Alaska Justice Forum

IN THIS ISSUE:

Vol. 3, No. 6 June 1979

Village Safety Officer Program

When Bill Nix was appointed commissioner of the Department of Public Safety in March, one of his first actions was to order the restudy and restructuring of the village police officer program.

Presented here is a report on what the Department of Public Safety is undertaking which is paralleling in many respects some of the observations contained in the Village Police Training and Alaskan Village Justice studies conducted by Dr. John Angell of the Criminal Justice Center, University of Alaska, Anchorage. (See Alaska Justice Forum, February, 1979, and April and May 1979.)

By James Messick
Office of the Director
Alaska State Troopers

I. The Problem

Public safety in rural Alaska is perhaps the most neglected aspect of village life, and this poses a serious threat to the bush residents inhabitating about 200 villages with state.

Consider that rural Alaska:

- Suffers the highest loss of life and property due to fire within the United States, and indeed the industrialized Western world;
- Suffers the highest loss of life due to boating mishaps and drownings in the United States;
- Is one of the most inaccessible areas of the United States to obtain assistance from law enforcement agencies;
- Is one of the most inaccessible areas of the United States to obtain major medical emergencies assistance;
- Leads the states, and perhaps the nation in the incidence of search and rescue missions;
- Leads the state in incidence of alcohol abuse and alcholism; and
- Has the least developed local resources to address these problems of the state, and possibly the entire United States.

It is safe to assume that no group of Caucasian communities would tolerate similar circumstances, and that they would demand equal protection under the law. (See Alaska Justice Forum, April and May 1979.) The question of why these conditions exist, and more importantly how they can be alleviated is the subject of this paper.

II. Existing Public Safety Responsibilities

A review of government agencies charged with one or more aspects of public safety, or the lack of assignments of such responsibilities, helps explain the high toll of accidental loss of life and property in Alaskan villages. It also suggests ways to alleviate the total public safety problem in rural Alaska.

A. Law Enforcement

The Division of State Troopers, within the Department of Public Safety is charged with law enforcement in the bush villages. Located at various remote outposts, but with limited resources, they respond as quickly as possible, but circumstances often preclude an immediate response.

Limited resources also means that they cannot respond to many minor offenses, but must concentrate their work to major concerns. Nevertheless, the Troopers represent by far the largest force of public safety personnel in rural Alaska. The extent of crime is not known with any certainty due to inadequate records at the village level.

Often the Troopers are called as a last resort by a village when a law enforcement problem cannot be dealt with by the village, rather than as the initial response mechanism as in an urban Caucasian community. Their task is often made more complex by the minority ethnic groups whose traditional law ways and methods of dispute resolution are often perceived to be in conflict with the dominant Anglo adversary system.

Although many villages have hired local police officers through the manpower programs within the several regional corporations during the last year, most of their personnel are untrained in even basic law enforcement aspects, suffer high rates of turnover due to low wages and peer pressure, traditional subsistence activities, and the CETA program limitations that do not apply to small ethnic villages in Alaska.

B. Water Safety

Boating mishaps and water-related deaths are the concern of two agencies—the State Troopers who enforce state legislation related to water safety; and the Coast Guard who enforce federal laws and also conduct boating and water safety programs. Due to limited resources and other reasons, the Troopers primarily investigate water-related deaths rather than become involved in prevention efforts.

Reduction of these deaths requires immediate on-the-scene response, coupled with effective educational and prevention-oriented efforts. The Coast Guard, with only seven prevention and educational personnel in the state are likewise restricted in their efforts.

(Continued on page 6)

One Judge's View Sentencing

Sentencing hearings are usually relatively brief proceedings in which the defendant's personal and criminal history is discussed and a sentence is imposed which is believed appropriate for the circumstances and the crime.

These hearings seldom last more than an hour and serious questions of law are rarely discussed.

But, in a hearing for Thomas F. Kelly following his conviction for sale of cocaine (more accurately a motion for reduction of sentence), Anchorage Superior Court Judge James K. Singleton undertook a lengthy discussion of sentencing practices in Alaska and the problems of disparity of sentences which has contributed to allegations of biases in sentencing practices, and to a discussion of retribution and whether this has not crept into sentencing practices under the guise of reprobation—the affirmation of community norms.

What stimulated this discussion, which was obviously addressed to the supreme court, was possibly the report of the Alaska Judicial Council regarding allegations of biases in sentencing practices and the arguments of the defendant which implied the concept of retribution and apparent support for this concept found in supreme court opinions.

The defendant in this case sought a reduction of this ten-year sentence, with five suspended for probation. He argued that minor crimes require minor sentences; that sale of cocaine and marijuana, even in large amounts, are minor offenses requiring minor sentences of eight months or less, probation or community service; and therefore he should receive a sentence of eight months or less.

In addition to finding a philosophy of punishment based on retribution in the defendant's arguments, which the judge said was inconsistent with the state constitution's requirement that punishment should be based on prevention of future crime.

Violation of Oath

The judge also noted that the defendant implied that judges could express disapproval of legislative actions by imposing light sentences or probation where the legislature had provided lengthy sentences. Judge Singleton said this confuses the judicial and legislation roles, and if consciously pursued by a judge would violate his oath of office.

The judge went on to explain that: "A careful study of our State Constitution establishes the prevention of future crime by the defendant and those similarly situated as the sole purpose or function of penal administration. This is clear in the plain wording of the constitution stressing reformation and community protection, the source of those words at the Constitutional Convention, and the climate of opinion existing in 1955-1956 at the time our Constitution was developed.

Reformation and Protection

"The State Constitution provides in part that, 'Penal administration shall be based on the principle of reformation and upon the need for protecting the public,' thus the initial focus of sentencing is on the individual defendant since if reformed or deterred he will cease violating the law and this goal blends into the complementary goal of community protection which permits the isolation of those who can be neither deterred nor reformed and the publication of a sentence as a vehicle for informing the public generally of the existence of the statutory sanction and the adverse results attending its violation, i.e., general deterrence."

Judge Singleton said there would be no need for further discussion based on the constitutional rejection of retribution and the supreme court's opinion in **Smothers v. State**, 579 P.2d 1063 (Alaska 1978).

