric treatment, alcohol programs or drug programs.	3 of the 12 were recommended for treatment.
6. 7 of the 12 sentences were negotiated.	4 of the 12 sentences were negotiated.
7. No defendants appealed their conviction; 1 sentence was appealed for excessive sentence.	5 defendants filed appeals; 3 appealed their conviction and sentence; and 2 appealed only their sentence.

Additionally, two of the Native Alaskan males were recommended for treatment. Neither of the females were. Three of the 4 sentences for the Native males were negotiated. Neither of the females' sentences was negotiated.

One of the women and one of the Native Alaskans appealed their sentences on the grounds of excessiveness.

Part II - Individual Sentencing Proceedings in 1973 for Defendants Receiving Sentences of Five Years or Greater - Anchorage Only

The following section contains narrative descriptions of the 30 defendants and the 30 sentencing proceedings that preceded the imposition of terms 5 years or longer in Anchorage. Unfortunately, detailed information for defendants in Fairbanks could not be included without traveling there to examine files, an activity not feasible within the scope of this report. The one Juneau case was researched in detail, but since no transcript of the sentencing proceedings was available, it is not analyzed in depth. However, the Anchorage proceedings are sufficient to exemplify the background factors of defendants and their cases, and the type of judicial and attorney involvement. Each "history" also includes descriptions of any subsequent activity such as sentence modification or appeal as of May 1975. Following the narratives further analysis of these sentences is provided.

Defendant #1

This defendant was a Caucasian female age 20 who had a juvenile record and a prior 1973 conviction for robbery. In the prior robbery she had stolen $50 and a watch from a person while she was under the influence of drugs, and Judge Carlson had deferred the imposition of sentence for 3 years under the condition that the defendant report to her probation officer once a week. Rice was the prosecutor in that case, and Jordan, a public defender, was the defendant's attorney.

The offense for which the defendant received her long sentence was possession of heroin, of which she had been convicted at a jury trial before Judge Occhipinti. Ripley was the prosecutor. The defendant was represented by a private attorney from out of state. Before the sentencing, a presentence report was ordered, and the defendant was released on bail under the condition that she submit to periodic drug tests. (Pending trial she had been released on an unsecured appearance bond and had appeared for all court appearances.)

Judge Occhipinti sentenced the defendant. The first witness at the sentencing was a police officer who testified that he had known the defendant two years and had seen her in massage parlors numerous times practicing prostitution.

Ripley told the court that he was tempted to treat the defendant as a victim as much as a criminal, because she had been beaten by her co-defendant. He then reported, however, that the defendant had been prosecuted as an accessory for an assault with a dangerous weapon in Kenai in 1972 and

was on a suspended sentence for that charge. He said she had been a "dead loss" as a probationer and needed psychiatric care. He recommended a five-year sentence with no time suspended, saying that she could have had help in the past but did not ask for it.

The defendant's attorney spoke on her behalf, noting that the defendant was young, had had a bad family life, and argued that she deserved to be given a chance.

Basing his opinion on information contained in the presentence report, the judge said he thought the defendant had exhibited a "pattern of antisocial behavior" and was not a good candidate for probation, adding that the defendant's attorney's argument that the defendant was a victim of circumstances was "bunk." He noted that giving her another chance would be foolish, because her record showed that she had been given a chance in 1968, 4 chances in 1969, 2 in 1970 (he was referring to her juvenile record) and that again in 1973 she was still "thumbing her nose at society." He sentenced her to the 8 years because he saw "nothing else to do," saying it was up to her whether her behavior would be changed but that society must be protected.

The defendant filed appeals of both her conviction and sentence, and was is on bail pending the appeals, the release having been allowed by Judge Kalamarides. The bail set by Judge Kalamarides was later revoked at the request of the bondsman. In early 1975 the Supreme Court reviewed the defendant's bail status and set a lower bond requirement. The defendant is presently on bail.

Defendant #2

This defendant was a Caucasian female, age 25. She is listed on Table II as having "no prior record of convictions," but her public safety file did indicate a record of at least one arrest, though no criminal disposition was indicated. She received a sentence of 10 years, 5 of the 10 suspended, for embezzling $28,000 from her employer. The defendant was a 9-year resident of Anchorage and was a heroin addict with a $200 per day habit.

The defendant did not have a trial but pled guilty to the charge before Judge Buckalew. She was represented by Bryner. The sentencing also was before Judge Buckalew, but the defendant was represented by Ravin (Bryner having entered the private practice of law). Mackey was the prosecutor. A presentence report had been ordered.

The district attorney began the sentencing by recommending a 10-year sentence with 5 years suspended. He noted that the defendant probably had used the money to support her habit, and he recommended against suspending all of the sentence because he did not think the defendant should continue living with people on a methadone program.

Ravin requested that the defendant be sentenced to probation. He presented a witness who told the court that he would be willing to employ the defendant if she were given probation or work release. Ravin also presented a witness from the methadone program who testified that the defendant had become much less hostile while with the program. The wit-

ness said that the defendant needed to continue therapy and counseling, and he noted that there was no drug counseling available to women in jail. A third witness testified that the defendant had reached the point where she was ready to change, that she needed counseling and job training, and that jail was not the answer.

An attorney for the victim (the employer) testified against the defendant, noting that his client was suffering the loss of his money. He also said he did not think the defendant had used the entire sum to support her habit, implying that she had kept some for herself.

Ravin then argued that the defendant was not violent and had done well in school.

Mackey spoke again, saying he thought the defendant was a liar because she had told the Division of Corrections (the presentence interviewer) that she was born in California when in fact she was a Canadian citizen. He queried why the defendant was not on the witness stand herself.

Judge Buckalew announced that he was "not encouraged by the presentence report" and that he did not think that probation was wise. He said that "society was concerned" about the employer who had to absorb so great a loss, and that he felt the sentence he was meting out was lenient.

The defendant's attorney asked the court if it would at least order work or school release, but the judge said he was "not inclined to do it." Ravin then asked if the defendant could have a few days time to herself before she had to begin

serving her sentence and then turn herself in to the jail, because neither he nor she had expected that she would receive 5 years. The court ruled that she could have until 6:00 that evening, noting that she had known that today was the day sentence was to be imposed. She is presently in the Juneau jail.

Defendant #3

This defendant was a 29-year old Caucasian male who was convicted of voluntary manslaughter. His prior record consisted of only one conviction of driving while intoxicated. He was reported to have had a psychiatric evaluation several years ago, but the reason for it was not specified. He was employed, married, and had 3 children.

The defendant originally had been charged with "shooting with intent to kill." When the victim died thereafterward, the defendant was charged with second degree murder but subsequently he negotiated a plea to voluntary manslaughter, represented by a private attorney, Collins. Judge Kalamarides accepted the plea. Mackey was the prosecutor.

The circumstances of the homicide were that the defendant shot the victim after the victim had trespassed on the defendant's yard in a trailer park and had refused to leave when asked. The defendant, who said he was afraid of the trespasser, was intoxicated at the time. The case file notes that the defendant had psychiatric and alcohol problems.

At the sentencing Mackey was the prosecutor, Kalamarides the judge, and Collins the defendant's attorney. Both attorneys agreed to the recommendation of the presentence report that the defendant should serve time in jail.

Collins noted in the defendant's behalf that he had a history of problems, having been expelled from school for alcoholism at age 17 when he had reached only the ninth grade. Collins noted that the defendant had been at Alaska Psychiatric

Institute for treatment of his alcohol problem during the proceedings against him, and that he now felt the defendant was a new man.

Judge Kalamarides deliberated over the sentence, noting that the defendant had a history of drinking rendering him dangerous. He concluded that the defendant should not be placed on probation and sentenced him to 10 years, one-third to be served before parole eligibility. However, he recommended that the defendant receive psychiatric assistance, and said that the defendant could petition to have his sentence reviewed if he showed rehabilitation.

A few months later, the sentence was modified by Judge Kalamarides upon a motion by Collins, unopposed by the district attorney, ordering that only 2 years need be served before parole eligibility.

Six months after this modification the defendant's attorney asked Judge Kalamarides to further modify the sentence to "time already served," saying that the defendant had been rehabilitated. At the modification hearing Talbot, the prosecutor, argued for parole rather than probation; but the court said it was impressed with the defendant's rehabilitation and placed him immediately on probation, with the condition that he consume no alcohol. The defendant has been on probation successfully for 6 months.

Defendant #4

This defendant was sentenced for robbery and assault with intent to commit robbery. Earlier in 1973 he also had been convicted of two counts of check forgery. He had a long prior record of check offenses and property offenses, including burglary, but he had never received more than a sentence of two to five years in the past. He was a Caucasian male, age 32.

Prior to being sentenced, the defendant was in custody under an extremely high bail, $100,000, as these robberies had been committed while he was on bail for the earlier forgeries. Kulik was his attorney. In the first robbery, the defendant had hit a man on the head and absconded with his money. The victim of the assault with intent to commit robbery was a woman clerk at a liquor store, whom the defendant beat with a hammer while his girlfriend attempted to rob the cash register. The defendant also attempted to rob the woman clerk of her money.

The sentence was negotiated and presented in court to Judge Occhipinti by attorneys Ripley and Soll. There was no presentence report. The court followed the agreement to sentence the defendant to 7 years, one-third to serve before parole elibigility, the sentence to be served concurrently with a 3-year sentence that had been handed down previously for the forgery charges by the same judge. The court, in following the negotiations, accepted the public defender's statement that the defendant had shown himself to be industrious and law-abiding in jail, and said that it was "too bad"

the defendant had to be in jail in order to behave. There were no further reasons given for the sentence.

Presently the defendant is at the Ketchikan jail.

Defendant #5

This defendant was a "repeat bail recidivist" in 1973 and ultimately received his long sentence for convictions of robbery, larceny, and probation revocation. The defendant had a prior record that included two robberies, but he had never been sentenced to greater than a year in jail. He was a Caucasian male, age 23, with a wife and child.

In 1973 the defendant was on probation from a 1972 case in which he had been sentenced to 60 days by Judge Occhipinti for stealing 2 coats from a store (he had a prior record of robbery at the time). Earlier in 1973 the defendant had served a very short sentence for petty larceny (although this charge was a plea-down from another robbery indictment). The robbery for which he received the long sentence was committed a few days after release from the petty larceny sentence. Even after being charged with this robbery, the defendant had secured bail release and committed yet another robbery and grand larceny. This second robbery was dismissed as part of the plea bargain.

The indictment for the first robbery, for which the defendant received his "long" sentence, charged that the defendant took a television, two speakers, $85 and a small pistol from 2 victims. The robbery that was dismissed charged him with stealing money from a person after threatening him with a gun. The grand larceny charge was for stealing a coat from a store. All the offenses were noted as "drug-related."

Judge Moody accepted the plea of guilty to the one robbery and one count of larceny and imposed the sentence. Ripley was the prosecutor and Van Winkle, a public defender, was the defendant's attorney. The attorneys presented their agreement to the judge, the district attorney recommending 6 years; then the defendant's attorney noting that the defendant had confessed to the crimes and had provided the state with information that had led to indictments against other persons. Van Winkle also said that the real reason the defendant had approached his victims had been to get marijuana, not to rob them; but that the circumstances "just turned into a robbery."

Judge Moody said he would go along with the negotiations because of the defendant's age. He sentenced the defendant to 6 years, one-third to be served before parole eligibility. He reminded the defendant that he could not appeal his conviction because it had been negotiated and said, "I hope you did it (the crimes) because of drugs, not bad nature--if you ever come before me again, you get the maximum," (although he said he was aware that the Supreme Court has said that maximum sentences in general ought not exceed 5 years). The judge also noted, with regard to the crime of robbery, that he sometimes thought it worse for an offender "to take away a person's livelihood that they have worked for than to just put them out of their misery."

Presently the defendant is at the Eagle River Correctional Center.

