Alaska Justice Forum

IN THIS ISSUE:

Volume 1, Number 7 November 1977

Corrections Master Plan To Come

Opinion by Roger Endell

The Alaska Division of Corrections now has $183,000 to spend on the development of a Correctional Master Plan. The Law Enforcement Assistance Administration approved and funded the grant application submitted in April by Director of Corrections, William H. Huston. The major contractor will have one year of intensive work to define what currently exists (data), what should be developed (planning), and to provide detailed recommendations for action (implementation). The Master Plan should result in a comprehensive set of short and long-term goals and objectives for improving the statewide correctional system.

Major emphasis, throughout the effort, is to be placed upon building real coordination and cooperation among police, courts, and corrections for reducing crime and improving the criminal justice system. The broad objectives include the specific identification and definition of the **existing** DOC structure and services, and developing a Correctional Master Plan which will meet the **future** needs of Alaska's concerned citizenry. The end result should provide the means for developing more effective correctional programs and facilities, and for more efficient administration of the correctional system. It should also recognize the changing concepts and priorities of in-state and national programs and facilities. Above all the project is to clearly define correctional priorities.

The identification and definition of issues which will result in the determination of correctional priorities presents the greatest challenge in the design of the Master Plan. Great controversy has developed nationally on how best to deal with offenders.

Overcrowding has caused many administrators and legislators nationwide to think first of new facilities (more room), as the answer to this pressing problem. Others argue that locking more people away insures only temporary community protection from those few offenders who are incarcerated, at extremely high cost to the taxpayer. They maintain that "caging" fails to result in anything more than temporary public protection and that real efforts must be expended on changing offender patterns of behavior. To do this, programming must be made available to the incarcerated.

On the other side of the issue are those who argue that rehabilitation programming hasn't proven to have significant value in reduced rates of recidivism. Millions of dollars of public money have been spent on well-intentioned programs that have no effect. They argue that a summary of recent evidence is that "nothing works." **(Continued on page 4)**

Legislators Featured At Conference

At the request of the Joint Legislative Interim Committee on Corrections, the University of Alaska Anchorage's Criminal Justice Center is sponsoring a Legislative Conference on Corrections Friday, December 9th, and Saturday, December 10th, on the University of Alaska, Anchorage campus, Building K, Room 203, from 1:30 p.m. to 3:00 p.m.

Speakers will include:

From the White House, Washington, D.C.: Richard Pettigrew, Assistant to the President of the United States for Governmental Reorganization. Mr. Pettigrew, from Florida, was former Speaker of the House of Representatives, and former Chairman of the Senate Criminal Justice Committee of the Florida Legislature. Pettigrew was actively involved in solving correctional issues, and seeking legislative and policy changes for improving a complex correctional system. Pettigrew has a reputation as a dynamic, knowledgeable, and expert speaker on correctional matters and the interrelated organization of governmental functions.

From Oregon: Representative Tom Marsh, Oregon State Legislature. Rep. Marsh was an essential member of the Oregon Joint Sub-Committee on Ways and Means, and was appointed by the Governor to the Task Force on Adult Corrections. His work played an important part in successfully passing recent legislation implementing the Community Corrections Act in Oregon. The Act stressed the development of correctional alternatives to construction of major new institutions. Emphasis was placed on construction or renovation of local probation or work-release centers, and restitution as a condition of probation or in addition to confinement, among the many other objects of the Act.

From Hawaii: Representative Lisa Naito, Hawaii State Legislature. Rep. Naito is a member of the Legislative Standing Committee on Corrections and has been outspoken in her correctional reform efforts. Her comments will address the Hawaii experience with the development of the Hawaiian Correctional Master Plan, and the legislative concerns and experiences in attempting to implement the results of the Plan. (Continued on page 6)

Revised Code Defines Use of Force

This is the fourth article in a series highlighting the major areas of rewriting in the Proposed Revised Alaska Criminal Code.

By Barry Stern
Staff Counsel
Criminal Code Revision Subcommission

The Proposed Revised Criminal Code includes nine statutes that describe circumstances in which the use of force, or threat to use force, is justifiable and is not a criminal offense.

The three key terms used throughout the statutes are; physical force, which is divided into deadly physical force; and nondeadly physical force. Physical force is defined as "force used upon or directed toward the body of another person; the term includes confinement. Deadly physical force means "physical force, that under the circumstances in which used, is capable of causing death or serious physical injury." The term nondeadly physical force encompassses physical force that falls short of the deadly variety.

The use of any degree of force under the Revised Code is justifiable only "when and to the extent (the person claiming the defense) reasonably believes (force) necessary." Therefore, even though the use of deadly physical force may be authorized by a particular section, it will not be justified if the person claiming the defense believed that he could have accomplished his purpose by the use of nondeadly physical force. Similarly, where the person believes a verbal request would be adequate, even the nondeadly physical force may not be used or threatened.

Physical Force: Self Defense

A literal reading of the existing justifiable homicide statute suggests that homicide is always justifiable to prevent the commission of any felony upon oneself. Unfortunately, persons who accept the statute at face value may find themselves prosecuted for murder or assault, since hidden in the case law is the requirement that necessity be shown to justify the homicide. Absent necessity, a homicide committed in self-defense will not be justifiable even when committed to prevent a felony.

With regard to the use of force in defense of others, existing law seems particularly in need of revision. The statute provides that a homicide is justifiable only if the person defended has some special relationship to the rescuer. For example, a homicide may be justifiable if committed in defense of one's "master or mistress" yet criminal if committed in defense of one's grandmother.

The Revised Code allows a person not otherwise at fault to defend himself from what he reasonably believes to be the use or imminent use of unlawful physical force. Subject to the limitations on the use of deadly physical force, he may exercise that degree of force which he reasonably believes necessary to defend himself. Deadly force may be used when the person reasonably believes it necessary to defend himself from what he reasonably believes to be the use, or imminent, use by another of deadly physical force, or any degree of force during the commission of kidnapping, robbery, or sexual assault.