Uncertain of Term

But, he said, the supreme court seems uncertain of the meaning of the term retribution and that a number of recent sentencing opinions involving approval of sentences of 30 years or more for crimes of violence can be explained only in terms of retribution.

The judge said it was necessary to "examine what our high court does rather than what it says . . . ," especially in light of current national support for a penology based on retribution and the legislative decision to establish "an arguably retributive scheme, i.e., presumptive sentencing."

He then cited Webster's dictionary which defines retribution as either 1) recompense, return, reward, or 2) the dispensing or receiving of reward or punishment according to the deserts of the individual.

The judge explained that the elements of retribution are: 1) personal culpability, or moral wrong, and 2) that a given crime calls for a given punishment.

He said it was not his intention to argue the relative merits of prevention and retribution, one looking to the future and the other looking to the past, as the policy has been established in the Alaska Constitution and the judiciary must accept that choice.

Chaney Standards

He said the standards established by the supreme court in **State v. Chaney**, 477 P.2d 1441 (Alaska 1970), are consistent with the crime prevention model with one possible exception.

Accordingly, a sentencing judge must thoroughly apprise himself regarding the defendant's mental state, background and circumstances, and determine to the greatest extent possible why the defendant committed the crime and then devise a sentence which will prevent future crime.

Confusion

But, Judge Singleton said, confusion has arisen where judges have lost sight of the distinction between means and ends and have treated drug counseling or vocational training as ends in themselves without regard to the prevention of future crime. The corollary of this error is to treat those who do not lack a trade, an education, a stable family life or mental and emotional stability as automatically meriting leniency without regard to the motivation for their crimes.

"There are, of course, criminals who lack nothing but motivation to obey a particular law and for them deterrence, if feasible, is the primary goal, and if deterrence is not feasible, then isolation for the statutory term," Judge Singleton said.

"Where a criminal plans a crime for monetary or other gain, he in effect engages in a wager with the state, betting

in Alaska

his freedom against the profit to be derived from illegal activity. Thus, deterrence serves to increase the ante while hopefully increasing the odds against winning, i.e., escaping detection and enjoying the fruits of crime. Thus the more certain detection and conviction, the smaller the penalty necessary for deterrence. Conversely, the less conviction is likely the more severe the penalty needed for deterrence."

Judge Singleton listed each of the **Chaney** standards and how they furthered the constitutional penal mandate for the prevention of crime:

Rehabilitation which treats are remedies in identifiable cause for a crime.

Individual deterrence, which requires an analysis of the defendant's situation to determine his payoff for crime and determining what is necessary to deter.

General deterrence, which requires the same analysis and publication of the existence of a community norm and the risk attending to its violation.

Isolation, for the person who can be neither deterred nor rehabilitated.

Or Is It Retribution?

If community condemnation and affirmation of community norms means publicizing the norm and attendant sanctions to discourage deviance from the norm, then it is synonymous with general deterrence, Judge Singleton said.

But, if the purpose is to express moral disapproval of the defendant and render his deserts without regard to the impact on his or others' futures, then it is synonymous with retribution.

The judge then explained some of his own sentencing practices stating: "Those who are likely to commit future crimes get long sentences, regardless of the nature of the crime, those who are not get short sentences or no time to serve at all. Where a specific crime appears the product of specific correctable deficiencies in the defendant, then the sentence should address those deficiencies. Where there are no correctable deficiencies, then deterrence and isolation determine the sentence. Thus, a defendant who is not likely to commit further crimes will only receive time to serve where necessary to serve the goal of general deterrence."

In a footnote he explained further that, "The legislature determines the seriousness of a crime by setting the maximum penalty, i.e., the penalty reserved for those who can be neither deterred nor rehabilitated. For a judge to nullify the legislative judgment by substituting his values or view of policy would be to violate his oath of office."

Arguments for Retribution

Judge Singleton recognized that there are several arguments against his position regarding retribution which include: 1) the general argument for retribution; 2) the argument that there should be no sanction against victimless crimes; 3) the argument that community "assurance" that the laws are being enforced is not retribution; 4) the argument that prevention of crime requires a weighing of the risk of future crime which involves both the gravity of expected harm and the likelihood of its occurrence, and 5) the argument that all retributive sentences can be rationalized as "general deterrence."

He said there is no question that the arguments for retribution are gaining wide circulation, accompanying a widespread dissatisfaction with utilitarianism and the search for a "natural law." The judge recognized that there are strong feelings underlying retribution which are seeking satisfaction, but he explained, "I simply 'feel' that feelings should play no part in judicial decisions. I do not contend that retribution is unnatural, it is merely unconstitutional.

He stated that the supreme court too narrowly defines retribution; and that the court possibly also too narrowly defines utilitarian aims as limited to "rehabilitation" in the sense of identifying crime with some kind of medical model to be treated by subjecting the defendant to therapy.

Retribution Intimated

Judge Singleton said that while the supreme court has required "reassurance" to explain its requirements for affirmation of community norms in some cases, **Smothers v. State**, 579 1061, 1064 (Alaska 1978), it does not explain why a utilitarian sentencing would not be reassuring. He said that in Note 7 in **Smothers** the court intimated that a sentence of incarceration may be required even if no utilitarian goal would be served, and that the court cited an authority which he said clearly advocates retribution.

The judge said that community assurance does not single-handedly carry the load the supreme court has assigned to affirmation of community norms, but that retribution does explain the court's decisions.

He explained further that in sentence appeals arising from crimes of violence such as rape, murder or kidnapping the court seems to limit its review to the gruesome facts of the crime, the interest of the victim, his suffering and injuries, if any, and the motives of the defendant, approving severe sentences and disapproving those that are less severe.

The judge described this as retribution, not an evaluation of evidence or burdens of proof regarding future conduct. He said it should be mentioned that there is no known correlation between incentive to commit crime and violence, that people have stronger urges to commit violent crimes than others, nor is there a correlation between violent crimes and recidivism.