Defendant #6

This defendant was a Caucasian male age 20 who had a prior felony record of two forgeries and a burglary committed in 1972, for which he had received deferred impositions of sentence. Prior to 1972 his record consisted only of two misdemeanors (illegal possession of a moose and possession of a soft drug). The defendant was noted as a heroin addict who lived with his alcoholic mother. He underwent drug treatment at Langdon Clinic while his 1973 cases were pending.

The defendant committed several crimes in 1973, all while on probation or bail, and received his long sentence for two counts of burglary in a dwelling and two counts of check forgery. The checks forged had been stolen from various residences. The defendant pled guilty to the charges in return for other charges being dismissed, although the defendant told the judge "I'm pleading guilty because I'm guilty."

The sentence also was negotiated and was presented to Judge Occhipinti. Bryner represented the defendant, and Ripley was the prosecutor. The attorneys had agreed on a sentence of 5 years with the defendant to be sent to the Palmer Adult Camp. (They also recommended that the defendant receive a concurrent 3-year sentence on a probation revocation.)

Judge Occhipinti agreed to the sentences but required the defendant to serve one-third before parole eligibility, although a mandatory minimum had not been part of the recommendations. The judge said to the defendant, "You may appeal," noting that Bryner had not objected to the one-third

requirement, but that he was not in agreement with it. He further warned him, "When you do come out and you continue this flakey behavior, don't expect a break."

The defendant did appeal his sentence to the Supreme Court. Additionally, the defendant filed a motion seeking modification of his sentence at the superior court level five months later, grounds for modification being that the defendant had been placed in the Juneau jail whereas the judge had recommended Palmer.

At the modification hearing Van Winkle (who represented the defendant because Bryner had gone into private practice) requested Judge Occhipinti to eliminate the required minimum. Merriner, the district attorney, was unopposed because the defendant was a witness in another important case. However, Judge Occhipinti temporarily refused the modification, noting that his previous recommendation regarding Palmer was not binding on the Division of Corrections, and that he could not change their action unless there was error. However, he said he would continue the matter, and he ordered the defendant brought to Anchorage.

A week later Judge Occhipinti granted the motion to eliminate the one-third requirement (Ripley, the prosecutor, not objecting). The defendant was returned to the Juneau jail, where he is at present. His sentence appeal was withdrawn in early 1974.

Defendant #7

This defendant was a Caucasian male age 19 with no misdemeanor or felony record. He was charged in 1973 with 2 counts of assault with a dangerous weapon, one count of lewd and lascivious acts toward children, and one count of assault and battery, all arising out of the same incident in which he sexually assaulted an 8-year old boy at gunpoint. The defendant said he was under the influence of drugs at the time. The defendant pled guilty to the lewd and lascivious acts in exchange for dismissal of the other counts. A pre-sentence report was ordered.

Judge Hanson sentenced the defendant to 5 years. Wardell was the prosecutor and Koziol the public defender.

At the sentencing the prosecutor quoted the report of a psychiatric examination which the defendant had had before the sentencing. The report said that the defendant had a prior history of "cruelty to animals, unusual behavior, and violent feelings." The defendant's military commander, however, testified that the defendant was mild-mannered, although he had been A.W.O.L. recently.

The defendant said that he wanted help and told the court he had a juvenile record.

Judge Hanson noted that the defendant was an extreme danger to society and to himself. He said he wished the defendant to have psychiatric care, but that he had no confidence whatsoever in the ability of the Department of Health and Social Services to handle the defendant's case. He said

that the legislature realized that persons needed treatment, but that the legislature has set up no way to assure they would get it. Ultimately he sentenced the defendant to 5 years, requesting that the defendant be placed in a psychiatric facility within 30 days of the imposition of sentence; and he asked that a semi-annual report of the defendant's progress be given to the court. The judge also said he preferred to see the defendant go to a California facility, and that if he was not sent to a psychiatric facility, he was to be brought back for re-sentencing. He further noted that the sentence was not imposed for punishment and authorized the defendant to be paroled upon examination by 2 psychiatrists who found him no longer a danger.

Presently the defendant is at the Eagle River correctional center.

Defendant #8

This defendant was a Caucasian male age 21 who was on parole from 2 prior felonies involving interstate transportation of stolen goods when he committed his 1973 offense. He had been sentenced to 6 years on one of those charges (he also had 2 misdemeanors on his record). The defendant had lived in Anchorage for 17 years with his parents, but his family refused to assume responsibility for him when he asked for bail release. The defendant was noted as a drug addict.

In 1973 he received his long sentence for armed robbery, having robbed his victim of $150 after threatening him with a knife. He escaped from Family House a few days before he was sentenced on the robbery and was sentenced also for the escape.

The defendant pled guilty to both charges without a trial, and the sentence was negotiated. The attorneys who presented the negotiation to Judge Occhipinti were Ripley and Burke. The recommendation agreed on was 7 years with a mandatory 2 years to be served, the defendant to reside at Family House in Anchorage.

At the proceeding Burke told the court of the defendant's drug problem, urging that he be allowed to go to Family House and saying it was pointless to just put the defendant away for 2 years in jail. However, the director of the Family House program told the court that the defendant's attempted escape had angered people in the program. Burke then noted

that if the defendant were not ultimately sent to Family House, the defendant could ask for a sentence modification. Judge Occhipinti followed the attorneys' recommendation and "strongly" recommended to the Division of Corrections that the defendant go to Family House. The recommendation was followed.

A month and a half later the defendant left Family House again (such a departure is classed as an escape by the Division of Corrections). At the following proceeding Judge Occhipinti remanded the defendant to the Juneau jail to serve the sentence. Soll was the defendant's attorney and Dunning the prosecutor.

Ten months later the defendant wrote to Judge Occhipinti requesting sentence reduction on the grounds that he had received a heavy sentence only to encourage his participation in the Family House program. The defendant also requested a transfer to an institution where he would receive "education." In his reply Judge Occhipinti told the defendant that he "had had his chance," and reminded him that he had left Family House of his own free will; but then he said the defendant should contact his attorney to raise the question of modification through proper channels.

The defendant presently is in the Juneau jail. No further papers requesting reduction or appeal appear in his file.

Defendant #9

This defendant was a white male age 26 who had committed one assault with a dangerous weapon and one felony check forgery in the past and who had received a sentence greater than 2 years but less than 5 on the felony. In 1973 he was convicted of negligent homicide for causing the death of a man in a car accident while driving under the influence of liquor. The defendant had a court-appointed public defender, Brubaker, and Rice was the prosecutor.

The defendant originally had been charged with both manslaughter and negligent homicide. The prosecutor intended to dismiss the latter in exchange for the defendant's guilty plea to the former, but Judge Kalamarides did not approve of the plea bargain and refused to accept it as "too lenient." The defendant thus preempted Judge Kalamarides, and the case was assigned to Judge Moody. The bargain ultimately accepted by Judge Moody was a plea of guilty to negligent homicide with the manslaughter charge dismissed, the reverse of the former. (The sentence authorized by the criminal code for each offense is the same, one to 20 years.) The sentence was not negotiated.

At the sentencing the district attorney recommended 7-1/2 years. The defendant's attorney did not make a specific sentence recommendation but told the court that he thought the defendant was capable of "making something of himself," and that the defendant merely was "easily misled." He said he realized his client had a criminal record but told the

court he did not have a criminal mind. The defendant told the judge he knew he had done wrong and would try to correct his behavior.

Judge Moody accepted the district attorney's recommendation and sentenced the defendant to 7-1/2 years. (In the file there is a memorandum from Judge Kalamarides stating that his recommendation was 10 years with 4 to be served before parole eligibility.*) In explaining his sentence Judge Moody made the following remarks to the defendant, "Your record is not consistent with that of a hardened criminal, but with irresponsibility . . . Your past conviction indicates problems with alcohol and you're not willing to solve it . . . If you can't handle your liquor, you've got to quit . . . If you hadn't pled guilty . . . if you had been found guilty by a jury, I'm not certain that I wouldn't have given you the maximum . . . in view of your background and your show of irresponsibility . . . On at least two occasions you had your chance and you fluffed them . . . I've got to not only punish you, but I'm making an example of you in this case . . . I hope you will learn a trade, and when you get out . . . will choose the right people to associate with. And, although religion is not a part of the law, it might help you, you know, to start going to church . . . rather than going to bars . . . ."

The defendant presently is at the Palmer Jail.

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* At the date of this sentencing proceeding the law did not allow the judge to fix a parole eligibility period that exceeded one-third of the sentence. See p. 27, Sentencing in Alaska, Alaska Judicial Council, March, 1975.

Defendant #10

This defendant was a 26-year old Caucasian male, with the military, who had no prior record. He was charged with shooting with intent to kill. The victim was his girlfriend, a nightclub dancer.

The charge was negotiated to assault with a dangerous weapon. Ripley was the prosecutor, and the defendant hired a private attorney, Nangle. The plea was accepted by Judge Occhipinti, Judge Moody having been disqualified upon a motion by the defendant. A presentence report was ordered, and the defendant was continued on an Own Recognizance release that he had been allowed since indictment. (The defendant had had a psychiatric exam before being released on bail and had been ordered to stay on his military base, have no contact with the victim, no liquor and no firearms.)

The sentencing was an open sentencing before Judge Occhipinti. The district attorney began the proceeding by noting that the defendant had conducted his life well prior to the incident in question, adding that the defendant would have been charged with first degree murder "but for the grace of God." Ripley said he realized the defendant "went blank" (the defendant earlier had testified that he did not remember the shooting), and that no signs of mental disorder had been found. He also said the defendant was a "tense" person who earlier had had opportunities to get out of the relationship but had not taken them. Finally he recommended a sentence of 10 years on the ground that society needed protection.

The defendant's attorney told the court that the defendant did need psychiatric help but made no specific recommendation for length of sentence.

Judge Occhipinti said he "found it difficult to sentence the defendant," noting that his past record was commendable and showed that the defendant was concerned with other people. However, the judge said he could not disagree with the district attorney that the defendant was a danger, especially since the circumstances could have been a first degree murder (although the victim did not die). The judge further ruled that in his opinion the defendant did require psychiatric help.

He then said that he thought the district attorney's recommendation of 10 years was proper under all the circumstances, but considering what the supreme court had said regarding lengths of sentences, he would sentence the defendant to only 6 years with 18 months to be served before parole eligibility. Judge Occhipinti further noted that he was "not naive," that he knew the parole board would release the defendant in less than 6 years, but that meanwhile he wanted the defendant to have as much psychiatric help as possible. He asked the defendant's attorney to see that he got this help.

The defendant presently is in the Anchorage State Jail on Third Avenue, a "half-way" facility allowing work release.

Defendant #11

This defendant was a Caucasian male age 26 with a long prior record. Early in the 1970's he had spent 2-1/2 years at Palmer for an armed robbery (although the sentence that had been recommended then by Judge Davis was that the defendant be placed in the custody of a school in Juneau and be given vocational training), and prior to that he had spent 3 years in prison in California for robbery and possession of narcotics. In 1973 he received his long sentence for two burglaries which involved the theft of several thousand dollars worth of copper tubing. He was a heroin addict but had not received sentences involving drug treatment in the past.

The defendant's plea and sentence were negotiated, and the defendant was sentenced by Judge Burke the same day he entered the guilty plea. Rice was the prosecutor and Soll the public defender.

At the proceeding Rice told the court that the attorneys had agreed to a sentence of 5 years. He explained that the defendant had been a heroin addict for 6 years and was by no means a first offender, pointing to his prior record. He also said that the crimes involved considerable premeditation, although he admitted that the defendant was under the influence of drugs at the time of committing the crimes and merely wanted to get money for more drugs.

Soll pointed out that the defendant would have no record but for his involvement with drugs, and that he (Soll) was enthused about getting the defendant enrolled in the Family

House program. The defendant reported to the judge that he had used no weapon in his previous robbery.