A person is required to retreat prior to using deadly physical force "if he knows that he can, with complete safety as to himself and to others, avoid the (use of deadly force) by retreating." Retreat is not required of one who is in his dwelling and is not the initial aggressor, nor of a peace officer or a person assisting him in making an arrest. There is no duty to retreat prior to using nondeadly physical force. The person must "know" that he has a safe retreat; it is not enough that a reasonable person would have believed that safe retreat was possible.

The Revised Code allows a person to come to the aid of another when he reasonably believes that the other would be justified in using physical force in self-defense. Unlike existing law, no special relationship need exist between the victim and the rescuer.

Physical Force: Property; Premises

The Revised Code distinguishes between the defense of property, and the defense of premises, setting a different standard for the use of physical force in each instance. Consistent with the interpretation likely to be given the existing statute by the Alaska Supreme Court, the Revised Code provides that a person may use not only nondeadly physical force when the sole justification is defense of property. This defense covers the limited situations where force might be used to prevent theft, or criminal mischief to property that is not a dwelling or occupied building.

The Revised Code provides that deadly physical force may be used in defense of premises when the defender reasonably believes it necessary "to prevent or terminate what he reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building," or "to terminate what he reasonably believes to be a burglary in a dwelling or occupied building." Only nondeadly physical force may be used to prevent or terminate a crime involving damage to premises not amounting to arson, or to prevent or terminate a criminal trespass.

After much discussion concerning problems of mistake, when third parties intervene in defense of premises, the Criminal Code Revision Subcommission concluded that any person, not just the owner, should be allowed to use force to prevent damage to property, or to prevent burglary. At a certain point, however, the seriousness of the offense is low enough that the relationship of the third party to the perceived offender becomes significant. Consequently, if the only crime is criminal trespass (usually, unlawful entry onto land) a person will be allowed to use force only if he is in possession or control of the premises, or is an "express or implied agent" of the owner of the premises.

Physical Force: Escape

Three proposed statutes describe the degree of force that can be used or threatened by private citizens and peace officers in making an arrest or in preventing an escape from custody. The private citizen, acting on his own account, is held to different standards than those applying to either the peace officer or to the citizen assisting the officer. The justifiable use of force by a guard to prevent an escape from a correctional facility is covered in a separate provision.

Currently a homicide is justifiable by a public officer "when necessarily committed in arresting a person fleeing from justice who has committed a felony." The authority to use force is subject to the limitation "that neither an officer nor a private person may employ more than necessary force in making an arrest."

(Continued on page 4)

North Slope Launches Detention Program

by Kim Moeller
Director, Public Safety
North Slope Borough

Side effects from excessive alcohol consumption account for more deaths in the North Slope Borough, City of Barrow, than are caused by any other factor. During the first nine months of 1977, Barrow had 17 alcohol related deaths of people between the ages of 2 months and 22 years. In all of these cases it appears that alcohol abuse weakened the judgment of the person responsible for the death. The direct causes of death range from freezing to homicide.

Within the North Slope Borough the occurrence of alcohol abuse and incidents of crime are inseparable. Granted, other factors such as unemployment levels, seasonal activities such as whale hunting, school sessions, and weather conditions effect crime rates, but 95 percent of all people arrested for crimes by the North Slope Borough Department of Public Safety (NSBDPS) were intoxicated at the time of commission of the crime.

The NSBDPS began a program which is consistent with Alaska Statutes, in January of 1977 to reduce the deaths and crimes which are related to alcohol abuse in our jurisdiction. This program involves the apprehension and short-term detention of people who are found in public in such an extreme state of intoxication that their mental faculties and capacity to care for themselves are greatly impaired. The detention period is no less than four, and no more than eight hours.

It is difficult, for a couple of reasons, to evaluate the success of this program at this point in time. First, in 1976, the City of Barrow was "dry," and in 1977 the sale of alcohol was authorized and a liquor store opened. Second, nine months does not provide sufficient data for firm conclusions.

The opening of a community liquor store was expected to produce a higher crime rate. Service requests did in fact double.

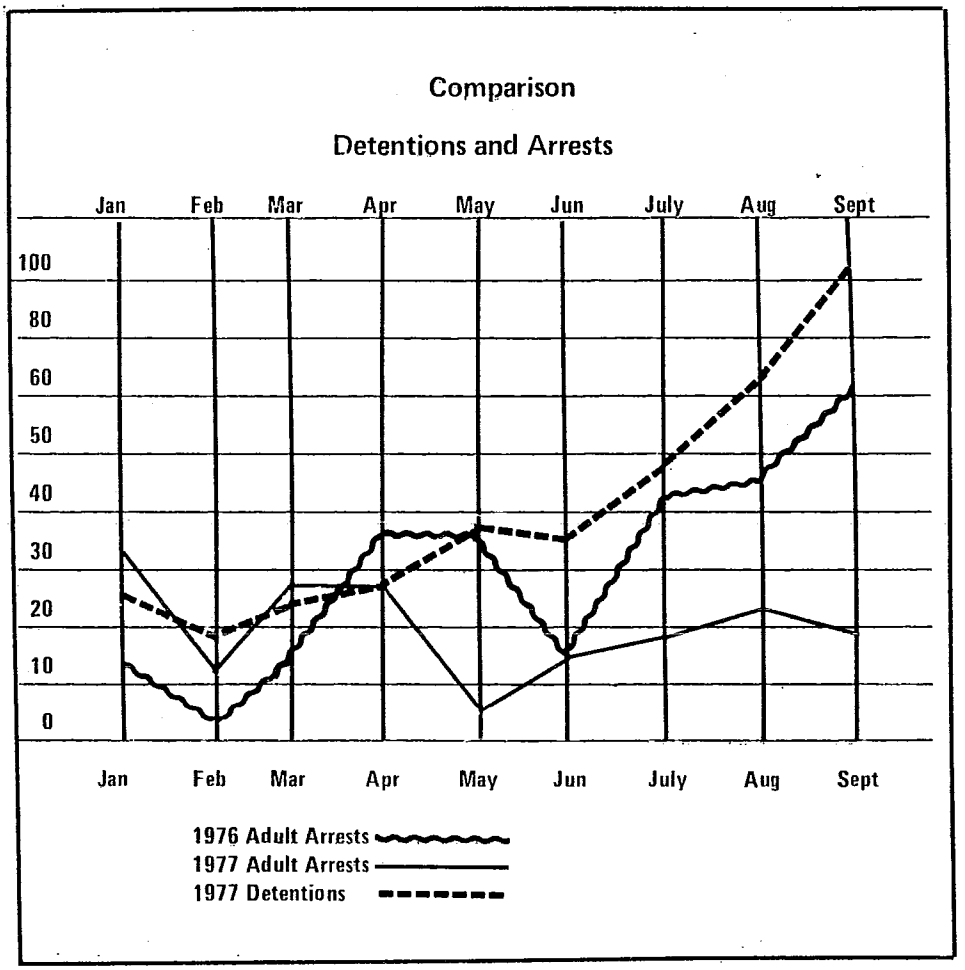
A three-way comparison (see table) of the 1976 and 1977 arrests for crimes reflect an increase of 1977 arrests over 1976 arrests during the first three months of 1977. During this period the use of detention was low.