He then said, "While most authorities confuse retribution with general deterrence in discussing reprobation—affirmation of community norms—and it is possible to rationalize most of the supreme court's affirmation of community norms opinions with general deterrence, it is clear that that is not the court's intention and that if it were, there would be far more attention to the evidence of the composition of the class to be deterred and that the format of a sentence that would have deterrence effect. Any unbiased reader of supreme court opinions cannot help but conclude that it is retribution which the court is discussing and upon which it relies for justification."

Disparity of Sentences

In the course of the discussion about retribution, Judge Singleton also discussed the problems of disparity in sentencing. He found many causes for this in the

(Continued on page 11)

Opinions of Note

MIRANDA

Harvey Lee Hunter
v.
State of Alaska
Opinion No. 1800
Feb. 16, 1979
Appeal from the Superior Court, Third Judicial District, Anchorage, Judge Peter J. Kalamarides.

In this case the Alaska Supreme Court rejected the "focus" test for determining when the **Miranda** warning must be given, stating that it is custody which determines when the warning must be given; and the court adopted the "reasonable person" test for determining when a person is in custody.

Accordingly, the court found that the defendant in this case was not in custody when he took a polygraph examination and the **Miranda** warning was not required. But the case was remanded back to the superior court for resentencing.

The supreme court said that the U.S. Supreme Court's decision in **Escobedo v. Illinois**, 378 U.S. 478, 12 L.Ed.2d 977 (1964) could be read broadly making focus of the investigation of the defendant the touchstone for sixth amendment, right to counsel, protection.

But, in **Miranda v. Arizona**, 384 U.S. 436, 444, 16 L.Ed.2d 694, 706 (1966), the U.S. Supreme Court held that the privilege against self-incrimination required that a suspect be advised of his fifth and sixth amendment rights before "custodial interrogation."

Most courts and scholars recognized that **Miranda** made custody, not focus, the test for advising suspects of their rights.

This was left open in Alaska in **Peterson v. State**, 562 P.2d, 1250, 1262 (Alaska 1977), but in this opinion the court said: "We now hold that focus, per se, is not the proper test for **Miranda** warnings. Focus was and is still relevant, but it is relevant to a determination of custody."

Then in determining custody, the court adopted the "reasonable person" test as an objective test—whether a reasonable person would have thought he was in custody—rather than a subjective test of whether this defendant or the police officer thought he was in custody.

This, the court said, requires some actual indication of custody, such that a reasonable person would feel he was not free to leave and break off police questioning.

The court listed three groups of facts that would be relevant in making this determination:

1. Facts intrinsic to the interrogation: when and where it occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of physical restraint on the defendant or things equivalent to actual restraints such as drawn weapons or a guard at the door, and whether the defendant was being questioned as a suspect or as a witness.

2. Facts pertaining to events before the interrogation, especially how the defendant go to the place of questioning: whether he came on his own, in response to a police request, or escorted by police officers.

3. What happened after the interrogation: whether the defendant left freely, or was detained and arrested.

But the court added, the latter factor cannot, by itself, be the determinative test for custody as the police might be willing to release a suspect after custodial interrogation, especially if the release permitted them to introduce statements that might otherwise be excluded. The court must determine whether the defendant was in custody when he made the incriminating statements—it is illogical to rest that judgment on something that occurs after the defendant has made the statements.

Recommendation

After explaining this test and finding that the defendant was not in custody when he took the polygraph examination and that his post-polygraph statements were admissible, the court recommended that police give the full **Miranda** warnings in any case where it is doubtful whether the suspect taking the lie detector is in custody.

The court said, "We, however, are mindful of difficult questions arising as to the voluntariness of statements made by a suspect while or immediately after taking a lie detector test at the request of police, and we are concerned that suspects receive adequate warnings before taking these tests. We also believe that a considerable amount of litigation and the necessity of ruling some confessions inadmissible may be avoided if the police give warnings in all cases before administering polygraph tests. We think that good practice dictates that police specifically inform suspects of their rights 'to refuse to take the lie detector test, to discontinue it at any point, and to decline to answer any individual question.' "

Sentencing

During the sentencing hearing there was testimony concerning an alleged admission of other burglaries involving approximately 50 weapons while the defendant was free on bail in this case.

The public defender was ethically foreclosed from challenging this testimony because the agency was representing a codefendant in the burglary and the defendant's private counsel in the case was not present.

The court said it was not clear from the record whether the sentencing court used the testimony to increase the sentence and it was necessary to remand the case to the lower court for resentencing to afford the defendant the opportunity to respond to and verify information that may be introduced in the resentencing procedure.

The court said it was not clear from the record whether the sentencing court used the testimony to increase the sentence. Therefore, the court said it was necessary to remand the case back to the lower court for resentencing and to afford the defendant the opportunity to respond to and verify information that may be introduced in the resentencing procedure.

Consecutive Sentences

The defendant received consecutive sentences of 3½ years for two counts of larceny in a building. These involved the thefts of items from two offices in a building where the defendant worked as a

Opinions of Note

janitor. These occurred on the same occasion.

The court said: "Here, the acts did involve the intent to steal from separate owners and the conduct of stealing separate items from each of the owners. There is sufficient difference in intent and conduct so that separate punishments would not impose double jeopardy. Nevertheless, in resentencing, the court should consider that there was one continuous transaction involving the thefts . . . For sentencing purposes, the offenses do not, to the same degree, violate the interests of society as where larcenies are committed on different occasions and in separate locations."

Derogatory Language

At sentencing the trial court referred to the defendant as a "bantam rooster" and as a "stud," in part based on the presentence report and psychiatric report which indicated the defendant may have committed some crimes in order to gain notoriety among his peers.

While the supreme court did not believe there was any intent to express a racial or sexual stereotype, the supreme court expressed its abhorrence of any inequality in sentencing based on racial differences and admonished the trial courts to avoid unnecessary derogatory language in sentencing.

SEARCH AND SEIZURE

Raymond Padgett, Jr.
v.
State of Alaska
Opinion No. 1801
Feb. 16, 1979
Appeal from the Superior Court, Third Judicial District, Anchorage, Judge Eben H. Lewis.

Because of testimony of the defendant's momentary refusal to consent to a search the front part of his car, and comment made on that refusal by the prosecutor during final summation before the jury, the Alaska Supreme Court reversed the conviction for rape and remanded the case back to the superior court for a new trial.