The court followed the sentence negotiation, ordering parole at the discretion of the parole board and recommending to the Division of Corrections that the defendant be placed in a facility that could furnish treatment for narcotics addiction. The defendant was placed in the Family House, but he "escaped" from there a few months later and was sentenced to a year concurrent with the 5 years by Judge Occhipinti, following the district attorney Mackey's recommendation.

Presently the defendant is at the Juneau jail.

Defendant #12

This defendant was an 18-year old Caucasian male with a juvenile record of burglary and vandalism. (He had spent one year at the McLaughlin Youth Center in Anchorage.) The defendant had completed only the eighth grade. It was noted in his file that his mother was a fugitive and that his father had just been released from a penitentiary, but that he had an uncle in Alaska who was "trying to help him."

In 1973 the defendant was charged with attempted robbery, burglary, 2 counts of grand larceny, and a later robbery, all arising out of separate incidents. The attempted robbery complaint stated that the defendant shot the victim several times with a revolver, although the evidence was controverted regarding whether he actually had a gun or not. (Two juveniles were co-participants in the attempted robbery, and the defendant contended that one of them had done the shooting.) The burglary was a house burglary; the larcenies involved some tools valued over $100 and a set of golf clubs; and the robbery was a robbery at gunpoint.

The district attorney, Ripley, negotiated with the defendant's attorney, Jordan, for pleas of guilty to the robbery and the attempted robbery, the other counts being dismissed. The defendant received a 5-year sentence, which also was negotiated. Judge Burke accepted the negotiations.

At the proceeding where the pleas were entered and the sentence imposed, Ripley told the judge that he did not think a 5-year sentence was unreasonable, as the defendant

had pled guilty to the most serious counts. The defendant's attorney reported that the defendant had agreed to testify for the state against other defendants.

Judge Burke, noting that the other defendants involved were juveniles, said he thought there at least should be restitution. Jordan argued that restitution was not part of the negotiations.

Ripley then further explained the circumstances of the crimes, noting that during the attempted robbery the defendant was only the "look-out" while the juveniles entered with a gun and a knife. He did point out that the victim had been permanently maimed, however. The court also noted that the defendant had had a knife in a previous robbery. Jordan further explained the defendant's background factors, particularly emphasizing his young age.

Judge Burke said he might consider ordering a psychiatric report before imposing sentence. The defendant's attorney replied that the exam probably would not find the defendant mentally ill. The court then said it at least intended to order psychiatric treatment as part of the sentence and asked the defendant to testify regarding his involvement in the crimes.

Ultimately, the judge accepted the negotiated sentence, citing the defendant's unfortunate background "where serious crime has been a way of life," and noting that a strong sentence was called for. He said he was taking into account the defendant's age and the nature of the crimes in imposing the sentence. He further said that if the defendant

were more deeply involved than he apparently was, he could not give him this sentence, and that the last person whom he had sentenced who had been holding a gun in a robbery got 15 years. Judge Burke further stated that although he was taking into account the lack of a serious prior record, the crime had proceeded in a professional way, that a man was shot, and that it was "very nearly murder."

The judge also reiterated his thoughts that the defendant should have a psychiatric evaluation in order to ensure the kind of treatment that would reform him, and said he hoped the defendant would not "be thrown in the cage with a lot of hardened criminals." Regarding restitution, the judge noted that the victim still had the right to bring a civil action against the defendant, but that he felt that he (the judge) could not require restitution because of the "fixed" sentence.

Judge Burke's sentence contained orders that parole should be at the discretion of the parole board, and also recommended that the defendant be afforded psychiatric evaluation and any such treatment as might be indicated thereby.

Three months later, the defendant wrote to Judge Burke from the Juneau jail requesting sentence modification. He cited his youth and family background and said he was a model prisoner and had reformed. A month later the public defender filed a motion for modification on the defendant's behalf because of his age and change of attitude, but the motion was opposed by the district attorney on the grounds

that all issues raised by the defendant had been covered at the sentencing. The modification was denied by Judge Burke.

A little over a year later (early in 1975) the parole board wrote Judge Burke a letter, saying that the defendant was eligible for parole and asking for comments. Judge Burke replied that he had had no contact with the defendant and did not know what progress he had made, but he reminded the parole board that the defendant had been convicted of crimes that he would consider extremely serious in nature.

Presently the defendant still is in the Juneau Jail.

Defendant #13

This defendant was a 19-year old Caucasian male, also with a juvenile record. He was charged with burglary, grand larceny, 3 counts of malicious destruction of personal property, and also had misdemeanors pending when he was arrested. He committed an additional burglary while on bail. The case originated in Kodiak.

The charges all resulted from a spree of car theft and malicious destruction or burning of some of the cars, in which the defendant participated along with another person. The defendant pled guilty to one count of burglary and one count of malicious destruction after negotiations. Wardell was the prosecutor and Koziol the public defender. Judge Burke accepted the plea and sentenced the defendant to 5 years on the burglary and one year on the malicious destruction, to be served consecutively. The defendant was to serve one-third of the 6 years before parole eligibility, and the judge recommended that the defendant receive psychiatric evaluation and job training.

Because the file of the case is in Kodiak, not much information is available regarding the reasons for the sentence, other than that it was "negotiated." It also was noted that the crime was alcohol related, and that the defendant's mother was an alcoholic and his father was dead. The judge also took into account, in sentencing the defendant, that he had committed a crime while on bail.

Presently the defendant is at the Palmer camp.

Defendant #14

This defendant, a 21-year old Caucasian male, had a prior record of joyriding and armed robbery, but he had never been sentenced to greater than one year. He was on probation in 1973 when he was charged with burglary, and while on bail for the burglary he was charged with another burglary. The defendant pled guilty to one burglary, and the other burglary was dismissed.

The prosecutors involved in the defendant's 1973 cases were Mackey, Rice and Luffberry. The defendant hired a private attorney, Fleischer. The plea was accepted by Judge Kalamarides. The sentence itself had not been negotiated, and after the district attorney, Mackey, recommended a sentence of 5 years (with one-third to be served before parole eligibility) and Fleischer disagreed, recommending "a lesser sentence," Judge Kalamarides ordered a presentence report and held the sentencing in abeyance.

At the second proceeding Luffberry represented the state and reiterated the state's recommendation of 5 years. After some discussion regarding whether the defendant should be sentenced on a probation revocation petition that had been filed, or whether Judge Occhipinti, who had imposed the probation sentence, should be involved, the sentencing proceeded, with all sentencing to be done simultaneously by Judge Kalamarides because he had accepted all negotiations.

The recommendation of the defendant's attorney was 2 years with a provision that the defendant be assigned to

a facility with "the best" psychiatric programs, since he was unable to relate to society and had had problems with his probation counselor before. Fleischer said this solution would "be best for the defendant and society." The district attorney argued that the defendant had shown that he did not care about getting help and that therefore the state could not help him.

Judge Kalamarides noted that the presentence report made him concerned about the defendant's fantasies, and that all he could see in the defendant's adult life had been "utter irresponsibility." He said he was convinced the defendant needed psychiatric help and that thus the determination of sentence was difficult. He noted that the defendant would be a danger to society if placed on probation and said it was unfortunate that the defendant felt that "the world had treated him so harshly" that he had to "utilize criminal activity to get even."

The judge imposed a sentence of 5 years, one-third to be served before parole eligibility, with the condition that a psychiatric evaluation be given to the defendant immediately, and that the defendant be given any psychiatric treatment consequently deemed necessary. (The defendant also received a sentence of 18 months concurrent on the probation revocation.)

Presently the defendant is at the Palmer camp.

Defendant #15

This defendant was a Native Alaskan male with a short prior record of minor alcohol offenses. He had never been sentenced to more than 90 days in jail. He was 28 years old and by trade was an ivory carver. He had lived in Anchorage only a year and was supported by his girlfriend.

The defendant received his long sentence for "shooting with intent to kill." The circumstances of the crime were that the defendant went to his girlfriend's house while intoxicated, found a man there asleep, and shot him with a rifle.

The defendant remained in custody while awaiting disposition of his case, without every having a bail hearing. However, he did have a competency hearing. He was found competent, and subsequently his guilty plea and sentence were negotiated. Three prosecutors and four public defenders were involved at various stages of the proceedings.

Shortell was the defendant's attorney and Balfe the prosecutor when the negotiated sentence of 7 years jail at an alcohol treatment facility in Palmer was presented to Judge Kalamarides and accepted by him. The judge explained the following purposes of the sentence to the defendant: there was a need for deterrence, the defendant needed to mature, and the defendant needed rehabilitation "to get over being alcoholic." Parole was to be at the discretion of the parole board. No further details of the sentencing were available.

The defendant presently is on parole in Anchorage.

Defendant #16

This defendant was a Native Alaskan male age 49 who was convicted of negligent homicide for shooting a man while intoxicated. The defendant's prior record consisted of several misdemeanor assaults, but he had never been sentenced to greater than 90 days in jail.

The case originated in Nome in 1972 (the defendant managed a store in Deering), but it was transferred to Anchorage in 1973. At least a year passed between the defendant's arraignment on the charge, and the final disposition achieved by the defendant's entering a guilty plea. The delay was due at least partly to psychiatric examinations.

The defendant originally had been charged with first degree murder, but the prosecutor, Garrison, and the defendant's attorney, Middleton (a public defender), negotiated to a negligent homicide plea. The attorneys also agreed on a sentence of 15 years with eight suspended. However, Judge Occhipinti, who accepted the plea and sentenced the defendant, sentenced him to only ten years with five suspended, primarily because of his age. Parole was to be at the discretion of the parole board.

At the proceeding the defendant testified to the circumstances of the crime, saying that all he remembered was that he had been drinking in the evening and had followed some snow machine tracks. He said that he did not remember the gun going off and did not think that he was in his right mind, because he had drunk quite a bit. He said he had not intended

to shoot but did feel that he was responsible for the death of the man.

In imposing the sentence, Judge Occhipinti said, "We're talking about a man 48 years old.* I could ask for a presentence report, but the psychiatric examinations give a pretty fair background. No previous record of any consequence. With due respect to everyone I'm going to sentence the defendant to 10 years with 5 suspended. The man has spent about one year in jail already. My only suggestion is that while he's on parole, his drinking be limited."

The defendant presently is in Kotzebue on probation.

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* The Public Safety records showed his birthdate as October 15, 1923. He was sentenced on June 8, 1973.

Defendant #17

This defendant was a Native Alaskan male age 24 with a prior felony record. He had been sent to the federal penitentiary in Lompoc for a burglary conviction when he was only 17 years old and had just returned in 1972.

In 1973 he was convicted of both burglary and robbery. He stole a gun during the burglary of a dwelling at night and while on bail for the burglary he robbed two victims at gunpoint of a television, stereo speakers, and $85. (A co-defendant on this robbery was defendant #5.)

The defendant's guilty pleas to the above offenses were negotiated, and the attorneys agreed on a sentence of 5 years. Ripley was the prosecutor, and the defendant was represented by a court-appointed public defender, Reynolds. Judge Moody accepted the negotiated plea and sentence.

At the sentencing proceeding the defendant explained the circumstances of the burglary. He said he had been drinking and that he had opened the door of a dwelling with a screw driver, intending to take a rifle, but that when the owner came to the front door, he escaped through the back door. The defendant said he would like psychiatric help, adding that he did not have a narcotics problem. He said he knew he would have to go to an institution but would like to have some job training. The district attorney noted that the defendant had attempted suicide in the past.

The judge imposed the 5-year sentence, recommending that the defendant have psychiatric treatment and allowing

parole at the discretion of the parole board. (His co-defendant on the robbery, defendant #5, received a sentence of 6 years, one-third to serve.)

During the next year the defendant escaped from custody 3 times. Once he assaulted an officer at the Palmer Correctional Center with a pocket knife, took his money and fled; once he escaped while going to a medical examination; and the third time he sawed off the bars of the window in his Anchorage jail cell.