As our detention for public intoxication increased in April of 1977 the arrest rate for crimes dropped to lower than the same monthly period in 1976. As the detention rates have increased the arrests for crimes continue to decrease below the same month in the preceeding year.

The arrest fluctuations from montn to month (shown on the chart) follow a seasonal pattern, to some extent. The detention program, however, seems to have reduced the number of arrests for criminal activity which were necessary.

Community attitudes concerning the "detention policy" have been extremely positive. The majority of those detained have been grateful for the protection and frequently thank Department personnel for their assistance upon release. Many community members have expressed support of the practice by comments and requests for detention of friends who they see in a drunken state outside their homes.

The elements of nature in the North Slope Borough are sometimes brutal, and even within the City of Barrow a person who is not mentally alert and physically capable can quickly lose limbs or life. The North Slope Borough Department of Public Safety established this detention program to protect and assist people whose mental and physical abilities have been temporarily diminished by grossly excessive alcohol consumption. We are acutely sensitive to the civil rights of our people; therefore, we are making every effort to insure that the detention practice is not misused.



Revised Code: Deadly/Nondeadly

(Continued from page 2)

The Revised Code recognizes that, subject to limitations on the use of deadly force, a peace officer may use or threaten to use force whenever he reasonably believes it necessary to effect an arrest or to prevent an escape from custody. Contrary to existing law, the peace officer's right to use force does not depend on whether the arrestee has actually committed an offense; a reasonable, though mistaken belief that the arrestee has committed an offense will justify the use of necessary force.

The common law distinction between felonies and misdemeanors is an inadequate guide for determining when deadly force may be used in making an arrest. The common law rule arose when a limited number of crimes, most involving a higher danger to life, were classified as felonies. Since the punishment for conviction of a common law felony was death, it did not appear unduly harsh to authorize a peace officer to use deadly force in effecting a felony arrest. Substantial number of crimes in existing law as well as in the Code, however, are classified as felonies. While some involve the potential of danger to human life, many do not.

The Revised Code makes several changes in existing law by listing four circumstances in which a peace officer is justified in using deadly physical force to effect an arrest, or to prevent an escape from custody. The first circumstance in which deadly force is justifiable is when it is used in self-defense, or in defense of others.

A peace officer may also use deadly force when he reasonably believes it necessary to make an arrest or to prevent an escape of a person he reasonably believes "has committed or attempted to commit a felony involving the use of physical force against a person." In this instance, the use of deadly force would be justified in arresting a robber, or a person who has committed or attempted a forcible sexual assault, but not in arresting a person whom the officer believes has committed a nonviolent felony such as forgery, or theft.

The third circumstance, in which the use of deadly force by a peace officer is justifiable, involves the armed fleeing offender. A peace officer may use deadly physical force to arrest a person who is fleeing while in possession of a deadly weapon. Since this provision allows a peace officer to use deadly force against a misdemeanant who is not using his weapon; it expands existing law. The factors of flight, plus possession of a deadly weapon, provide sufficient evidence of dangerousness to justify the use of deadly force, if necessary, to effect an arrest.

Finally, a peace officer may use deadly physical force to arrest or to prevent the escape of a person who "may otherwise endanger life or inflict serious physical injury unless arrested without delay." This subsection gives the police the necessary leeway to deal with a person who may not have committed a forcible felony, nor is in possession of a deadly weapon, but is nevertheless highly dangerous.

Existing law provides that "a peace officer making an arrest may orally summor as many persons as he considers necessary to aid him in making the arrest." The strict liability rule applicable to a peace officer's use of force in making an arrest also applies to the citizen's use of force in assisting the officer. The citizen's use of physical force will be justifiable only when he acts at the command of an officer, and then only if necessary "to arrest a person fleeing from justice who has committed a felony."

Under the Revised Code, a citizen who has been called upon to make an arrest by a person he reasonably believes to be a peace officer is justified in using nondeadly force, " . . . when and to the extent that he reasonably believes it to be necessary to carry out the peace officer's direction." Similar to other sections of the justification chapter, a person is allowed to act upon appearances if he does so reasonably. Deadly force may be used to assist a peace officer when the private person is so directed, unless he knows that the officer lacks the authority to employ such force.

The rules in the Revised Code, governing the use of force by private persons acting on their own account in making an arrest, are generally more stringent than those controlling the conduct of peace officers and persons assisting them. Existing law provides that a private person has the same arrest powers as a peace officer; a homicide is justifiable if committed by a private person attempting to arrest a fleeing felon.

Under the Revised Code, the private citizen may use nondeadly force in effecting an arrest, or in preventing an escape from custody only when he reasonably believes a crime has been committed in his presence. Deadly physical force may be used when the private person reasonably believes the suspect has, in his presence, committed murder, manslaughter, robbery, or forcible sexual assault. Deadly force may also be used to arrest a person who is in immediate flight after committing one of these crimes.

Physical Force: Guards

Under existing law, a guard may only use the degree of force in preventing an escape from a correctional facility as could have been used in effecting the original arrest. Since deadly force may not be currently used to arrest a misdemeanant, it may not be used to prevent his escape.