During the course of the investigation by Alaska State Troopers the defendant's car was impounded and he was advised that a search warrant would be obtained to search for a screwdriver that allegedly had been used to threaten the rape victim. When asked if he would consent to a search of the car, the defendant consented at first, then said he would consent only to a search of the back of the car, agreed to a search of the whole car.

A screwdriver was found under the front seat which was later identified by the victim as the screwdriver used to threaten her.

The defendant was tried twice on the charge, the first ending with a hung jury.

During the second trial the momentary refusal to consent to a search was testified to in response to a question by the prosecutor, "Is there anything else that made you think he was hiding anything?" Defense counsel objected to this on the grounds that the question was leading.

The momentary refusal to consent to a search was then commented upon by the prosecutor during final arguments without objection.

The supreme court said the defendant had a right under both the federal and Alaska constitutions to refuse to consent to a search of all or part of his car. "That right would be effectively destroyed if, when exercised, it could be used as evidence of guilt. It was error to admit testimony of the defendant's refusal, and error to comment on it during summation. This is not the first decision on this point. In **Bargas v. State**, 489 P.2d 130 (Alaska 1971), we held that it was error to introduce evidence of a refusal to consent to a search, and to comment on it during closing arguments. That case is directly dispositive here."

The court said that since the error involved violation of a federal constitutional guarantee, it cannot be considered harmless unless, beyond a reasonable doubt, it did not affect the jury's verdict. The court said it could not declare such a belief in this instance.

Failure to Object

The court also said the failure to properly object to the introduction of the testimony, or to object to the prosecutor's comment did not waive the point on appeal.

The court said that in **Bargas** it had held identical errors to fall within the plain error doctrine reflected by Criminal Rule 47(b), and that was controlling here.

It was explained that the court's decision might have been different if all that was involved was the introduction of testimony in which a timely objection could have prevented it from reaching the jury.

But the court explained that an objection during final argument is not so effective. The prejudicial comment is before the jury before the objection can be made, and the curative effect of an admonition from the court to disregard the comment is of debatable value.

Victim's Prior Sexual Experiences

Regarding an argument that the defense was unduly restricted in cross-examination of the victim's sexual history and relationships, the court said AS 12.45.045 governs the admission of such evidence.

The court said that if the defense wanted to cross-examine the victim in this area it should have requested an opportunity to do so on the record in a closed hearing out of the presence of the jury. The trial court could then determine whether the information so elicited should be admitted. But no such request was made.

Village Public Safety Officer

(Continued from page 1)

C. Fire Service

The fire problem in Alaska is particularly acute, even tragic, when it is realized that fire-related deaths in rural Alaska are greater than anywhere else in the Western World. Although rural lifestyles involving the use of flammable liquids, lack of building and electrical codes and other factors are prime causes of high fire losses, it is also true that there is no state agency charged with the development of local fire suppression efforts.

Unlike law enforcement the fire service in Alaska has no assistance from a comparable state agency. The two state agencies with fire-related objectives are the Fire Service Training Program in the Department of Education and the Division of Fire Prevention in the Department of Public Safety. The former has a training responsibility, the latter a prevention responsibility. Even then only the Division of Fire Prevention is a legislative program; the other is merely a portion of the continuing education function of the Department of Education. There is little evidence that the legislature comprehends the fire loss problem in rural Alaska. Some of the remedies proposed during the last session—purchasing self-contained breathing apparatus and buying fire trucks—reflect a singular inappropriateness to small rural villages.

D. Emergency Medical Service

Major medical emergencies, like water accidents, usually require an immediate response. Many villages have Community Health Aides (CHA) funded through the Indian Health Service of the U.S. Public Health Service with additional assistance also provided by itinerant State Public Health nurses.

The CHA program, however, is primarily oriented to daily health concerns, rather than emergency medical response. Their program also experiences personnel turnover and is subject to times when the CHA is absent from the villages. Bad weather may mean a delay of several days before a severely injured person may be evacuated. Other than the CHA, and possibly other residents with prior training in first aid, many villages can offer only limited response to a medical emergency.

E. Search and Rescue (SAR)

Search and Rescue is perhaps more nearly a function of weather problems, vast distances and inhospitable terrain than any other aspect of public safety. Many SAR missions require an immediate response, and the Department of Public Safety is legislatively charged with the responsibility for SAR in Alaska. In discharge of that mandate the department has named SAR coordinators in each detachment and has developed statewide and detachment level SAR plans.

However, nowhere within the organization is there the specialized resources needed for the broad array of SAR missions experienced. They must therefore rely extensively upon military and civilian rescue capabilities.

F. Village Ordinances

Local government in rural Alaska is often nonexistent, at least in the formal sense. Many villages are "unorganized" although equally true, many are second-class cities, thus making them eligible to receive state-shared revenue and other assistance programs. While eligible for these purposes, their local government machinery is often informal.

Local ordinances to enable the village to act upon and resolve issues of local interest are incomplete at best, often out of date, and on occasion unconstitutional. The Department of Community and Regional Affairs is the state agency most closely aligned with local government. Other agencies, such as certain CETA efforts to train village administrators, Native Regional Corporations, the AFN, and at least one borough have all been involved in the ordinance program. Their efforts, however, have generally existed independently of each other. As a result, one may uncover evidence of three or four previous efforts to upgrade ordinances in a given village, but the village may still not have a complete set of ordinances.

These previous efforts have generally been of short duration, with the notable exception of the Department of Community and Regional Affairs. Needed is an ongoing well-coordinated effort amongst all interested agencies.

III. Village Public Safety Analysis

In developing a viable, effective public safety program for bush Alaska, one must appreciate the character and nature of village public safety problems.

Requests for law enforcement assistance are generally uncomplicated. Most involve alcohol abuse and domestic disturbances.

Village fires tend to involve relatively small structures, although they may be quite intense given the flammable nature of the construction, and must be suppressed immediately or the structure, and perhaps lives, will be lost. Village residents can be most helpful in determining the need for search and rescue missions as they have intimate knowledge of both the individual and the area involved. Boating mishaps and drownings are aggravated by silt-laden waters, cold water temperatures, and lack of water safety skills.