The second and third escapes occurred before the first had been adjudicated. Ultimately the defendant pled guilty to one of the escapes in return for dismissal of the other two, the attorneys having agreed on a maximum sentence of three years consecutive to the sentence he already was serving. Talbot was the district attorney and Koziol the public defender.

The defendant was sentenced on the escape by Judge Burke. All parties supported the defendant's need for psychiatric help, noting that he had spent most of the last 6-1/2 years in institutions and that he was a proud individual who was trying to solve his problems. Judge Burke said he was not sure that the community would particularly condemn the defendant, rather they might recognize him as having a very serious problem, but that it was necessary to isolate him during rehabilitation. He sentenced the defendant to only 2 years consecutive to his present sentence, recommending that he receive psychiatric and medical treatment.

The defendant presently is at McNeil Island in Washington.

Defendant #18

This defendant was a 21-year old Native Alaskan with a prior record of 2 misdemeanors, both traffic related. He had never been sentenced to greater than 90 days. His prior offenses were noted as alcohol related, as was his 1973 offense, which was burglary in a dwelling. The burglary involved the breaking and entering of a dwelling, from which he took a television set, an iron, 2 cigarette lighters, and approximately $33 in cash.

The defendant had a trial by jury before Judge Occhipinti. Mackey was the prosecutor and Bryner the defendant's attorney. Prior to trial the defendant had been released on his own recognizance and was attending an alcohol program where he was reported to be "doing well," but pending the sentencing Judge Occhipinti remanded him to custody, saying there was a need for security. A presentence report was ordered.

At the sentencing Mackey recommended 10 years with 5 suspended, noting that the burglarized dwelling had been occupied and that the presentence report stated that the defendant "had no goals in life."

Bryner presented the defendant's counselor in the alcohol program as a witness, who testified that the defendant had started to use alcohol at the age of 10, that he had a severe problem as he used other drugs (but no hard drugs), but that he was working well with the program and was motivated. Bryner said that the court should consider the defendant as a "first offender," noting his age, the fact that he

had been drinking, and his opinion that the crime was not premeditated. He requested a 3-year sentence, with the defendant to receive alcohol treatment at Palmer.

Mackey then emphasized the fact that the defendant went to trial "even though he knew he was guilty," "because he thought he could get away with a misdemeanor." Mackey also said the defendant took the items with intent to sell them and knew what he was doing.

Judge Occhipinti agreed that there was criminal intent. He discounted the "alcohol defense," saying the items were picked up carefully and quietly and the people were not awakened. He also noted that the crime was at night. He said he would follow the district attorney's recommendation of 10 years, but suspend only 4 years and require one-third to be served before parole eligibility.

Bryner argued that certain elements on which the sentence was being based, such as the burglary having taken place at night and the dwelling having been occupied, were not alleged in the indictment. The district attorney pointed out that a 10-year sentence was allowed anyway.*

Judge Occhipinti imposed the 10-year sentence, suspending 4 years. He did not recommend any treatment. He said that he found nothing to show the defendant had an alcohol problem, but that if he were evaluated by the Division of

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* The maximum for burglary in a dwelling is 10 years, for burglary in a dwelling at night, 15 years, and for burglary in an occupied dwelling, 20 years. AS 11.20.080.

Corrections to have such a problem, treatment would be recommended by the DOC staff.

The defendant appealed his sentence on the grounds that it was excessive and that the judge had improperly considered facts that were not alleged in the indictment. The Supreme Court vacated the sentence and remanded the case for re-sentencing on the grounds that the judge had improperly considered facts that were not alleged in the indictment. It was in this opinion that the court noted that sentences in general ought not exceed 5 years, and that maximum sentences should be given only to the "worst types of offenders," which it said this defendant was not, noting that it was his first felony, that he was only 21, that he had returned the stolen property when confronted by his accusers, and that at the time of sentencing he was making excellent progress in an alcohol program.[12]

The re-sentencing before Judge Occhipinti took place at the end of 1974, 9 months after the first sentencing. Mackey again was the prosecutor, but the defendant was represented by a different public defender, Bryson, as Bryner had entered private practice. The defendant had been at the Palmer Adult Camp for those 9 months.

Mackey told Judge Occhipinti that he still considered the burglary serious. He recommended 5 years, with one-third to be served before parole eligibility.

Bryson presented the defendant's counselor at Palmer as a witness, who testified that the defendant was working well

with him, was quiet, was willing to accept volunteer employment, and would be a reasonable risk if allowed into the community. He also said the defendant had displayed concern for other people.

Bryson noted that this was the defendant's first felony and that the items he had stolen he willingly had returned. He also noted that the defendant had an alcohol problem, but that he had participated in a program and was making progress. He suggested that the defendant receive job training at the Seward Skills Center. He also noted that a harsh sentence would not serve the purpose of deterrence because the crime showed no premeditation. He argued for the majority of any jail time meted out to be suspended, asking that the defendant be given a chance.

Mackey admitted that the defendant had made progress but said that putting him on the street would be a gamble. He said the Supreme Court was "mistaken," and urged the judge to follow his recommendation.

Judge Occhipinti said he too thought the Supreme Court was wrong. "I will state so and will continue to state so; I have done so for some time. It's very easy for someone who doesn't try a case to make snap judgments and read pretty books with pretty words and come up with pretty solutions which fail because our recidivism rate shows it failed; but I am not as naive as some jurists both in our Supreme Court and ABA apparently are."

The judge went on to say that the facts were serious

and that the defendant should not be considered a first offender. "Very serious crime. Supreme Court in their ivory tower says no one was hurt. Hogwash. Very serious." He said that he did not believe there was any alcohol connected with this crime because the defendant was quiet at the time and therefore could not have been drunk. He also noted that the presentence report showed the defendant had no source of income and said this indicated to him that the defendant must use criminal means to support himself, and this burglary was merely the first time he was caught. He accused him of being "a leach on society."

The judge continued with remarks about the purposes of the sentence. "Deterrence. I agree giving a 10-year sentence might not deter others because too many other judges don't adhere to that; the district attorney's office recommends suspended impositions of sentence too many times. And I mean the vast majority of their cases . . . The district attorney's office has avoided responsibility. Luckily, Mr. Mackey's not one of them . . . He's much more informed and enlightened than some of them."

The judge also pointed out that few persons sentenced to 5 years ever serve that much time because of the parole system. He further noted that if he did suspend the sentence and the defendant committed another crime, he knew the public defender agency would disqualify him. "Your office does it consistently, and then you'll make a bargain and sentence that will be ridiculous."

He sentenced the defendant to 5 years, forbidding work release and ordering one-third to be served before parole eligibility. He noted that "Deterrence is that when you commit a burglary, you pay the price. And the price is high. I say I discount rehabilitation because the State of Alaska has no rehabilitation that I can see. Punishment is part of deterrence."*

The defendant again appealed his sentence on the grounds that the sentence was excessive, that the judge failed to follow the Supreme Court's guidelines, and that the judge improperly considered the fact that the defendant was represented by the public defender agency. The appeal is pending; and the defendant is now at Eagle River.

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* The full text of the judge's remarks at this sentencing is contained in an appendix to this report.

Defendant #19

This defendant, a Black male age 26 with a minor prior record, was in the military and was noted as a heroin addict. He received a sentence of 5 years for robbing the cash register at a hotel gift shop of $260.75 after threatening a woman clerk with a knife.

A month prior to committing this offense the defendant had been charged with 2 other robberies (one in Anchorage and one in Fairbanks) and one charge of driving while intoxicated. Negotiations resulted in the defendant pleading guilty to the gift shop robbery, with the other cases being dismissed. The defendant's attorney was Byrne, and the prosecutor was Rice. Judge Occhipinti accepted the plea and the negotiated sentence, 5 years.

The court decided to follow the recommendation because the defendant had virtually no prior record (outside of military discipline) and had been accepted into the Family House drug program. Neither the state nor the judge recommended a minimum period to be served before parole eligibility. No other reasons or explanations for the sentence were stated on the record. The defendant is presently at a federal penitentiary in Virginia.

Defendant #20

This defendant was a Black male age 24 with no prior record. He was attending Alaska Methodist University on a basketball scholarship in 1973 when he was convicted of the armed robbery of a grocery store in which he stole $65 after threatening the clerk with a gun.

The defendant had been allowed bail release prior to the disposition of his case under a $5,000 bond and a strict curfew. Judge Occhipinti allowed the release. Ripley was the prosecutor, and the defendant had a private attorney, LaBate.

The defendant did not have a trial but agreed to enter a guilty plea. As part of the negotiations the district attorney, Ripley, agreed to recommend a sentence of 5 to 7 years with no mandatory minimum. Judge Occhipinti accepted the plea, and LaBate requested that a presentence report be ordered. The judge did so, also agreeing not to exceed the district attorney's recommendation.

On the day of the sentencing the district attorney announced that there was another charge pending against the defendant, but the defendant's attorney said there was no basis to it. The district attorney then said that he thought the presentence report was "a fine report" but that he disagreed with its recommendations, pointing out that it was beneath the negotiations. The district attorney called as a witness the store clerk who had been robbed, who described how frightened she had been. The defendant's attorney objected

on the grounds that the defendant already had pled guilty and that the district attorney was trying to prejudice the court.

A witness was presented on the defendant's behalf, who said the defendant was not violent and reported that he worked with boys' clubs and helped juvenile delinquents.

Judge Occhipinti announced that he did not agree with the recommendation of the presentence report, that he thought punishment was necessary, and that the would follow the district attorney's recommendation, sentencing the defendant to 5 years. He also said that deterrence was necessary--that he could not put up with armed robbery and would not put up with it. He did say, however, that the defendant would be eligible for parole anytime the board "in what sometimes passes for their wisdom, feels he is entitled to be released." He also noted that society could not continue to have such lenient sentencing, saying he was "surprised and disgusted that the defendant, who was a pretty fair basketball player and helps kids, would do this."

A month and a half later the parole board wrote to Judge Occhipinti to say that the defendant was eligible for parole and ask to ask him for comments. Presently the defendant is at the State jail in Anchorage on Third Avenue.

Defendant #21

This defendant was an older Black male, age 35. He had no prior record except a few misdemeanors many years in the past, for which he had not been sent to jail. In 1973 he was charged with several drug offenses but was convicted of only one of them because of the deaths of two key witnesses.

The defendant was convicted at a heavily contested trial of one count of possession of heroin. (A co-defendant in this case was defendant #2.) The trial was presided over by Judge Occhipinti. Ripley was the prosecutor, and the defendant hired a private attorney from out of state. A pre-sentence report was ordered.

The scheduled sentencing was delayed because the defendant's attorney was not able to get to Anchorage. At that time Judge Occhipinti said he was tired of waiting for the attorney and wanted to get on with the sentencing, but Ripley advised him to wait so that the defendant would not be able to appeal on the ground that he was denied counsel.

At the sentencing the defendant's attorney objected to the presentence report as being "unfair in every way." The court noted, however, that it showed the defendant to be "a fine man," and added that the report's primary purpose was merely to show a defendant's background. (The report did allude to the fact that the defendant had an income that apparently was illegal, but the court said that was a matter for the IRS to deal with.)

Ripley recommended that the defendant receive a

10-year sentence, one-third to be served before parole eligibility. He pointed out that "this man has lived in that drug world" and that the other cases had been dismissed only because of the deaths of 2 key witnesses. He said that the defendant showed no remorse, citing his lifestyle as evidence.

The defendant's attorney argued that the defendant should "go free," that no heroin ever had been shown to the jury, and that the defendant had no prior record and was a solid member of the community.

Judge Occhipinti said he thought the defendant's lifestyle was condemning, but that in imposing the sentence he was not considering the defendant's lifestyle and lack of a solid work history very seriously. He also said he did not see any probability of rehabilitation and that based on all the circumstances, he was not going to follow the recommendation of the district attorney. He sentenced the defendant to 6 years, one-third to be served before parole eligibility.