By restricting the use of deadly physical force to situations involving escapes by felons, existing law may not only increase the likelihood that an escape will be successful but may inspire a greater number of escape attempts. In many instances a guard has no way of knowing whether the escapee is a misdemeanant or a felon. The guard is forced into a guessing game which may result in his failure to use deadly force even when it would be justifiable to prevent an escape.

Once understood by guard and prisoner alike, a rule which authorizes the use of deadly force when necessary to prevent any escape will hopefully lead to fewer attempted escapes and reduce the number of instances deadly force is used. The Revised Code specifically permits a guard or peace officer employed in a correction facility to "use physical force when and to the extent he reasonably believes it necessary to prevent the escape of a prisoner from a correctional facility."

The next article in this series will discuss robbery and accomplice liability.

Master Plan

(Continued from first page)

The current authorized budget for the Division of Corrections for FY 77 is $18,991,000. Approximately 1,800 offenders are supervised by the Division's probation/parole staff (at 13.5 percent of the budget), while approximately 800 juveniles and adults are incarcerated (at 81.2 percent of the total budget). The remaining 5.3 percent of the budget is for administration and support services. At this time, the amount of money and the overwhelming majority of the 470 correctional personnel are clearly directed toward incarcerated offenders.

The Master Plan then, is to identify clearly defined alternatives which the Division may follow in substantial efforts to reform its clientele and satisfy the tax

(Continued on page 5)

Master Plan

(Continued from page 4)

paying public. Advocates of program emphasis and advocates of facilities emphasis will both be looking at the Master Plan. Program advocates in particular are concerned that the Plan will be structured with emphasis on building more and costly "monuments to failure." They will argue where they can the cost/benefit factors of alternative programming, and point to the need for substantially increased programming as security levels increase. The apparent dichotomy has not been successfully addressed in the history of American corrections.

According to the grant as funded, the Master Plan is to be developed with a view of corrections as a part of a complete system which includes the community and its resources.

Defenders of rehabilitation agree in part. They say that if educational, vocational, and medical models have demonstrated limited success, this is due to inadequate resource commitments to overly ambitious goals. Failures in communication with the public concerning the goals, objectives, and success rates of these efforts have distorted public understanding of what can be done and how it can be done.

The controversy rages between the proponents of the "facility mentality" and those proposing rehabitation models. Neither of these proponents has demonstrated conclusive, positive results which have both humanistic and cost/benefit advantages to the citizen or to the offender.

The current Alaska correctional system has several advantages over the senior states. A major factor is the existing unified correctional system which is responsible for custody, rehabilitation, treatment, probation, and parole services for adult offenders and delinquent youths based on regional service levels.

Full scale restitutional programs for incarcerated offenders as well as for those under "street" supervision are under consideration as a concept acceptable to the public, the victim, the criminal justice system, and the offender. Perhaps at least offenders sentenced for non-violent crimes (which are the majority of offenses) should be allowed to earn their way out of prison. An offender could pay for his offense in real money earned by his toil while incarcerated rather than accumulating good time on his behind, receiving unwanted "treatment", or getting an education or legitimate vocation in which his interest is feigned.

Most property offenders could be given the option of electing to earn their way to freedom under the same economic system all working Americans understand. Some may choose simply to serve time. Either option should satisfy society.

A work program, of course, would permit at least partial repayment in economic terms to the citizenry who actually pay the bills for offenders' actions. The concept is neither new nor innovative having had its legal beginnings in Anglo-Saxon England between A.D. 700 and 900, when the offender repaid those whom he offended.

The development of a Correctional Master Plan for the State of Alaska presents options and opportunities from the outset. The decisions to be made in determining its direction may be traditional or contemporary. The chief "architects" of the plan may adopt the assumption presented by the National Clearinghouse for Criminal Justice Planning and Architecture:

> " . . . community corrections is preferable to institutional treatment wherever this may be feasible without detriment to the community, and that individualization of treatment and differential handling of the great variety of offenders is vital to a substantial reduction of crime, (there must be developed) a systematic approach to the planning of a community correctional system and its environmental setting in which institutionalization is seen as the last, rather than the first disposition alternative."

The options to be developed in the Plan must be related to the revision of the state's criminal code, court rules, administrative procedure, and public concerns for a more effective justice system. An opportunity now exists to develop a plan which, in essence, will become an ongoing and viable working document recognizing the highest possible standards that have evolved in the American Correctional system as they may be applied to Alaska's particularly unique needs and situations.

Bars and programs, rehabilitation and protection, are the issues. The Correctional Master Plan appears to be the best available tool with which to examine these issues and build alternatives from which Alaskans might choose. But like any tool, it must be used for its intended purpose. That purpose concerns both security and the changing of a variety of individuals non-acceptable behavior into behavior which is acceptable to the Alaska community.

A Master Plan is not a tool for assembling more bricks, mortar and steel. These things must follow after definitions of purpose and strategies in corrections are arrived at after open debate. Hopefully the Alaska Master Plan will meet these standards.

WHICH WAY, SUPREME COURT?

By John Havelock

Early in October Justice Warren Mathews, the newest member of the Supreme Court, lifted the veil of secrecy which normally surrounds management of the Supreme Court, to reveal the Court's continued concern with the effect of mounting caseloads. In the last few years, Justice Mathews told the Anchorage Bar Association, the appellate case load has been rising at the rate of 25 percent, each year, civil and criminal.

After resigning from the Court earlier this summer, Justice Erwin, also concerned with this problem, had suggested that the Court be gathered under one roof, instead of having two members of the five member court reside in Fairbanks and Juneau. Consolidation, he argued, would result in more speedy and deliberative case disposition.

Though there is no sign of the justices budging on geographic distribution, Justice Mathews made clear that the Court was at least considering other approaches. Among them: adding two new members to the Court, hearing cases with less than a full complement of justices, and the establishment of an intermediate appellate court level.

While these more drastic solutions are well over the horizon, justice practitioners, perhaps gratefully, can expect shorter opinions, less discussion of issues, and many one line decisions in the immediate future.