Although villages face a broad array of public safety problems, the number of problems that occur in one village in a year are not great, since most villages have only a few hundred residents. Most problems involve law enforcement, but typically only one or two fires occur. Perhaps only one drowning or maybe none occur in a given year. Most search and rescues are successful.

It is readily apparent that with the low number of calls for assistance and the relatively uncomplicated nature of the calls, that the nature of law enforcement, fire fighting, and emergency medical services, such as are needed in urban areas are not needed in a village program. Therefore, a paid fire chief and paid police chief is not applicable in the bush. Equally inappropriate are big city fire trucks, patrol cars and home-rule status for the village.

IV. Program Requirements

A successful village program should consider the following:

- The response effort for fire suppression, and many other public safety aspects, must be immediate, and therefore from within the village in order to be effective.
- The village public safety program must interface with other existing public

Program

safety programs to be maximally cost effective, and produce the best results.

- The program must be sensitive to, and utilize to the greatest extent possible the traditional means of dispute resolution and law ways.
- Over the long term, state legislators, regional corporations, village council presidents and other decision makers in Bush Alaska must be convinced of the value and approach of the program, in order to assure long-term support and funding.
- The approach must place emphasis upon local decision making and control to assure the program meets village objectives and concerns.
- The State Troopers should develop the program and take responsibility for its implementation since they are the largest public safety force in the Bush and have responsibilities for more elements within the public safety field than any other agency.

V. Program Proposal

In view of the relatively uncomplicated nature and limited number of calls for assistance in individual villages, it is recommended that one person from each village be broadly trained in all aspects of public safety to include law enforcement, fire protection, emergency medical services, search and rescue, boating and water safety.

This individual, the Village Public Safety Officer (VPSO), would then be broadly responsible for improving all public safety aspects in his village, and should attempt to interest other residents to assist him in this task.

A. Training

Three levels of training are envisioned. Initially a one-week survey course will be conducted that is designed to present an overall view of the public safety field to the prospective VPSO as well as reveal those who, by temprament or other reason, would not perform well.

A five-week session would be held shortly thereafter consisting of two weeks of law enforcement, search and rescue, water safety and local ordinance development, two weeks of emergency medical training, and one week of fire fighting and fire prevention.

The one-week familiarization course would be held in major communities of the state where most trainees live; whereas four of the five-week session would be held at the Trooper Academy in Sitka to take advantage of the training aids, as well as the reduced subsistence cost there.

The fifth week for fire service training would be conducted at one of the five regional fire training centers, funded through a recent bond issue, and coordinated by the State Fire Service Training Program. These training centers will be constructed in Anchorage, Fairbanks, Kotzebue, Bethel, and Juneau, with the Anchorage facility to be completed in October 1979, and the others thereafter.

To limit the time the VPSO's are away from their villages, the one-week program could be held in their local area at a certain time, the four weeks Academy program a month or so later, and the fire service training either on their return trip from the Academy, or separately a short time thereafter. Full dormitory and classroom facilities, plus practice areas at the Regional Fire Training Centers will solve many the logistics pertaining to the fire training portion. It is anticipated that the State Fire Service Training Program, and the Division of Fire Prevention, in coordination with local fire departments, will present the fire service portion of the training.

Other Public Safety agencies will assist the Sitka Academy staff in the instruction there. The Coast Guard, Department of Community and Regional Affairs, Criminal Justice Planning Agency, and detachment level Troopers will assist in their particular areas of expertise.

CETA training funds would pay for travel and subsistence/per diem for the trainees. Instructional-related costs would be borne by the several Public Safety agencies.

Training received would result in:

1. Certification by the Alaska Police Standards Council as a Village Police Officer;
2. Certification by the State of Alaska as an Emergency Medical Technician;
3. Certification by the Department of Education as a Rural Fire Fighter I;
4. Award (of an as yet undetermined number) of college credits by Sheldon Jackson College/University of Alaska.

Completion of the five-week training program does not mean the VPSO needs no further guidance, and training. Indeed State Troopers undergo 11 weeks of follow-up field training after completing 13 weeks of formal academy training.

It is proposed that follow-up field training be accomplished by dividing the various subjects into a prescribed number of objectives, tailored to village conditions. Each time a Trooper visits a particular village, he would present information on a particular objective. Documentation of completion of each segment could be developed in a training jacket so that as other Troopers visit that village, information is readily available about what training has been completed and what subjects need to be covered. In this manner, field training is accomplished in an orderly manner even though different Troopers may be involved.

Present Trooper background and experience qualifies them to present follow-up training in areas of law enforcement search and rescue, and related fields. Although individual experience and interests will vary, some Troopers will not consider themselves qualified to provide follow-up training in fire suppression, ordinance development, shared revenue, emergency medical aspects, and water safety, and therefore will need to undergo supplemental training in these fields.

At least two possibilities exist to accomplish this extra Trooper training. In the short term, existing Bush Troopers could attend training sessions in these areas. In the long term, an advanced Academy training session could be developed for all Troopers destined for assignment to Bush posts. These Troopers could be certified to a higher level of accomplishment by the Police Standards Council.

B. Program Elements

The following section describes the village programs to be developed and encouraged by the VPSO:

1. **Provide Law Enforcement Services.** The VPSO should in effect, act as an

(Continued on next page)

Village Public Safety Officer

(Continued from page 7)

extension of the state Trooper at the village level. For more serious crimes, the VPSO should take the immediate actions required such as notifying the Trooper, protecting the scene, preserving evidence, determining witnesses, and other actions as directed by the Trooper.

The greatest number of problems, however, will involve relatively minor offenses. Drunkenness, petty theft, local ordinance violations and related problems should in most instances be resolved by the VPSO and the Council.

He will also have to be proficient in report writing, keep basic statistics, and perhaps most importantly, become prevention oriented. Attempts to help resolve smoldering differences before a crime is committed, assisting persons who become intoxicated so they do not harm themselves and others, and related efforts will all help to prevent problems from occurring. He should also insure that the council is aware of and applies for shared revenue on the basis of law enforcement in the village.