The defendant filed appeals of both his conviction and sentence, and presently he is on bail pending the appeals.

Defendant #22

This defendant was a Black male age 34 who had a long record of felony convictions that included property offenses, forgeries and drug convictions. The defendant was noted as a heroin addict. He was a 10-year resident of Alaska and a musician.

In 1973 the defendant was on probation when he was convicted of 2 burglaries, the second having been committed while he was on bail pending disposition of the first. The defendant pled guilty to the burglary charges (other larceny charges against him were dismissed), but the sentencing was an open sentencing before Judge Burke. Rice was the prosecutor, and Soll represented the defendant.

The sentencing began with the district attorney and judge reviewing the sentence for which the defendant was on probation, which had been a 20-year sentence with 18 years suspended. Rice said he had not given the matter a great deal of thought, but that he would recommend 2 years on each of the old offenses, to be served concurrently with any sentences for the burglaries.

Soll pointed out that the defendant already had served 2 years on those offenses. Rice then noted that rehabilitation usually takes place during the first 2 years, but that this defendant was different because his problem was heroin. However, Rice recommended 10 years on each burglary count, to be served concurrently.

The defendant's probation officer spoke up regarding

the defendant's associates, saying they were a problem and that the defendant needed counseling.

Soll noted that the defendant was an addict, but also a talented musician. He recommended "something like Family House." He said the defendant had no criminal instincts, had never used violence, and was "a man with virtually no record."

The defendant admitted that he had been an addict on and off but said he had never been in a drug program and that he thought the recommendation was fair.

Judge Burke sentenced the defendant to 8 years on one burglary and to 2 years on the other, to be served consecutively; and he allowed parole at the discretion of the parole board. He also recommended that the defendant be placed in a facility that could furnish treatment for his narcotics addiction. Presently the defendant is at the Family House in Anchorage.

Defendant #23

This defendant, a Black male age 23, received a 15-year sentence for robbery in 1973. The defendant committed the robbery while he was on bail pending a burglary charge. He also was on parole from a 10-year sentence from an earlier robbery and had a record of several past robberies and attempted robberies. He also was charged with 2 other offenses while on bail in 1973, a burglary and a drug offense.

The defendant was convicted of the robbery after a jury trial. (Earlier in the year he had been acquitted of the burglary charge also at a jury trial; his drug case later was dismissed due to the death of an essential witness.) Judge Kalamarides presided over the trial. Merriner was the prosecutor. The defendant hired a private attorney, Webb. After the trial a presentence report was ordered.

The district attorney filed a motion just before the sentencing requesting that the proceeding be delayed pending the disposition of the one pending burglary charge, in order that the state could seek an "habitual criminal" prosecution against the defendant. Judge Kalamarides denied the motion, however. No reason for denial was stated on the record.

At the sentencing Webb told the judge that the state owed the defendant a chance because the last time he had been sentenced he did not get rehabilitated. Merriner replied that there was "no hope" for rehabilitation in his case, that the defendant needed to be sentenced for the protection of society, and that the community would be outraged by anything

less than 15 years with one-third to serve before parole eligibility.

The defendant said that he was not an habitual criminal, that he was ashamed of himself, but that he needed a skill. He noted that the last time he was sentenced he "didn't get one."

Judge Kalamarides told the defendant that he already had been given a chance, and he reminded him that he had said he had learned a lesson from being sentenced several years ago. He told the defendant that he did not think he was beyond rehabilitation, but noted that the charge was serious and that society was entitled to protection.

Judge Kalamarides sentenced the defendant to 15 years "for the protection of society and as a deterrent to others," ordering one-third of the sentence to be served before parole eligibility. He also noted, however, that the defendant could file a petition for review if he showed sufficient rehabilitation. The judge also recommended job training.

The defendant did file a petition requesting the one-third minimum to be removed, but it was opposed by the state. The motion was calendared for a hearing but never has been held. The defendant presently is in Lompoc, a federal prison in California, where he was to receive job training additional to what is offered in Alaska facilities.

Defendant #24

This defendant was a Black male age 24 with a minor misdemeanor record. He had never been sentenced to jail. He received a 5-year sentence for possession of heroin. The defendant also had been charged with 4 counts of sale of heroin.

The defendant pled guilty to all the sales and the possession, but for the sales he received a "deferred imposition of sentence" as part of the plea bargain, so that they would not be on his record. Judge Occhipinti accepted the plea and the negotiated sentence. Ripley was the prosecutor. The defendant hired a private attorney, James Johnston.

At the proceeding where the plea was entered and the sentence imposed, Ripley said he thought the negotiated sentence was sufficient to protect society, even though he knew the defendant might be paroled within 6 months to one year.

The defendant said that he was pleading guilty because he was guilty. He also said that he wanted to go to school and get an education.

The judge said he believed in punishment, but that he agreed that 5 years in one case would be sufficient. He reminded the defendant that if he "stayed clean," the sales would be off his record. He allowed the defendant to begin serving his sentence a month later (the sentence was imposed a few weeks before Christmas). Parole was allowed at the discretion of the parole board.

A year later the defendant complained to Judge

Occhipinti that he was not getting an education. The judge's reply explained that the judge only has the power to recommend correctional programs, that the final decision is made by the Division of Corrections, and that the defendant would have to consult his counselor at Eagle River. The defendant is presently at the Anchorage Third Avenue jail.

Defendants #25, 26 and 27

The following 3 defendants (#s 25, 26 and 27) all received sentences of 5 years or greater after participating in several of the same liquor store robberies. Their "histories" are somewhat difficult to follow, as they provide a classic example of confusion arising when cases involve multiple indictments and multiple co-defendants. Although all the details are not noted here because the sentences are retrievable without examining every proceeding, interested persons may consult Anchorage Superior Court criminal case numbers 73-653, 73-664, 73-665, and 73-666.

Briefly, there were 4 gun-point liquor store robberies altoghether, which occurred within a space of two weeks. In addition to these 3 defendants (#25-27), there were 3 other co-defendants involved (who did not receive sentences of 5 years or greater). More than 6 defense attorneys filed numerous motions for continuances, severances, waivers, dismissals, petitions for review, changes of attorney, etc., most of which focused on interpretations of the speedy trial rule and the admissibility of co-defendants' testimony and confessions.

All of the defendants (#s 25-27) were Black males age 19 in military service. None of them had prior records before the occurences related above, (except one, who had been convicted of a soft drug offense).

The first defendant, defendant #25, was convicted of 3 of the robberies. At the time he entered plea negotiations

and was sentenced, he was represented by a court-appointed public defender, West. Ripley was the prosecutor. The defendant pled guilty to the robberies in exchange for Ripley's promise not to recommend more than a 10-year concurrent sentence on each count. Ripley also said he intended to recommend a mandatory one-third to be served before parole eligibility, but there had been no negotiations to that effect. Judge Kalamarides accepted the plea, and ordered a presentence report, chiefly because the defendant intended to argue against the mandatory minimum.

At the sentencing proceeding, Mattson appeared for Ripley and reiterated Ripley's recommendation. West, appearing for the defendant, said that he had not agreed to the mandatory one-third because the defendant was young and could be rehabilitated. West also said that the mandatory one-third would not serve any deterrent purpose. Mattson then noted that the 3 robberies were all armed robberies and were serious.

Judge Kalamarides reported that he had read the presentence report and it had made him concerned with the defendant's youth. (The defendant also had been convicted of possession of marijuana for sale a few weeks earlier.)

The defendant said he had "made a mistake" and was sorry--that he had taken up a dare in participating in the robberies, but that he did know the difference between right and wrong. He said he thought the state's sentence recommendation was fair.

Judge Kalamarides then sentenced the defendant to 9 years, with one-third to be served before parole eligibility. He said to the defendant, "The presentence report indicates you are salvageable. I hope so." He recommended that the defendant be placed in the Eagle River facility, and he also recommended job training.

Two months later the defendant moved to have his sentence reduced, because the Division of Corrections considered the sentence too long to allow the defendant to be placed in Eagle River. Mackey represented the state at the hearing on the motion.

At the proceeding West emphasized that the defendant had been sent to Juneau where there was "merely a jail," instead of to Eagle River, which offered rehabilitation. The defendant told the court he wanted to better himself, and said that the mechanics training program he presently was enrolled in in Juneau would be over in a year, and that then he would just "sit there" for the remaining 2 years. Mackey said he understood the defendant's problem, and he had no objection to the transfer to Eagle River. West noted that the defendant had shown no trouble while he was in the military, until these robbery incidents, where he had just been riding around with friends who decided to rob a store because they thought it was easy money.

Judge Kalamarides reduced the sentence to 5 years with one-third to serve "for the purpose of rehabilitation." The defendant presently is at Eagle River.

Defendant #26 also was charged with 3 of the liquor store robberies, but he pled guilty to only one robbery. He was sentenced at an open proceeding by Judge Burke. A presentence report had been ordered. The state had agreed to limit the sentence to 5 years, but to allow the defendant to argue for less. Van Winkle represented the defendant during the plea negotiations but Drathman represented him at the sentencing. Talbot was the prosecutor at both proceedings.

In presenting the plea to Judge Burke, Van Winkle noted that the defendant was charged with 3 robberies that were more or less a prank, that there had been only one gun, that the defendant never had participated in the joking, and that the robbery was a complete turnaround in the defendant's conduct. Talbot told the judge that he thought one conviction was enough, and that at the sentencing the other charges could be dismissed.

At the sentencing Talbot reiterated the 5-year sentence recommendation, noting that the defendant had been charged with 3 armed robberies. The defendant's attorney presented an argument that the defendant had been denied his right to speedy trial, noting that he had been in custody pending disposition of the cases almost a year. He also informed the judge that the robberies were "typical liquor store robberies."

The probation officer who had written the presentence report said that in his opinion the offense in question did not merit a suspended imposition of sentence. He noted

that the defendant had not "done anything" during his time in jail, that it was just "dead time" and that he was "floating." He affirmed that the defendant had no prior record of arrests or convictions.

Drathman told the judge that the defendant had been raised in a ghetto, but nonetheless had had no prior contact with the law. Drathman did admit, however, that the defendant had gotten involved in drugs in the past, but then had joined the military although he still had some drug problem when he was arrested. Drathman also noted that the defendant did not have a weapon in his possession during the offense. He recommended a 3-year sentence, noting that the defendant had a one-year old daughter and wanted to marry her mother. He ended by saying that the defendant was not a hardened criminal, and that the one year already spent in the city jail was sufficient deterrence for him. He also said the defendant now was willing to admit the other robberies.

The defendant took the witness stand and testified that he had not just been "laying around the jail," but that he had worked in the kitchen.

Judge Burke imposed a sentence of 5 years, parole at the discretion of the parole board, noting that he had reviewed the presentence report and was considering the admission of the other robberies. He also impressed upon the defendant that robbery was a very serious crime, and that these robberies did involve a weapon. He then noted that since the defendant came from a fairly "tough" background, his lack of a prior record "may merely have indicated that the defendant

never had been caught before," but then he added "More likely, he's been law-abiding." He said, however, that for the protection of society it was important to isolate the defendant during rehabilitation, and that for the deterrence of the defendant he must impress on him the seriousness of his crime by imposing a substantial sentence. He added that as far as "deterrence of others" was concerned, "We've already failed to deter those now in jail for robbery . . . if we deter one person from robbery, the goal will be achieved. . . the community can't condone robbery, or even appear to condone it."

The defendant filed an appeal of his conviction, based on lack of a speedy trial. The defendant presently is in the Juneau jail awaiting the appeal verdict.

Defendant #27 was charged with only one of the aforementioned liquor store robberies, but he also was charged with receiving and concealing some of the money stolen during three of the robberies, and additionally he was charged with robbing an inmate while at the jail pending trial.