In closing, Justice Mathews, a long time civil trial lawyer, threw a bouquet to the appellate work of the District Attorneys and Public Defenders, whom, he said, did excellent work in briefs and argument.

Legislative Conference

(Continued from first page)

From Florida: Oliver J. Keller, immediate past President of the American Correctional Association. Mr. Keller was appointed by former Governor Rueben Askew to the cabinet post of Secretary of Health and Rehabilitation Services for the State of Florida. During Mr. Keller's administration significant improvements were made in services provided through regional probation/parole centers and in developing a successful youth services system. Mr. Keller is now Director of Project Diversion at the University of Florida.

Purpose of the Conference:

The purpose of the Legislative Conference on Corrections is to bring legislators together from various points around the nation who will share their practical experiences with our own concerned lawmakers and criminal justice administrators. The speakers will be asked to describe the correctional problems that precipitated legislative action, what form that action has taken, and the results of good and poor correctional legislation. Discussions following each speaker's presentation are expected to be directed toward problem solving at the legislative level.

During the last legislative session, Alaska lawmakers were asked to fund capital construction appropriations for a new $27 million pre-trial detention facility to be built in Anchorage for the Division of Corrections. This request followed a previous rejection by the voters of a statewide ballot request to construct various new justice facilities around the state. Legislators requested more information, more data, and a look at alternatives in order to intelligently assess this and related requests.

Concurrently, the American Correctional Association has stressed the potential value of communication between lawmakers and policy formulators across state lines in order to exchange practical knowledge and experience on a peer legislative basis in dealing with too often neglected correctional matters.

We would hope that participants will benefit from the exploration of alternatives which will be discussed by these experienced and distinguished legislators from diverse locations and perspectives.

Please contact the Criminal Justice Center as soon as possible to confirm your attendance. There is no cost for participation.

Justice Training Calendar

This calendar will list upcoming conferences and training sessions for criminal justice practitioners throughout the United States.

West

Nov. 6-11: "Sentencing Misdemeanants." National College of the State Judiciary.

Nov. 6-11: "Evidence." National College of the State Judiciary.

Nov. 6-18: "Fall College." National College of Juvenile Justice, P.O. Box 8978, Reno, Nev. 89507.

Nov. 12-19: "Crowd Control and Use of Chemical Agents." Modesto, Ca. Regional Criminal Justice Training Center.

Nov. 13-16: "Law Office Management." San Francisco (National College of District Attorneys, College of Law, University of Houston, Houston, Tx.

Nov. 13-18: "Administrative Law." National College of the State Judiciary.

Nov. 13-18: "The Decision-Making Process." National College of the State Judiciary.

Nov. 14-17: "Police Discipline." San Diego, Cal. (International Association of Chiefs of Police, Eleven Firstfield Road, Gaithersburg, Md.).

Nov. 14-18: "Basic Juvenile Hall." Modesto.

Nov. 21-22: "Community Resources." Modesto.

Nov. 14-17: "Police Discipline." San Diego, Ca. International Association of Chiefs of Police.

Nov. 23: "Patrol Sergeants Workshop." Modesto. Regional Criminal Justice Training Center.

Nov. 21-22: "Community Resources Utilization in Treatment Planning." Modesto. Regional Criminal Justice Training Center.

Nov. 27-30: "Delinquency Control Institute." Syracuse, N.Y. University of Southern California.

Nov. 28 - Dec. 2: "Jail Operations." Modesto, Ca. Regional Criminal Justice Training Center.

Nov. 28-29: "Reality Therapy." Modesto. Regional Criminal Justice Training Center.

Dec. 4-9: "Court Administration." University of Nevada, Reno. Judicial Training and Education.

Dec. 4-9: "Budget, Planning and Financial Controls." Institute for Court Management, Denver, Colo.

Dec. 4-16: "The Judge and the Trial." University of Nevada, Reno. Judicial Training and Education.

Dec. 5-16: "Basic Correctional Academy." Modesto. Regional Criminal Justice Training Center.

Dec. 7: "F.I.R.O.-B." Modesto. Regional Criminal Justrice Training Center.

Dec. 8-11: "Meetings of the Council of State Court Representatives and the Board of Directors of the National Center for State Courts." Phoenix, Arizona.

Dec. 10 & 17: "Private Patrol Basic Firearms Training." Modesto. Regional Criminal Justice Training Center.

Dec. 11-16: "Institute for Juvenile Justice Management Basic Seminar," Snowmass, Colo. Institute for Court Management.

Dec.11-16: "Alcohol and Drugs - Specialty." University of Nevada, Reno. National Judicial College.

Dec.11-16: "Alcohol and Drugs." University of Nevada, Reno. Judicial Training and Education.

Dec. 11-16: "Administrative Law," University of Nevada, Reno. Judicial Training and Education.

Dec. 12-14: "Crisis Intervention." Modesto. Modesto Regional Criminal Justice Training Center.

Dec. 12-16: "Officer Survival." Modesto. Regional Criminal Justice Training Center.

Dec. 12-13: "Crisis Intervention." Modesto. Regional Criminal Justice Training Center.

Dec. 14: "Juvenile Court Law." Modesto. Regional Criminal Justice Training Center.

Dec. 14 & 15: "Private Patrol Arrest Function." Modesto. Regional Criminal Justice Training Center.

Dec. 19-23: "Correctional Ancillary Program." Modesto. Regional Criminal Justice Training Center.

(Continued on page 9)

Recent Alaska Supreme Court Decisions

by Peter S. Ring

DAVENPORT V. STATE, [No. 1479, September 2, 1977]

This case involved an appeal from an 18 month sentence for receiving and concealing stolen property. The defendant was on parole at the time the offense occured. His sentence was to be served concurrently with sentences for the prior offenses. On appeal he challenged a denial of his motion to suppress evidence on two grounds: (1) An arrest warrant for a parole violator is invalid unless accompanied by a sworn affidavit; and (2) The police did not have parole cause to enter and search the apartment of a third person in an attempt to execute the arrest warrant.

The State appealed on the grounds that the 18 month sentence was too lenient. The court upheld the denial of the motion to suppress, affirmed the conviction, and additionally found that the sentence was too lenient insofar as it was to run concurrently with the other sentences.