2. **Help Organize a Village Fire Department.** The VPSO can stimulate interest among the Council and other residents to form a basic fire protection capability utilizing portable extinguishes, smoke detectors, portable pumps and lengths of hose, voluntary home inspections, school-oriented prevention programs, and similar efforts.

   The extinguisher should be the dry chemical, multipurpose, cartridge units, rated for cold weather. These units can be refilled in the village, with the long-term goal of one in every house. A supply of powder and cartridges should be stockpiled in the village.

   As a long-range goal, smoke detectors best suited for village home conditions should be in every home.

   While the VPSO may be a member of the fire department he ideally should not be the fire chief. The more villagers that can be involved in the public safety program, the better their village conditions will become. He should, however, know how to apply for revenue sharing for fire prevention, how to help organize a local fire department and how to report fires to the state Division of Fire Protection.

3. **Help Organize a Local Search and Rescue Group.** The VPSO can stimulate interest in forming a volunteer cadre of villagers to assist the Troopers and other agencies in search and rescue.

   This effort could consist of villagers who own snow machines, or have boats who have agreed to form a rescue group. The group could undergo training in first aid, and other areas determined appropriate. They could sponsor prevention efforts such as assuring everyone who goes on an extended trip has survival gear, has made his itinerary known to someone within the village, etc. Although the VPSO should ideally not be head of the SAR group, both the SAR group head and the VPSO should be knowledgeable about how to be reimbursed by the state for fuel, and equipment, etc., that were expended during the SAR mission. Rescue group personnel can be of particular help in evaluating the actual need for a search and rescue mission when a local resident is overdue, as well as other aspects of assistance to rescue authorities.

   As may be seen, the Fire Department and the Rescue group, although described separately here, can easily consist of the same personnel, and in fact should be the same persons. Training in fire suppression, artificial respiration and other subjects is plainly applicable to both functions.

4. **Assist the Community Medical Provider.** Many villages have a resident Community Health Aide, or other medical provider. The role of the VPSO is to offer such assistance as is deemed appropriate, but not attempt to take the place of this individual. In some cases the VPSO may be the only person trained in response to medical responder. The VPSO and CHA can jointly arrange for first aid training to be taught to villagers, help procure needed medical supplies for emergency situations, take each other's place when one or the other is absent from the village, and similar joint efforts.

5. **Assist the Coast Guard to Upgrade Boating Safety and Water Survival.** The VPSO can assist the Coast Guard in boating and water safety efforts, by arranging for the showing of films, displaying posters, assuring life jackets are in boats when persons are on the water, arrange for swimming classes if feasible and refer flagrant violators of safe boating practices to the Coast Guard and generally assist in other Coast Guard efforts toward safer marine practices.

6. **Work with Village Council to Improve Ordinances.** Numerous aspects of the VPSO's work will be made easier if local ordinances can provide the legal basis for areas of local concern. The VPSO can make suggestions to the Council about fire hazards that could be addressed by ordinance, safe boating and snow machine practices, local dog control, juvenile curfew, alcohol beverage control, trash and garbage disposal, discharging fire arms in the village and numerous other topics of local concern.

   In addition to suggestions about needed ordinances, perhaps even precedent to them the VPSO should know how ordinance are promulgated and what agencies and programs can be called upon to assist the village to develop a viable set of ordinances.

C. State Level Programs

For the Village Public Safety Office concept to be successful requires assistance from several state agencies, for program development, research and continued assistance. Although there are many state agencies with programs of interest and value to the small rural communities, this section describes three major areas where research is needed, that pose particular advantages and value to the Public Safety Officer program.

1. **Development and Maintenance of Village Ordinances.** The improvement of village ordinances is an important aspect of increased local control and self determination. To date, there have been many generally independent efforts by various organizations to address this problem, but none have been entirely successful.

Program

At the request of the Department of Public Safety the Criminal Justice Planning Agency is developing a concept paper about how the ordinance problem can best be addressed.

An early aspect is the convening of a meeting by agencies with an interest or existing program in thie field. It is anticipated that the Departments of Public Safety, Law, Community and Regional Affairs, the AFN, Yupitak Bista Manpower program, Doyon Ltd., Criminal Justice Planning Agency, Criminal Justice Center, and others will meet to discuss which agency has done what, the existing programs and capabilities, and how each can dovetail their efforts with the other, and the overall parameters of a long-term ordinance development and maintenance program.

2. **Developing Mechanisms of Local Dispute Resolution.** To enable local villages to resolve as many minor disputes as possible serves several purposes. Many village councils already informally assess penalties to miscreants that typically include restitution in kind to the aggrieved party, and the production of useful work for the villagers. This approach has the advantage of local decision making that best suits the offense, a penalty that is clearly related to the offense, (rather than appearance at a court elsewhere, the defendant's release on his own recognizance and his return to the village a few days later) and clearly an alternative to formal processing through the criminal justice system. Local offense resolution should be encouraged, and expanded, though within the parameters of constitutional rights and guarantees.

An earlier attempt to utilize local decision making for dispute resolution involved the concept of the reconciliation board. Begun several years ago by the Alaska Court System, the program involved local village residents who attempted to arrive at a mutually agreeable solution to both sides of a dispute. This alternative to formal justice system processing was set up in several villages, but was only marginally successful, and dropped soon thereafter by the court system. This program should be reviewed, both in terms of its acceptability and value at the village level. If found to be of potential value, it could be modified as required and reinstituted.

Additional study is needed in the area of traditional dispute resolution within the different ethnic areas of the state to determine if they include constitutional rights and guarantees and if they could apply to villages in rural Alaska.

3. **Village Control Mechanisms for Alcoholic Beverages.** As noted earlier, providing the means to respond to public safety concerns is in reality dealing with the manifestations of a deeper underlying social problem—that of alcohol abuse.

Specialty agencies within the broad field of public safety acknowledge that nine out of ten public safety problems are related to, or are the direct result of alcohol abuse. There is no question that many villages want to control or eliminate alcoholic beverages in their communities but do not know how best to proceed or even how to proceed at all. The depth of the alcohol problem, and the benefits to be gained by its control have led several villages to institute drastic measures to prevent alcoholic beverages from coming into the villages. Some of these approaches are certainly effective but obviously unconstitutional.