Mackey prosecuted this defendant in both his robbery cases, and Webb and Gilmore were the defendant's attorneys. The defendant had a trial by jury before Judge Kalamarides on the liquor store robbery. During the trial, the defendant asked for a change of venue to Nassau, the Bahamas, saying he was not a citizen of this country. The court denied the change of venue but later allowed the trial to be discontinued part-way through because the defendant's court-appointed public defender, Webb, had to withdraw and Gilmore, who was

appointed next, requested time to become familiar with the case.

Before the trial was re-continued, a plea bargain was reached. Judge Kalamarides accepted the defendant's pleas of guilty to both robberies and one of 3 counts of receiving and concealing, and ordered a presentence report.

At the sentencing the defendant had two different attorneys, Webb and Abbott, one for each robbery charge, and Webb for the receiving and concealing charge. Mattson was the district attorney.

Abbott said that the prosecutor and attorneys had agreed to a sentence of 7 years. Mattson affirmed his concurrence, adding that the defendant had provided the gun for the robbery. Judge Kalamarides noted that the presentence report showed that the defendant was a follower, not a leader. He then questioned the defendant regarding his lifestyle and occupations. The defendant said he had used drugs in the past but had given them up. He also said that he had had a good job before coming to Alaska but that he had resigned from it to enter the service and to get away from a bench warrant. He told the judge that he was presently taking correspondence courses in fingerprinting and criminal investigation that he wished to continue.

Judge Kalamarides decided to impose concurrent sentences on all 3 counts, but the length of the sentence was below the length that had been recommended. He gave the defendant 5 years on each of the robbery charges and 3 years

on the receiving and concealing, all concurrent, with one-third of each to be served concurrently before parole eligibility. He told the defendant that he was giving him this sentence because he was young and because he (the judge) thought the defendant could be rehabilitated, although at present he was a danger to the community and should be incarcerated.

The defendant presently is at Eagle River.

Defendant #28

This defendant, a 28-year old Black male, had a long prior record from both California and Alaska. He had committed more than 4 felonies in the past, mostly frauds, check forgeries, and assaults. However, he had never received a sentence longer than 5 years. He received his long sentence in 1973 for attempting to pass a forged check in the amount of $345.56. In 1971 the defendant had received a sentence of 18 months from Judge Fitzgerald for his most recent check forgery.

The 1973 forgery was committed while the defendant was on bail for a robbery charge and several burglaries. Two drug offenses also were committed while the defendant was on bail. Most of the charges were consolidated for a trial by jury before Judge Burke, at which the defendant was convicted of the attempt to pass a forged check. (He was acquitted on some of the other counts, and a mistrial was declared on still other of the counts.) Hawley was the prosecutor, and Shortell was the defendant's attorney. Afterwards, Judge Burke ordered a presentence report.

At the sentencing Hawley said he was not convinced that the defendant was beyond rehabilitation. However, Judge Burke said it would be a mistake to put the defendant on probation because of his age, prior record, present charges, and the need to deter others in the community. He gave the defendant a 6-year sentence with one-third to be served before parole eligibility. No special rehabilitation treatment was recommended.

The defendant appealed his conviction on the ground that the court had erred in consolidating the cases for trial. The appeal still is pending. The defendant presently is in the Juneau jail.

Defendant #29

This defendant, a Black male age 23, had no criminal record before 1973. He was charged with rape, sodomy, and robbery, all arising out of the same incident, and then charged with another rape committed while on bail pending sentencing.

He was convicted of the first rape and robbery and acquitted on the sodomy charge at a trial by jury before Judge Kalamarides. Ripley was the prosecutor, and the defendant hired his own attorney, Ravin. The judge ordered a presentence report.

While on bail pending sentencing, the defendant was charged with the second rape, to which he pled guilty although he maintained his innocence, saying he pled guilty only because he did not feel he had "any chance of winning in court." At that point Judge Kalamarides said he could not accept the plea, but the defendant then said he wanted to plead guilty anyway. The Court accepted the plea, ruling that the grand jury minutes would stand as "a substantial basis for the plea" (which the law requires a judge to find before he can accept a plea. *)

At the sentencing Bryner represented the defendant, and Ripley again was the prosecutor. Ripley recommended a 15-year sentence for the first rape and 7-1/2 for the robbery with one-third to serve before parole eligibility. He noted that the defendant had not been proven guilty on the second

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* Crim. R. 11

rape, but that the defendant was hostile and appeared to feel discriminated against on the basis of race. He told the judge that he "could afford to take a chance with burglars," but not with a defendant charged with such crimes as these.

Bryner urged a sentence of 15 years with 10 suspended, saying the defendant needed psychiatric counseling. He asked the court to take into account the defendant's age and lack of prior record. He noted that there had been minimal physical harm, and no weapon used. He said he thought that the defendant's problem had been caught in the bud and recommended that the defendant go to the Eagle River facility, where he could get psychiatric counseling and where he could remain in close proximity to his son and girlfriend, whose relationships gave him "support."

Judge Kalamarides announced that he was impressed with the presentence report. He then said to the defendant, "You indicate the jury was prejudiced. I find no evidence. You don't come from a background where you couldn't improve yourself. I am constantly amazed by people blaming their behavior on others. Rape is a trauma for the community. Your own attorney has recommended rehabilitation." He further noted that if there had been only one charge, he would follow Bryner's recommendation.

Judge Kalamarides sentenced the defendant to 10 years on the first rape, to a concurrent 7-1/2 years on the robbery, and to a concurrent 10 years on the second rape. He recommended that the defendant be placed in the Eagle River facility, and

that he have psychiatric help and training. The defendant appealed both his conviction and sentence, both of which are pending.

Subsequent to filing the appeals, the defendant wrote several letters to the judge requesting sentence modification, saying that he had been sent to the Juneau jail, not placed in Eagle River. He noted that Juneau was no place for rehabilitation, as there was "nothing for prisoners to do except shoot pool and listen to music." He said he had not chosen to come to this state but had been forced by the Army and would gladly leave if given a sentence reduction.

Judge Kalamarides referred him to the public defender, even though earlier the defendant had hired a private attorney, as the defendant already had written a letter complaining about the "double standard" evident from Ravin's "test" of the marijuana laws.*

Early in 1975 the parole board wrote Kalamarides a letter saying the defendant would be eligible for parole shortly. (He had been in custody only a year.) The judge replied with a copy of a letter he had sent earlier to the Division of Corrections when the defendant had made a request for executive clemency, which said that he felt that the defendant was carrying a grudge. The letter also said that he thought the defendant was dangerous and that he (the judge)

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* Mr. Ravin had been convicted of possession of marijuana and was contesting the legality of such conviction before the Supreme Court.

had heard that the defendant had written threatening letters to one victim.

Presently the defendant is still at the Juneau jail.

Defendant #30

This defendant was a young Black male, age 21. He was a 14-year resident of Alaska and had been on juvenile probation. In 1973 he received 2 consecutive 10-year sentences for 2 counts of robbery, both arising out of the same event, and committed while the defendant was on bail for burglary and check forgery charges.

The defendant had been charged with 3 counts of robbery but was convicted of only 2 of them at a jury trial before Judge Kalamarides. Rice was the prosecutor, and Shortell was the defendant's attorney. The burglary and forgery cases were dismissed afterwards "in the interests of justice." A presentence report was ordered.

At the sentencing the district attorney recommended the maximum on each count, 15 years, noting that the robberies had been armed robberies (although the defendant was not prosecuted for armed robbery).

The defendant's attorney, Shortell, argued that the defendant was not the worst type of offender, noting that he was only 21, that he had no prior adult convictions, although he did have a juvenile record, and that there had been no allegations at trial that the defendant had a gun.

The defendant spoke, emphasizing that he did not think he should be sentenced on the basis of his juvenile record.

Judge Kalamarides told the defendant that his record was not affecting the sentence but reminded him that

armed robbery was a heinous crime which he had planned and executed. The judge imposed the consecutive 10-year sentences, saying to the defendant, "You are being sentenced for the protection of society." However, he told the defendant that he would consider reviewing the sentence if he showed rapid rehabilitation.

The defendant appealed his conviction (on the grounds that the district attorney had improperly influenced the grand jury) and also appealed his sentence, on the grounds of excessiveness. Presently the appeals are pending. The defendant is in the Juneau jail.

Part III - ANALYSIS AND CONCLUSIONS

This paper began with the purpose of focusing on two points: whether or not the persons who received long sentences in 1973 had committed "particularly serious offenses" or were "dangerous offenders", "professional criminals", or "the worst type of offenders"; and whether, given these criteria, the high percentage of Black defendants who received sentences of five years or greater was as deserving of these sentences as the low percentage of Caucasians. Many facts and circumstances have been set forth in the preceding pages in order that an analysis of these questions can be attempted.

It may be instructive first to look at the supreme court's sentencing criteria. Since the sentence appeal law was enacted, effective January 1, 1973*, over 60 defendants have appealed their sentences to the supreme court.[13] (Approximately 70% of these appeals have resulted in affirmation of the lower court sentence, approximately 20% have been reversed on the grounds of excessiveness, and only 2 sentences, less than 4%, have been disapproved as too lenient.)[14] In the various supreme court opinions explaining its decisions in these cases, guidelines for sentencing have been set forth.

As noted, the court has written that, in general, maximum sentences need not exceed five years, except for particularly serious offenses, dangerous offenders, and professional criminals, and that the maximum sentence for a crime ought to be given only to the worst type of offender.[15] Regarding the definition of "serious offense", the court has noted in a

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* AS 12.55.120

case in which it affirmed a rape sentence that "Forcible rape and robbery rank among the most serious crimes."[16] In another case, where the defendant was convicted of assault with a dangerous weapon, (and in another very recent sentence affirmation for a rape case), the court has expressed the view that violent crimes involving physical injury to innocent people are to be regarded as the most serious offenses, and are not to be treated lightly.[17]

In several other cases the court has commented on the terms maximum sentence and "worst type of offender". In 1971 in affirming a maximum sentence, the court said a maximum sentence generally was not appropriate for a single violation of a law which was not surrounded by aggravating circumstances, such as a prior record or the defendant's having committed the offense while on bail, probation or parole.[18] The court further said in Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), in overturning a maximum sentence for petty larceny, that the following factors should be considered in assessing whether the defendant was the worst type of offender: the defendant's age; the defendant's previous offenses, if any; whether the (multiple) offenses occurred within only a single criminal transaction; and the value of the property taken. The terms "dangerous offender" and "professional criminal" have not been defined by the supreme court.

As noted earlier in this report, most of the crimes of which the 42 defendants were convicted were quite serious

offenses, although not all were rape or robbery, and not all involved harm to victims. In fact, only 3 of the 42 were convicted of rape (7%) and 13 convicted of robbery (31%), for a total of 38%.

Many of the defendants were young. It already has been noted that over half, 26 defendants or 63%, were under age 25. Eighteen were only 21 or younger, fully 43%.

Many of these defendants did not have prior records or had records of very little consequence, such as traffic offenses or misdemeanor convictions that had not resulted in jail. Nineteen defendants, or 46%, fit this description.

Many defendants also were involved in only a single criminal transaction, although the single transaction often was very serious. Eighteen defendants, or 43%, committed only a single criminal act. However, it should be noted that eight of the defendants involved in only a single transaction in 1973 had prior felony records.

With regard to the fourth guideline, the value of property injured or stolen, most of the crimes for these 1973 defendants involved harm of some value (usually over $50) if they involved harm to property.

These sentencing guides also can be compared along racial lines. (Only defendants in Anchorage are included in the following computations, as the desire to focus on racial comparisons arises from Blacks sentenced there.) Of all 12 Caucasians receiving sentences of five years or greater, 7 or 58% were 25 years old or younger, and 6 or 50% were 21 or

under. Of all 12 Blacks receiving sentences of five years or greater, 8 or 67% were 25 or younger; but only 4 or 33% were 21 or under. Thus more young Caucasians received long sentences than Blacks.