The court first found that the procedure under which Davenport was arrested did not violate the U.S. Constitution, as it found no case law that a parolee could be arrested only on the basis of an arrest warrant. Looking then to Alaska's constitution, the court held that it did not require an arrest warrant, either. Since existing Alaska statutes provided for a warrant procedure, the court, on statutory grounds, held that a warrant should be secured, unless urgent circumstances exist.

While the court found that there was no error in issuing a warrant without a written statement outlining probable cause, it held that in all future cases a written statement indicating probable cause should be filed with the parole board or with one of its members as a justification for the warrant, in order to avoid unnecessary appeals.

Finally, the court found that the arrest warrant for the parole violation was not used as a pretext for gathering evidence in a criminal case, and that the police had probable cause, considering the circumstances, to believe that Davenport was in the apartment of the third person.

LADD V. STATE, [No. 1480, September 2, 1977]

Ladd appealed his conviction of kidnapping and first degree murder on six grounds; three are discussed in this summary of the decision of the Alaska Supreme Court.

The contested issues were: (1) whether the trial court erred in denying his motion to suppress; (2) whether the trial court erred in failing to submit the issue of the voluntariness of his statements to the jury; and (3) whether the trial court erred in permitting the prosecution to introduce testimony from an earlier trial in which Ladd was acquitted. Ladd contended that his constitutional rights were violated because he was not afforded his **Miranda** rights and because his statements were involuntary.

Ladd made a total of eight statements between his arrest on December 15, 1973 on federal charges and March 6, 1974. Key statements, and the primary thrust of the motion to suppress were made on January 31, and February 1, 1974. At the time of his arrest on December 15th, Ladd was advised of his Miranda rights and attempts were made to comply with his request for an attorney. They proved fruitless. Although Ladd was thereafter questioned, no incriminating statements were obtained.

The important point of the case for this discussion is that the Alaska Supreme Court refused to hold that once a defendant indicated he wished to see and speak with an attorney, no confession elicited from him by the police, no matter how gentle the inquiry, would be admissible. The court noted, "we feel that this position circumscribes too narrowly the permissible scope of interrogation. Therefore we decline to adopt such a broad rule, and will instead carefully scrutinize the particular facts before us." In short, the court has opted for a case-by-case approach to this complex aspect of the law of confessions.

While the court found that the continued questioning on the 15th of December violated Ladd's rights, it concluded that none of his admissions on that date furnished information which led to his subsequent seven statements. In addition, it found that his subsequent statements were either volunteered or were made after proper warnings and a waiver of his rights. At no time during the period in question was Ladd denied the right to an attorney and there was no evidence that the State made any efforts to impede his efforts to obtain counsel. In fact, he received visits from seven attorneys, and the attorney appointed to represent him on the federal charges told him not to talk with the police until he had obtained the advice of counsel.

Reviewing the totality of the circumstances in Ladd's case, the court also held that his statements were entirely voluntary.

On the second point of appeal, the court held that the instruction of voluntariness requested by Ladd's attorney, denied by the judge over counsel's objection, was substantially the same as the instruction actually given by the judge. No specific objection was made to the given instruction. Relying on Criminal Rule 30, the court found that there was no need to further consider Ladd's point, and upheld the action of the trial judge.

The third point raised by Ladd dealt with the admission into evidence at his trial of references by the prosecutor to a prior trial at which Ladd was acquitted of the murder of another person. The victim in the instant case had testified against Ladd in that trial. Evidence related to the prior trial was introduced to show motive and intent, not criminal predisposition. A cautionary instruction on the evidence was given to the jury by the trial judge. The court found that the probative value of the evidence outweighed its potential prejudicial impact, and was unable to say that the trial court had abused its discretion.

The court found no merit in Ladd's three other points on appeal and affirmed his conviction. Justice Rabinowitz dissented from the holding arguing that Ladd's Sixth Amendment right to counsel was violated, citing BREWER V. WILLIAMS, 51 L.Ed. 2d 424 (1977), that in the factual context of the case Ladd had not waived his right to counsel, and that his request to terminate questioning until he had been provided with counsel had not been "scrupulously honored" as required by MICHIGAN V. MOSLEY, 423 U.S. 96, 104 (1975). Thus, in Justice Rabinowitz's mind, Ladd's **Miranda** rights had been violated since he was in custody during the entire time in question – much of it in solitary – and thus there was no break from the original taint (the December 15th questioning) to justify a holding that it had dissipated.

A full recitation of the facts in this case is beyond the scope of this summary of the case, although they will be dis-

Recent Supreme Court Decisions

(Continued from page 5)

cussed in detail in a survey of the law of confessions which will commence in the next issue of **Forum.**

BATSON ET. AL. V. STATE, [No. 1486, September 9, 1977]

The three appellants in this case all challenged a ruling of the Superior Court that once a showing of entrapment has been made, the prosecution is only required to show by a preponderance of the evidence that the entrapment did not occur.

In reaching its decision the court once again reaffirmed its holding in GROSSMAN V. STATE, 457 P.2d 226 (Alaska 1969), that an objective theory of entrapment would be used as the standard in Alaska. The burden of proof issue raised in this case was one of first impression in Alaska.

The appellants argued that once entrapment had been raised, the State was required to disprove it beyond a reasonable doubt. The State, in turn, argued that the burden is on the accused to prove entrapment by a preponderance of the evidence, or, alternatively, that it must disprove entrapment by a preponderance of the evidence.

After considering the pros and cons of both arguments, the court concluded, "on balance, the better reasoned position is to require the defendant to prove entrapment by a preponderance of the evidence."

The court, however, reversed in part the holding of the Superior Court and remanded the case for further proceedings to determine if entrapment had occured. The reason for the reversal stemmed from the denial of the appellant's request for the non-drug expense logs of two undercover officers involved in the case. The defense had requested these logs under a Rule 16 discovery motion in order to develop evidence that the defendants had been given quantities of money and gifts and purchases in kind by the undercover officers since actions of this type had been cited by the Supreme Court in GROSSMAN as examples of possible entrapment. The court ruled that the logs were material to the defense of entrapment. The court ruled that the logs were material to the defense of entrapment and that the Superior Court erred in denying defendants' motion.