Simultaneously with the development of the Village Public Safety Officer program, a research effort should be mounted to explore all the means and options that a village has or could have with changes in the law in order to deal with the alcohol problem. The Attorney General's Office, the Criminal Justice Planning Agency and the State Troopers should be involved and possibly the Office of Alcoholism and selected social service agencies. The objective is to identify the means a village could use to prevent/control the influx of liquor into the village, rather than any attempts to determine the sociological reasons people drink, etc. No more worthy commitment of resources can be imagined.

D. Funding

Objective—The long-term objective is to develop continuing funding for the village public safety program. There are several approaches that appear possible. Although discussed individually below, it is likely that a combination of the funding sources would be used for the program.

1. **Comprehensive Education and Training Act (CETA).** In the short-term CETA manpower funds of the several Native Corporations will continue to fund salaries and travel costs. Training conducted by the State Troopers to date—one-week sessions in Bethel and Nome—has been CETA funded. The first month-long session scheduled for September will also be financed by the Manpower program.

However, the CETA program envisions units of government assuming salary costs after persons have been temporarily hired by CETA. Present CETA regulations stipulate that employment is limited to 18 months at which point the employee is terminated, theoretically to then be paid by the local community. At that point, a new person may be hired for the same job and paid by CETA funds. Needless to say most small villages in Alaska have little or no resources to pay the salary of any employees.

It is during the initial term of employment by CETA, that alternative means for funding must be developed to meet the objectives of both the Village Public Safety Officer and CETA program.

2. **Legislative Appropriation.** As with the State Trooper program, state appropriations may be made to fund the VPSO program, as an adjunct to, and as an extension of the State Troopers. Such appropriation could be made to the Department of Public Safety which could contract with the several nonprofit Native regional corporations, or through some alternative means. Direct legislative funding could be either for entire program costs, or to be used in conjunction with one or more of the other potential funding sources.

(Continued on next page)

Village Public Safety Program

(Continued from page 9)

3. **Revision of Shared Revenue Formula.** Presently state-shared revenues are apportioned on a per capita basis—$12/person for law enforcement and $7.50/person for fire protection. Although a regional cost differential is applied, there is little concern with the adequacy of the funds, existing tax base, local effort, or even whether or not the majority of funds are spent in those areas for which eligibility is derived. Only recently has the Department of Community and Regional Affairs stipulated by regulation that at least 20 percent of monies so derived be spent for that service in the village. The legislature could require that shared revenue funds awarded on the basis of existing police and fire services, be utilized to upgrade and otherwise support those programs in the villages. Currently only 20 percent of the entitlement must be so spent.

   A proposal could be developed for the legislature in which a minimum amount could be specified for public safety services. Perhaps $25,000 per village, or some other figure that could support a full-time public safety individual. Or, the per capita basis could be increased and changed to include recognition of local effort, such as the existence of a village sales tax or other means of municipal income that reflect a good faith effort by the village to help themselves.

4. **Contract Services.** Another aspect involving shared revenue is the idea of villages contracting with the Department of Public Safety to provide public safety services through the use of the village's shared revenue entitlement. Currently shared revenue funds in most cases would not support a full-time Village Public Safety Officer.

   Supplemental funding from either the legislature or the department would be needed if this approach is to be utilized. The goal of such an approach is to develop the program in the village and then involve the council to an increasing degree, until the village can administer the entire program. However, the department would continue its oversight and supervisory function, as described earlier.

5. **Rural Public Safety Revolving Loan Fund.** A concept that could be developed to fund the expense of training future Village Public Safety Officers, if CETA Manpower funds are reduced is to develop a revolving loan fund, similar to other student training loan funds. The legislature would be requested to establish the fund within the Department of Public Safety. Village residents meeting certain minimum qualifications (age, residency, education, etc.) who desire to become a Public Safety Officer would apply for a loan after obtaining the sponsorship of a village which intends to hire him at the completion of his training. Those granted loans would attend the training and then return to the village as a VPSO. His loan would be forgiven upon the completion of three years of satisfactory service. Preliminary work has already been done by the Public Safety Academy staff on this concept.

6. **Contracts from Other State Agencies.** Financial support may be available from other government agencies with irregular needs for short-term tasks in rural areas by contracting with Native nonprofit corporations to perform the tasks through the Public Safety Officer. Currently state and federal agencies send several persons into the Bush to perform the needed tasks. Often they are unfamiliar with the Bush, do not budget adequate funds for the job nor allow sufficient time to do it, have no entree with the villages, and may not relate well to village residents. Substantial time and money is often expanded for less than successful results.

   In the alternative, the government agency could contract for the task to be performed. Since the VPSO's have intimate knowledge of their village and others nearby, they could perform the work required with a minimum of effort. As a result, valid information would be gathered in a timely manner without the costs of travel, per diem, and salary.

   The regional corporation would then forward the appropriate amounts of the contract to the villages involved for use in support of the public safety program.

   If this concept proves feasible, it holds implications for state agencies with Bush responsibilities. In the long term, a generalist in the villages would evolve who knows quite a lot about many state agency functions and could perform on-site tasks for functional specialty agencies of state government. As an example, the diverse requirements of the Departments of Health and Social Services, Labor, Education, etc. could be fulfilled by the "village coordinator."

   If true our entire framework of thinking about state government operations in the Bush would have to be re-examined. Instead of functional specialists separated by the traditional hierarchical pattern on organizational charts, a generalist who performs work for many differing agencies would evolve, and at potentially great cost savings to the traditional ordering and approach of government agencies.

Appreciation For Alaska Court System Assistance

Printing has been a continuing problem for the Alaska Justice Forum, part of it arising from the necessity to keep printing costs as low as possible.

When problems arose with the April issue the Alaska Court System graciously came to the assistance of the Forum and printed that issue in the midst of their own heavy printing schedule.

The staff of the Alaska Justice Forum would like to express their appreciation for the assistance of the Alaska Court System and the excellent quality of their work with special appreciation extended to Arthur H. Snowden II, administrative director; Stan Vickers; and Clay Dotson.

A Judge's View of Sentencing

(Continued from page 3)

heterogeneous backgrounds of the judges, the value systems, education, experience, biases, and preconceptions which explain but do not justify disparity in sentencing.