Four of the Caucasians (33%) had no prior record (or no prior record of any consequence). Eight of the Blacks (67%) had no prior record. Thus twice as many Blacks as Caucasians who had no prior record received long sentences.

Five of the Caucasians (42%) had been involved in only a single criminal transaction (including any offenses committed later while the defendant was on bail but had not yet been sentenced). Only 3 of the Blacks (25%) were involved in only one transaction.*

As noted previously (on p. 18), seven of the Caucasians (58%) did physical harm to a victim, while only one out of all 12 Blacks (the defendant who raped two women) could be said to have done physical harm to his victim. All of the homicides and aggravated assaults that resulted in long sentences were committed by Caucasian (or Native Alaskan) males.

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* Some of the sentences appear to have been based on the judge's consideration that the defendant probably had committed other offenses and merely not ben caught, although convicted of only one. However, the Supreme Court clearly has said that such consideration is not proper in sentencing. In Galaktionoff v. State, 486 P.2d 919, 924 (Alaska 1971), where the court was reviewing a judge's consideration that a defendant probably was guilty of more serious offenses than the one charged, the court said that the danger inherent in giving undue weight to such factors should be readily apparent to the judge, and that absent a conviction even an indictment is absolutely no evidence of guilty conduct.

The main offense which was committed most often by these Anchorage defendants, both Caucasian and Black, was robbery. Four of the Caucasians and 8 of the Blacks received their long sentence for robbery. All but one of the Caucasians receiving long sentences for robbery had prior felony records. Only one of the Blacks receiving a long sentence for robbery had a prior felony record.

In order to analyze whether these 7 Blacks received unduly harsh sentences, these sentences are compared below with other Anchorage sentences for robbery (that did not exceed 5 years). Although it would not be feasible to compare for each of the 42 defendants all other sentences meted out to other defendants for the same offense, it is possible to compare all of one kind of sentence for a select group of individuals. Because most of the Blacks in question were first offenders, the description below is of all 1973 defendants who committed robbery, who were first offenders or had no prior record of any consequence, but who did not receive sentences of 5 years or greater.

Firstly, it can be seen that 9 Caucasian first offenders received sentences of less than 5 years for robbery in 1973. Only 4 Blacks received such sentences. Moreover, only one of these Blacks was sentenced to less than 1-1/2 years in jail, whereas seven of the 9 Caucasians (78%) were sentenced to one year or less in jail. (Two were placed on probation.)

All defendants on Table IV, Caucasian and

TABLE IV

DEFENDANTS≠ CONVICTED OF ROBBERY WHO RECEIVED
LESS THAN A FIVE-YEAR SENTENCE
(Anchorage only - no robbery convictions in Fairbanks or Juneau)

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
F	Cauc.	20	One prior misdemeanor	Probation (3 years SIS)*	Carlson	Robbed victim of watch and $50
M	Cauc.	21	No prior record	5 months (plus 5 years SIS)	Burke	Robbed person of watch and $50 at gunpoint; repeat bail recidivist
M	Cauc.	19	No prior record	1 year (plus 2 suspended)	Kalamarides	Military; liquor store robbery at gunpoint; co-defendant of defendants #25-27, Table II
M	Cauc.	21	Less than 6 misdemeanors, no jail time	1 year (plus 2 suspended)	Occhipinti	
M	Cauc.	23	Less than 6 misdemeanors; never served more than 90 days	Probation (2 years SIS)	Burke	Robbed person of money with long-barreled gun; case dismissed in return for defendant pleading guilty to other cases; repeat bail recidivist.
M	Cauc.	18	Minor traffic record	2 years (plus 2 suspended)	Occhipinti	
M	Cauc.	19	No prior record	3 years	Kalamarides	Convicted of 2 counts of robbery, one armed, one against his mother
M	Cauc.	21	No prior record	1 year (plus 4 suspended)	Moody	Turned state's evidence; ordered to make $240 restitution
M	Cauc.	23	Two prior felonies; never been sentenced to more than 90 days	115 days	Carlson	Stole $435 after putting victim in fear with .22 calibre rifle; "Pled down" to petty larceny; drug-related

≠ Defendants with no prior criminal record, or a minor record only.
* Suspended imposition of sentence.

TABLE IV - Continued

SEX	RACE	AGE	PRIOR RECORD	SENTENCE	JUDGE	SPECIAL CIRCUMSTANCES
M	Nat.	25	Less than 6 misdemeanors; no jail time	4 years	Burke	
M	Black	20	Less than 6 misdemeanors; no jail time	1-1/2 years (plus 3-1/2 years suspended)	Buckalew	
M	Black	19	No prior record	60 days (plus 3 years SIS)	Carlson	Military; recidivated on bail; defendant's father (a military officer) appeared on his behalf
M	Black	23	No prior record	3 years (mandatory 1/3)	Occhipinti	Military; drove "get away" car
M	Black	21	No prior record	2 years (plus 3 suspended)	Burke	Military; alcohol treatment recommended

Black, were under age 25. All the Caucasians except one were 21 or younger, and all the Blacks except one were 21 or younger.

None of the Blacks on Table IV were noted as having used a weapon during the robbery (although the fact that the court files did not note a weapon does not necessarily preclude the possibility of their having been one). Five of the Caucasians (56%) were noted as having used a gun.

It thus appears that even among defendants receiving less than 5 years for robbery, Blacks may have been treated more harshly.

Comparing the 9 Caucasians on Table IV with the 7 Blacks (on Table II) who were also "first offenders" but received 5 years or greater, there are some factors possibly justifying apparent disparity. It can be noted that the Blacks were slightly older--one was over 25 and 3 were over 21. Moreover, of the 7 Blacks, 5 (71%) were noted as having used a weapon, compared to 56% of the Caucasians. Five of the 7 Blacks (71%) also were involved in more than one event, whereas only 4 of the Caucasians in Table IV (44%) were involved in more than one criminal transaction.

It should be pointed out that if the 3 young Black defendants (#25-27) who participated in the same liquor store robberies had not received sentences of 5 years or greater but had received lesser sentences, a bit more of the statistical disparity among Blacks and Caucasians on both Table II and Table IV would be removed. However, those three

Blacks did receive sentences of five years or greater. It should be further noted, with regard to those liquor store robberies, that Table IV shows a fourth co-defendant in those cases, who was a Caucasian male, also age 19 with no prior record, and who received a sentence of one year plus two years suspended. (This sentence was imposed by the same judge who sentenced 2 of the 3 Black defendants.) The following analyses of certain other sentencing phenomena may help to show whether the 1973 sentencing results shown in Tables I and II might be considered disparate.

Table V below shows the number and type of defendants who had a trial on the charge for which they received their long sentence, compared to those who accepted plea negotiations. It was noted in several of the preceding Anchorage sentencing narratives that the attorneys or the judge when sentencing a defendant took into account whether or not the defendant had gone to trial.

Out of 30 Anchorage defendants with long sentences, 8 had trials (27%). This figure far exceeds the figure of 6% of all convicted felony defendants who had trials in 1973.[19]

In Anchorage, none of the Caucasian males who received sentences of 5 years or greater went to trial. The first report showed the converse--that none of the Caucasian males who went to trial received sentences of 5 years or greater.[20] On the contrary, six of the Blacks who received sentences of 5 years or greater (50%) had gone to trial. The earlier study also reported that all Black males convicted

TABLE V

INCIDENCE OF TRIALS

Fairbanks		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Caucasian Males	1	25%
Nat. Alaskan Males	1	33%
Males, Race Unknown	0	--

Juneau

The one defendant sentenced to five years in Juneau did have a trial.

Anchorage		
	Number of Defendants Who Went to Trial	Percentage of Defendants
Cauc. Females	1	50%
Cauc. Males	0	--
Nat. Alaskan Males	1	25%
Black Males	6	50%

at trial in Anchorage received sentences of 5 years or greater.[21]

However, Table VI below shows that whether or not there was a trial, the majority of all sentences of 5 years or greater statewide, and most of the sentences of 5 years or greater given to Blacks in Anchorage, did not occur without the benefit of a presentence report. Statewide, presentence reports were prepared in 62% of the cases, although this figure varied according to type of defendant and area of the state. In Fairbanks presentence reports were prepared for 92% of defendants receiving long sentences, but for only 50% of the Anchorage defendants. A presentence report was prepared for the one defendant in Juneau.

Among the Anchorage cases, presentence reports were prepared for 75% of the Blacks but for less than 50% of the Caucasians, and for only 33% of the Caucasian males. It might be noted that the higher incidence of presentence reports among Blacks may reflect the fact shown earlier on p. 18 that sentences for Caucasians were "negotiated" more often. (It might also be called to mind that Table II showed that the judge followed the district attorney's recommendation for Caucasians three times, sentenced above it once, and sentenced below it once; and for Blacks the statistics were not very different, the judge following the district attorney's recommendation 4 times and sentencing below it twice.

Table VII shows another factor that could indicate

TABLE VI

INCIDENCE OF PRESENTENCE REPORTS

A. Statewide. 62% of defendants sentenced to 5 years or more in jail received pre-sentence reports.

B. Areas.

Race & Sex	Anchorage	Fairbanks			Juneau	
	No. of defendants for whom report prepared	% of defendants of this race & sex	No.	%	No.	%
Cauc. Female	1	50%	--	--	--	--
Cauc. Male	4	33%	6	100%	--	--
Nat. Alaskan Male	1	25%	3	75%	1	100%
Black Male	9	75%	--	--	--	--
Male, Race Unk.	--	--	1	100%	--	--
	15		10		1	

disparity, the incidence of a judge imposing a required mandatory minimum (usually one-third of the sentence imposed) to be served before parole eligibility.

Statewide, 18 out of the 42 defendants (43%) were required to serve a mandatory minimum. In Fairbanks only 2 defendants (17%) were required to serve a mandatory minimum. The one defendant in Juneau was not required to serve a mandatory minimum.

In Anchorage 60% of the defendants were required to serve a mandatory minimum. However, 67% of Caucasian males were required to serve a mandatory minimum, while only 42% of Black males were. As is noted on the chart, however, 2 of the Caucasian males succeeded in getting their mandatory minimum eliminated, and thus the final situations are not very different. Unfortunately, the earlier report did not contain statistics on what percentage of all defendants receiving jail sentences were required to serve a mandatory minimum.

Sentencing Criteria and Treatment

The very first sentence appeal decision handed down by the supreme court after the sentence appeal law was enacted, State v. Chaney,[22] stated that a trial judge when imposing sentence should consider the following factors: the principles of reformation and the necessity of protecting the public, the objective of rehabilitation of the offender into a non-criminal member of society, isolation of the offender from society to prevent criminal conduct during the period of confinement, deterrence of the offender, deterrence of other

TABLE VII

INCIDENCE OF REQUIRED MANDATORY MINIMUMS

Fairbanks

Only two defendants in Fairbanks who received sentences of 5 years or greater were required to serve a minimum before parole eligibility. One was male, "race unknown," and one was a Caucasian male. One was required to serve one-half of a 30-year sentence before parole eligibility, which sentence is illegal,* and one was required to serve 2 years of a 10-year sentence (less than one-third of the sentence).

Juneau

In Juneau, the one defendant receiving a sentence of 5 years or greater was not required to serve a mandatory minimum.

Anchorage

	Number of Defendants Required to Serve Mandatory One-Third Minimum	Percent
Caucasian Females	1	50%
Caucasian Males	8**	67%
Native Alaskan Males	1	25%
Black Males	5	42%

* At that date the judge was allowed to fix a mandatory minimum to be served before parole eligibility only if it did not exceed more than one-third of the sentence. AS 33.15.230(a)(1). See also Sentencing in Alaska, p. 27 and p. 168.