HAMPTON V. STATE, [No. 1487, September 9, 1977]

Defendant Hampton had been convicted of first degree murder and sentenced to life. He appealed his conviction, raising five issues, and attacked his sentence on the grounds that it was excessive. The court affirmed the conviction and upheld the sentence.

This discussion of the case is limited to those issued on appeal which relate to Hampton's interrogation by officers of the Anchorage Police Department.

Two members of the A.P.D. arrived at the home of the deceased in response to a call. Upon their arrival they saw the defendant seated near the body. A weapon was nearby and one of the officers told Hampton not to touch it. The officer testified that Hampton told him "[M]ove it [the gun] before I shoot somebody else." The other officer told Hampton his **Miranda** rights and he responded that he knew what his rights were and that he did not want to talk.

He was then taken to the police station where he was again advised of his rights, even though he interupted the officer stating that he knew what his rights were and that giving him them was a waste of time. This officer testified that Hampton was given his full rights and that he then made incriminating statements.

On the following day Hampton was again interrogated by two other officers. He was advised of his rights, and signed and initialed a waiver form. During the course of this interrogation, Hampton admitted that he shot the deceased and had previously threatened him. This admission was tape-recorded.

Hampton moved to suppress his statements on the ground that he had not effectively waived his **Miranda** rights during the first interrogation at the police station and because of his intoxicated condition, he was legally incapable of making an effective waiver. He sought to suppress the second station house interrogation on the grounds that they were the fruits of the first.

After reviewing all the evidence in the case, the court concluded that Hampton possessed the requisite mental capacity to make a knowing and intelligent waiver of his **Miranda** rights, despite the fact that some of the evidence was in conflict.

Hampton also challenged the introduction of his statement on the grounds that because of his self-induced state of drug and alcohol intoxication, his initial statement was not voluntary and its use violated his due process rights. Once again, after reviewing all the evidence, the court concluded: (1) because his intoxication was self-administered; (2) given the lack of sustained questioning or undue police harassment; and (3) since they did not find that Hampton was intoxicated to a point where he could not understand what he was telling the police, due process was not violated. His initial statement was voluntary and thus admissible.

This finding resolved Hampton's second ground of attack. Since his initial statement was legally obtained, there was nothing to taint his second statement, and it was also admissible. In so holding, however, the court did note that it agreed with former Justice Harlans' concurring opinion in DARWIN V. CONNECTICUT, 391 U.S. 346 (1968) that generally, multiple confessions based on an initially involuntary confession should not be admissible since a defendant, having once confessed, is likely to think he has little or nothing to lose by further confessing. Thus, he concluded, the prosecution has two heavy burdens: (1) proving that subsequent statements are themselves voluntary and (2) that they were not directly produced by the existence of the earlier confession.

In HAMPTON, the court seems to be adopting the "cat out of the bag" approach to multiple confessions and may have indicated an answer to one of the questions left unresolved by its opinion in SCHARVER V. STATE. (See the May issue of **Forum.**) Unlike the case in LADD, the court may be signaling in HAMPTON that unless a first round of interrogation is preceded by proper **Miranda** warning and a valid waiver, then all subsequent interrogations *related to the same offense* will be inadmissible regardless of compliance with the requirements of **Miranda**.

Training Calendar

(Continued from page 6)

Nov. 7-18: "Law Enforcement Planning Officers Seminar." Evanston, Ill. Northwestern University.

Nov. 7-18: "Selective Traffic Enforcement Program." Evanston, Ill. Northwestern University.

Nov. 7-18: "Motor Fleet Accident Investigation Workshop." Evanston Ill. Northwestern Unviersity.

Nov. 9-12: "National Educational Conference." National College of Probate Judges, 200 W. Monroe St., Ste. 1606, Chicago, Ill., 60606.

Nov.13-16: "Seminar on Building & Evaluating Court Information Systems." Institute for Court Management, Minneapolis, Minn, (1405 Curtis St., Denver Colo. 80202).

Nov. 15-17: "Crime Prevention." Case Western Reserve University. Cleveland, Ohio.

Nov. 15-17: "Understanding and Managing Change and Improvement in the Law Enforcement Organization." Chicago. Center for Continuing Education. The University of Chicago, Ill. 60637.

Nov. 28-Dec. 2: "Basic Finger Printing." Case Western Reserve University. Cleveland, Ohio.

Nov. 28-Dec. 2: "Rape Investigation." Case Western Reserve University, Cleveland, Ohio.

Nov. 28-Dec. 9: "Traffic Law Enforcement." Evanston, Ill. Northwestern University.

Nov. 28-30: "The Selection and Promotion of Law Enforcement Personnel." Chicago. Center for Continuing Education. The University of Chicago.

Nov. 28-Dec. 9: "Traffic Law Enforcement." Traffic Institute. Northwestern University.

Dec. 4-9: "Advanced Organized Crime." Columbus, Ohio. National College of District Attorneys.

Dec. 5-8: "Personal Adjustment Problems in Law Enforcement Personnel Seminar." Traffic Institute of Northwestern University.

Dec. 5-16: "Records and Their Uses." Evanston, Ill. Northwestern University.

Midwest

Nov. 3-4: "Hostage Procedures and Negotiations." Case Western Reserve University, Cleveland, Ohio.

Nov. 6-17: "Standards for Driver Examinations." Evanston, Ill. Northwestern University.

Nov. 7-10: "Assessment Center Workshop for Law Enforcement Personnel." University of Chicago, 1225 E. 60th St., Chicago, Ill., 60637.

South

Nov. 3-Dec. 2: "World Congress of Crime Prevention." New Orleans, La. Crime Prevention International, Louisville, Ky. 40205.

Nov. 7-9: "Interview and Interrogation Seminar." Florida Institute for Law Enforcement.

Nov. 7-18: "Investigation of Sex Crimes." Southern Police Institute, School of Police Administration, University of Louisville, Louisville, Ky.

Nov. 13-16: "Schools, Educational Services, and the Justice System." Richmond, Va. (Delinquency Control Institute, University of Southern California).