He noted that sentencing in Alaskan courts has come under fire from the Alaska Judicial Council and Black and Native organizations because of alleged disparity in sentencing.

But he also argued that the supreme court has also contributed to disparate sentences in Alaskan courts.

First, he said, the supreme court has failed to articulate principles of general application limiting discretion in sentencing and therefore limiting the impact of biased sentencing.

He explained that the **Chaney** standards merely admonish the decision maker to consider certain factors and can be reconciled with any conceivable result. While the supreme court's rulemaking power probably does not extend to the substantive area of determining appropriate sentences, its sentence review power does.

He said that if the supreme court had established a system of meaningful presumptive sentences and meaningful guidelines governing deviation from the sentences, it would have substantially reduced disparate sentences while cutting down its own sentence review obligation.

Second, Judge Singleton said, the supreme court has contributed to the excessive discretion in sentencing by its failure to clearly delineate the respective roles of the trial court and the appellate court in sentencing. This being the failure, to establish and articulate meaningful standards for the review of trial court discretion.

He said the problem with the clearly erroneous standard used by the supreme court lies in the definition of clear error and the need for some verification principle to determine error and mistake.

The judge said the overwhelming majority of discretionary decisions are a combination of value preferences and factual assumptions, but rarely does the supreme court question the factual assumptions, find logical error or articulate a conflicting principle. Rather, the court's opinions turn on comparing its value preferences with that of the trial court and rejecting the latter.

While value preferences may be wise or foolish, approved or disapproved, they cannot be clearly right or clearly wrong, the judge explained.

He found, therefore, that the articulated standard of the supreme court is inapplicable to the majority of cases, but that two other standards could be applied to a review of judgments consisting of a value preference—substitution of judgment and the rational basis test.

The judge argued that, in fact, these standards do characterize the supreme court's review of trial court discretion in looking at what the court does rather than what it says.

The substitution of judgment test looks at the result and asks: Do we agree or disagree?

The rational basis test looks at the process and asks if the parties were given a reasonable opportunity to be heard? Did the court exercise its discretion based on the evidence?

Judge Singleton claimed that a review of the decided cases establishes that the supreme court alternates between these two standards. He concluded that the court's failure to recognize the inapplicability of the clearly erroneous standard to the majority of discretionary decisions has led to unnecessary conflict with the superior court and precluded the supreme court from articulating the principles that would have substantially reduced disparate sentences.

Third, Judge Singleton said the court has failed to forthrightly point out the significance of the sentencing hearing and the trial judge's fact-finding responsibility.

He said the supreme court must recognize the significance of the sentencing hearing, a hearing which is far more significant than the determination of guilt or innocence since the overwhelming majority of cases are determined by plea. He said that with the possible exception of the bail hearing, the sentencing hearing is the only determination in the course of a criminal proceeding in which substantial risk attends the finding of fact.

Finally, Judge Singleton said the supreme court has failed to recognize and articulate the distinction between retribution and prevention as sentencing goals, particularly the extent to which they point to different results in the same case and look to different and frequently conflicting criteria for their determination.

He said the supreme court has held, and the constitution seems to support his proposition that sentencings should be free of retribution. But by failing to recognize that what it terms reprobation is nothing more than retribution, it has left the law confused and has contributed to disparate sentencing.

In conclusion, Judge Singleton said that, "If justice is to be done in Alaska, the disparate sentences limited; if biases are to be controlled, and like circumstances receive like treatment, then the supreme court must institute reform in its own handling of sentence review.

"First, it should begin to articulate clear principles of sentencing paralleling a presumptive sentencing scheme. Alternatively, it should disclose for each case in which a sentence is appealed to it the range of acceptable sentences form too lenient to too severe for that criminal and that crime.

"Second, it must recognize that in the area of value judgment, it can either substitute its own judgment or revert to a reasonable basis test, but absent a verification principle there can be neither clear error nor clear mistake.

"Third, the court must recognize the distinction between retribution and prevention. Recognize that each seeks incompatible goals and choose one or the other, preferably, given the constitution, prevention.

"Finally, the court must recognize and articulate the significance of the sentencing hearing and the need for an adequate factual record and carefully drafted findings of fact and conclusions of law thereon.

"Only in this way will the sentencing function be properly performed and the interest of justice served."

Forum Suspends Publication

Publication of the Alaska Justice Forum is being suspended with this issue on the expiration of the supporting grant from the Criminal Justice Planning Agency.

The Forum was established by the Criminal Justice Center, University of Alaska, Anchorage in May 1977 under Grant 77-A-1006 approved by the Governor's Commission on the Administration of Justice and has continued under Grants 77-A-026 and 77-A-032.

During the past two years the Forum has reached an expanding audience of Alaskan police officers, prosecutors, defenders, private attorneys, judicial personnel, corrections personnel, treatment personnel, legislators, and private citizens. There has been increasing interest in the Alaska Justice Forum from other states and internationally.

Particularly noteworthy were the series of articles by Peter S. Ring of the Criminal Justice Center on various legal issues and the summaries of recent supreme court opinions.

Efforts to secure alternative funding for the Forum have not been successful. It is the intention of the Criminal Justice Center to resume publication if new funding for the Forum can be obtained.

Solicitation of paid subscriptions had been scheduled to begin in April and was undertaken when alternative funding still seemed possible. Because of some of the production problems which have plagued the Forum, publication of the April issue was unavoidably delayed.

The Criminal Justice Center will refund subscriptions in response to solicitation in the April issue.

It is with regret that the Forum is being suspended. All who have been associated with the publication of the Alaska Justice Forum have enjoyed the opportunity to provide this service to the criminal justice community in the state. They have also been gratified by the response to the publication and pleased that it has been of some value.

If new funding can be secured, the Alaska Justice Forum will be resumed.

Alaska Justice Forum
Criminal Justice Center
University of Alaska, Anchorage
3211 Providence Avenue
Anchorage, Alaska 99504

Editors: Roger Endell
Peter S. Ring
Managing Editor: Paul L. Edscorn

The Alaska Justice Forum is financed under Grant 77-A-032 of the Governor's Commission on the Administration of Justice.