** 2 eliminated, plus one that was less than one-third.

members of the community who might possess criminal tendencies; and community condemnation of the individual, (also described as "reaffirmation of societal norms for the purpose of maintaining respect for the norms themselves.")[23] The court further noted in a later case that the trial judge must determine the priority and relationship of these objectives in any particular case.[24]

In recent years there has been much debate over these criteria, with special focus on rehabilitation.[25] In the Anchorage sentencing narratives, the so-called "Chaney criteria" were alluded to in various ways by judges when imposing sentence. All of the "goals"--retribution and reaffirmation, deterrence of the offender and others, rehabilitation of the offender, and protections of society--were mentioned frequently as "purposes" of the sentence being imposed (as was punishment, however, which has not been set forth directly by the supreme court as a permissible basis for a sentence).

Although no tally has been made of those rationales for sentencing most frequently expressed by superior court judges, rehabilitation, deterrence, and protection of society were mentioned with regularity by the Anchorage judges.

The number of defendants recommended by the judge to receive rehabilitory treatment was discussed previously at pp. 8, 9, and 19. More defendants in Anchorage than in Fairbanks were recommended for treatment, and in Anchorage more Caucasians than Blacks were recommended for treatment. Both of the women and all 4 of the Native Alaskan males were

noted as having either an alcohol or drug problem, but only 2, both Native males, were recommended for treatment. Although in the Anchorage narratives more Caucasians than Blacks were described as having specific problems that could be "treated", it is difficult to believe that there could be a single person who needed a 5-year sentence but who did not need "treatment", in some sense.

Occasionally a judge recommended a certain correctional institution as a place where treatment should be provided. However, eight times that a judge recommended, or attached as a condition of the sentence, a certain institution or rehabilitation house such as Family House, the defendant was not placed there (or in an equivalent facility) by the Division of Corrections (or the defendant left the institution voluntarily, as was the case with 3 or 4 defendants sent to Family House). In only two cases was there a proceeding to resentence the defendant or modify his sentence once it was clear that the recommendation was not going to be followed.

The supreme court has set the rehabilitation of offenders high on the list of criteria to be considered at the time of sentencing. However, one obvious problem was expressed very succinctly by Judge Hanson when he said that the legislature has realized that persons need treatment but has not set up any way for them to get it. Especially when a defendant is sentenced to a long jail term, as were the defendants in this report, the lack of correlation between the defendant's need for treatment, the judge's recommendation for treatment, and the defendant's actual receipt of treatment is extremely

burdensome not only to the courts and the defendant, but to society who must support these persons while confined and deal with them when they are released. (It might further be noted that 7 of the defendants who were sentenced to 5 years or greater to serve in 1973 are, in mid-1975, not even in jail or an institution. Two are on bail pending their appeals, and 5 have finished serving time and are on parole or probation.)

Recommendations

The supreme court has said on numerous occasions that mere disparity in sentencing is not undesirable, and that on the contrary, disparity helps to achieve the purposes of sentencing. Rather, the key word in analyzing disparity in sentencing is whether or not it is justifiable.[26] While the supreme court will not review most of the sentences that were discussed here it is the recommendation of this report that the supreme court actively utilize the sentence appeal process to further expound the criteria it has set forth previously. Five years have passed since the sentence appeal law was enacted, and even though the court has said that sentences greater than 5 years should be given only to "the worst type of offenders" or only for "particularly serious offenses, dangerous offenders, and professional criminals", these terms have not been well enough defined. It has been noted especially that the 7 Black first offenders in Anchorage who received long sentences for robbery did not possess remarkably different characteristics from the 9 Caucasian male first offenders who received sentences of far less than 5 years.

A second proposal resulting from this study is a recommendation for better coordination of correctional activity with the purpose of any long sentence meted out in court. The "treatment" that is to be afforded a defendant during his period of incarceration or isolation must be respected as an integral part of the decision of how long that period need be. Presently the Division of Corrections, not the judge, makes the decision regarding where and how a defendant is to be confined.[27] Although no recommendation is made that this decision should be taken away from the correctional authorities, it is urged that the judge better coordinate his judgment of sentence and treatment recommendation with that of the Division of Corrections (presentence reports now are mandatory for felonies). If the judge's final recommendation is not followed, the judge should be notified forthwith by the Division of Corrections (and not by the defendant, as happened so often in 1973). Upon the DOC's notifying the judge that it cannot follow his recommendations, there should be a mandatory resentencing, subject to the present rules governing sentence modification.

To render the judge's participation in the correctional decision meaningful, judges must have an awareness of programs at existing facilities in the state and of any new developments in the broad field of corrections. Although a certain amount of judicial attention to matters concerning rehabilitation can be focused through participation in seminars and conferences, genuine devotion to theories and practices of rehabilitation or reformation must, in the end, be up to

each individual judge. Committees on judicial qualifications and other persons involved in the selection of judges should be made aware that a judge's interest in and attention to matters of criminal rehabilitation are an important aspect of his judicial abilities.

FOOTNOTES

1. Sentencing in Alaska by B. Cutler, March 1975, published by the Alaska Judicial Council..

2. Id. at 125.

3. Id. at 140.

4. Id. at 32 and 105.

5. Interview with Justice Robert Erwin of the Alaska Supreme Court, October 1974.

6. Donlun v. State, 527 P.2d 472 (Alaska, 1974), at 475.

7. Ames v. State, Op. No. 1137 (1975) at p. 9, footnote 8.

8. Sentencing in Alaska, Table XLVII, p. 141.

9. Id. Table XXXIII, p. 105.

10. In the first report it was noted that the race of a significant number of Fairbanks defendants was not recorded on their Public Safety cards.

11. As explained on page 2, this figure includes two defendants who were sentenced since the writing of the earlier report.

12. Id.

13. Sentencing in Alaska, p. 27; in addition to the figure cited therein, over half a dozen new appeal have been filed. (For a more current breakdown on the supreme court's treatment of sentence appeals, see the paper Five Years of Sentence Review in Alaska by Robert C. Erwin, Associate Justice, Supreme Court of Alaska.)

14. Id.

15. Donlun, supra.

16. State v. Chaney, 477 P.2d 441, 446 (Alaska 1970).

17. State v. Armantrout, 483 P.2d 696, 698 (Alaska 1971); Ames v. State, Op. No. 1137, April 3, 1975, footnote 8.

18. Waters v. State, 483 P.2d 199, at 201-202 (Alaska 1971).

19. Statewide, 29 defendants were convicted at trial (see Sentencing in Alaska, p. 112, Table XXXVIII). This is 6% of the 518 defendants convicted.

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73-623 Cr. State vs. Robert Donlun

December 30, 1974

Present: William Mackey, Asst. District Attorney
William Bryson, Asst. Public Defender
Jay Johnson, Probation Officer

TRANSCRIPT OF JUDGE'S REMARKS AT DISPOSITION

Judge C. J. Occhipinti

THE COURT: I will say one thing. I think the Supreme Court was wrong. I will state so and I will continue to state so, I have done so for some period of time and, of course, its very easy for someone that does not try a case to make snap judgments and read pretty books with pretty words and come up with pretty solutions which fail because our recidivism rate shows it failed, but I am not as naive as some jurists both in our Supreme Court and ABA apparently are.

First of all, the facts in this case are serious. Number one, one fact is that this is not a first offender. He's been--had a DWI previously which is a serious misdemeanor and also he had a pre--another misdemeanor, connected with alcohol apparently. There was no indication of alcohol in this crime. Anyone that went through this -- as I heard the testimony, quietly through a place with four people sleeping could not have been drunk.

Also another thing I considered - I think the presentence report indicated that there was no means of support this man showed for pre-- time prior to his committing this crime. So, putting everything together, indicated that this was the first time he was caught. Number one.

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APPENDIX I

Number two, that is a very serious crime in my opinion. The Supreme Court says my opinion is wrong, but I think anyone that commits a burglary at night, and the hours were sometime in the early morning hours like between two and six in the morning, with people asleep in the place, is in my opinion very, very serious. It's easy for someone to sit up on an ivory tower and say - well, no one got busted or -- head was busted or someone got bloody or killed, so it wasn't serious. That's hogwash. It was a very serious crime. Looking at the guidelines set by Chaney, which I agree with substantially, deterence. Now I agree that perhaps giving the ten year sentence might not deter others because too many other judges don't adhere to that, they pass them out with suspended imposition of sentences. And from Mr. Mackey's office I will say that, in my opinion, the District Attorney's office recommends suspended imposition of sentences too many times. And I mean a vast majority of their cases, no matter how serious they are, and that fails to take into consideration that every one of us, judge, lawyers, the people, citizens, have responsibilities. I think the District Attorney's office has avoided responsibilities. Luckily, Mr. Mackey is not one of them. I think, in my opinion, he's much more informed and enlightened than some of the people in the District Attorney's office. But we do have responsibilities here--let's look at the practicalities. Mr. Bryson says hard time five years is tough. Show me one defendant that has served five years on a five year sentence. That's another reality that we're--we're not faced with.

Also show me where it has been consistent--these sentences have been consistent, they haven't been. But I will maintain consistency. Number one, I think the defendant's lifestyle was shown to me during the trial as well as during the sentencing and pre-sentence report, that his lifestyle was one that he just was a leach on society living off it somehow or other, probably illegally, and he was convicted of this one. So his lifestyle hasn't changed. What Mrs. Sloan has testified has reinforced my statement, Eagle River and the State of Alaska have no rehabilitation program, they have a lot of garbage, they talk in group sessions, but they do not change lifestyles. And the recidivism rate and the repeat offenders we show in Alaska proves that to me. So I think they're going to come up with some positive programs to change a lifestyle. A person in a good setting like Eagle River, of course will be at his top behavior. He's being geared to con the parole board into letting him out. Some of them are sincere, some of them are not. Who is wise enough to select those, I don't know, I have yet to see anyone that is. Anyway, deterrence to Mr. -- the defendant here as well as anyone else, is that when you commit a burglary, you pay the price. And the price is high so that you do discourage it. I say I discount rehabilitation because the State of Alaska has no rehabilitation that I can see. Punishment is part of deterrence, yes. Deterrence of the public in general is necessary. And also I know that any suspended time, and Mr. Bryson you'll be the first one to come in on a suspended -- if there is a violation of

probation to disqualify the judge immediately and go before another judge. Your office has done it consistently--no--no problem with it except that I know this is a reality that occurs. And then what happens is that they bargain away this sentence plus the new crime and bargain it away to something that is ridiculous. So all we're takling about is pretty words, no facts, no accomplishments. But I think things must stand on their own two feet. Based on the limitations the Supreme Court has given me, I'll sentence the defendant to five years. I'll also say that he must serve one-third of his sentence and is not eligible for work release at all. And I think that if the defendant is sincere, and he wants to rehabilitate himself within those guidelines, he can do so. He can utilize what little they have at Eagle River and what little the State has for rehabilitation purposes. And I say little because it is very little. But the thing is that he has his first felony that's slapped on him and the next time he's going to have to look at ten or fifteen or twenty years. This sentence should be a twenty year sentence, maximum, because of the facts as they occurred. I took into consideration the youth of the offender as well as other things and set it at ten years and suspended four of it. But as I say, I don't think I am as naive as some other people so--but with the guidelines I'll follow the orders of the Supreme Court and I'll limit it to five years with one-third to serve, and that means a maximum about another four or five months perhaps under the present

situation. He has served nine months. And at that time he'll be eligible for parole and if the parole board is wise enough to determine that he's rehabilitated and should return to society, fine. He can make his reentry. But I do want to emphasize that burglary is a serious crime, that people that come to court should expect to spend five years in jail, but I've yet to see anyone serve that time. Anything further?

WILLIAM MARKEY: No, Sir.

WILLIAM BRYSON: Nothing further.

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On 2-28-75 I delivered copies to DA, PD, and DOC

Court Reporter/Deputy Clerk

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