Nov. 14-17: "Developing Police Computer Capabilities." Orlando, Fla. (International Association of Chiefs of Police).

Nov. 14-17: "Police and the Juvenile Offender." University of Maryland.

Nov. 14-18: "Organization and Management of Multiagency Investigative Units," New Orleans, La. (International Association of Chiefs of Police).

Nov. 14-18: "Protective Services." Atlanta, Ga. (International Association of Chiefs of Police).

Nov. 14-18: "Bomb Investigation Seminar." Florida Institute for Law Enforcement.

Nov. 14-18: "Protective Services." Atlanta, Ga. (International Association of Chiefs of Police, Eleven Firstfield Road, Gaithersburg, Md., 20760).

Nov. 14-18: "Protective Services." Atlanta, Ga. International Association of Chiefs of Police.

Nov. 14-18: "Organization and Management of Multiagency Investigative Units." New Orleans, La. International Association of Chiefs of Police.

Nov. 16-18: "Planning and Budgeting Workshop." Arlington, Virginia. (Theorem Institute, 1737 North Ist St., San Jose, Ca. 95112).

Nov. 16-19: "Trial of a Drug Case." El Paso, Texas. National College of District Attorneys.

Nov. 28-Dec. 2: "Robbery Investigation." Univerity of Maryland.

Nov. 30-Dec. 2: "World Congress of Crime Prevention." New Orleans, La. (R. Allen McCartney, Director of Research, Crime Prevention International, 2100 Gardiner Lane, Louisville, Ky. 40205).

Dec. 1-3: "The Unmet Challenge of the 70's — Juvenile Justice for Young Women." Orlando. (National Council of Juvenile and Family Court Judges, University of Nevada, Reno. P.O. Box 8978, 89507).

Dec. 3: "Evidence Seminar." Dallas.

Dec. 17: Chicago. West Continuing Legal Education Seminar.

Dec. 5-9: "Hostages: Tactics and Negotiation Techniques." Miami National Institute of Law Enforcement and Criminal Justice.

Dec. 5-9: "Burglary Investigation." University of Maryland. National Institute of Law Enforcement and Criminal Justice.

Dec. 5-6: "Command Seminars." Miami. Dade County; and

Dec. 4-15: "Institute on Organized Crime."

Dec. 5-9: "Executive Development." St. Petersberg, Fla. Florida Institute for Law Enforcement.

Dec. 4-8: "Advanced Juvenile Justice Management Institute." Kissimmee, Florida. (University of Nevada, Reno).

Dec. 5-8: "Crime Analysis." Atlanta, Ga. International Association of Chiefs of Police.

Dec. 5-9: "Hostages: Tactics and Negotiation Techniques." Miami, Fla. International Association of Chiefs of Police.

Dec. 11-14: "Justice System Services for the Abused Child." San Antonio, Texas. Delinquency Control Institute, University of Southern Calif.

Dec. 12-16: "Executive Development." San Antonio, Texas. International Association of Chiefs of Police.

Dec. 12-16: "Executive Development Workshop." San Antonio, Texas. International Association of Chiefs of Police.

Dec. 12-16: "Program Planning, Funding and Evaluation in Criminal Justice Agencies." Washington, D.C. National Institute of Law Enforcement and Criminal Justice.

Dec. 27-30: "Annual Meeting of Association of American Law Schools." Peachtree Plaza Hotel, Atlanta, Ga.

Dec. 19-21: "Government Project Management." Chicago, Ill. New York University School of Continuing Education

SEMINARS WILL EXAMINE CODE

The Criminal Justice Center of the University of Alaska, Anchorage is presenting another seminar in its series of Continuing Professional Development Seminars. The seminar will be held in four Alaska cities, and all law enforcement agencies are urged to participate.

Entitled, "Substantive Criminal Law for Law Enforcement Personnel," the course was developed by the Criminal Justice Center staff upon the request of Colonel J. P. Wellington, director of the Alaska State Troopers.

Wellington requested the seminar series, stating, "For the past two years, the State of Alaska, through the Criminal code sub-Commission, has been working to adopt a revised Criminal Code that will be submitted to the legislature this session. This Code is very involved, very detailed in nature, and is almost a complete revision of our existing criminal statutes. There will be much concern and discussion about the code during the forthcoming legislative session and I am sure that a number of legislators, and the public in general, will be concerned as to its effect on them. Obviously, law enforcement has a very deep interest in the proposed code."

The seminar objectives include providing law enforcement personnel with an update on recent and proposed changes in the criminal law, interpretations in search and seizure issues, and the impact of recent judicial decisions on law enforcement personnel.

Instructors for the seminar will be Barry Stern, chief staff council to the Criminal Code Revision Sub-Commission; Steve Hutchings, assistant council to the Sub-Commission; and Peter Ring, director of reasearch at the Criminal Justice Center.

The cost of the seminar is free unless academic credit is applied for, (then a $20 registration fee will be assessed at the time of registration). Individuals who register for academic credit and successfully complete the seminar will receive one credit which can be accredited toward the University of Alaska AA and BA Justice degrees.

The seminar will be held at the University of Alaska, Fairbanks on December 2 and 3; at the University of Alaska, Anchorage on December 16 and 17; at the Kenai Community College on December 20 and 21; and at the University of Alaska, Juneau on January 10 and 11 (in the Bill Ray Center). All sessions will meet from 9 a.m. - 5 p.m., with registration for each session at 8:30 a.m.

Because of the short notification period for this seminar series, an immediate response/confirmation is needed. Contact Roger Endell, Criminal Justice Center, University of Alaska, Anchorage, 3211 Providence Avenue, Anchorage (99504) to confirm those in your department who will be attending. The Criminal Justice Center's telephone number is 278-3938.

Contribute!

All our readers are encouraged to contribute articles and notices of events pertinent to criminal justice. The more practitioner participation we have, the more effective our work will be in providing a single forum for the entire field.

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

Editors: Roger Endell
Peter S. Ring
Managing Editor: Barbara E. Britch

The Alaska Justice Forum is financed under Grant 77-A-006 of the Governor's Commission on the Administration of Justice.