



ALASKA JUSTICE FORUM

A Publication of the
Justice Center

Alaska Justice
Statistical Analysis Unit

Spring 1998

UNIVERSITY OF ALASKA ANCHORAGE

Vol. 15, No. 1

Criminal Defense in Rural Alaska

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While Alaska Natives are only 16 per cent of the overall population of the state and only 12 per cent of the adult population, Alaska Department of Corrections statistics indicate that approximately 34 per cent of the current population in Alaska prisons is Alaska Native.

This article focuses on several structural aspects of the criminal justice system in rural Alaska which may contribute to this overrepresentation of Alaska Natives in the state's prisons. While some of the problems identified can involve non-Natives as well as Natives, this discussion focuses primarily on the situation of rural Alaska Natives.

In writing the article, I have drawn upon my work as an assistant public defender and upon additional research. From 1991 to 1994, I represented indigent clients in the jurisdictions of Ketchikan, Kodiak and Kotzebue. Each of these areas is populated by different Alaska Native groups: Tlingit, Haida and Tsimshian Indians in Ketchikan; Alutiiq in Kodiak; and Inupiat in Kotzebue. During my three years of work, I kept a detailed journal of my experiences in these communities. Quotations from this journal are presented in italics.

Attorney-Client Relationship

Vast distances separate clients in rural Alaska and the few attorneys available to represent them. In more remote parts of the state, transportation and communication systems resemble those in developing countries;

power outages, poor equipment and bad weather often interfere with communication.

Southeast Alaska

I served three islands in Southeast Alaska while working out of the Ketchikan office—Revillagigedo Island, where Ketchikan is located; Prince of Wales Island; and Annette Island, where Metlakatla is located. Travel between islands was by ferry, plane or charter boat. Once a month I caught a float plane, or put my car on the ferry, and traveled to Craig, which is the court seat for Prince of Wales Island. Unless they traveled to see me, this monthly visit was the only chance I had to meet with clients in person. The extent of my caseload made more frequent travel impractical.

The history of my first jury trial exemplifies some of the problems of representing clients in Southeast Alaska. The client lived in Whale Pass on Prince of Wales Island. The only telephone in Whale Pass was at the general store—a place of little privacy. Pretrial communication with my client was limited to writing and the one visit which she made to Ketchikan. To investigate the case before trial, I traveled by ferry from Ketchikan to Prince of Wales Island, a journey of several hours. I left Saturday morning; trial was scheduled for Tuesday. On Prince of Wales Island, I drove one and a half hours from a paved road to a logging road. From the end of the pavement to Whale Pass, a distance of about 125 miles, the drive took nearly four hours. I arrived in Whale Pass around 8:00 PM, about twelve hours after boarding the ferry.

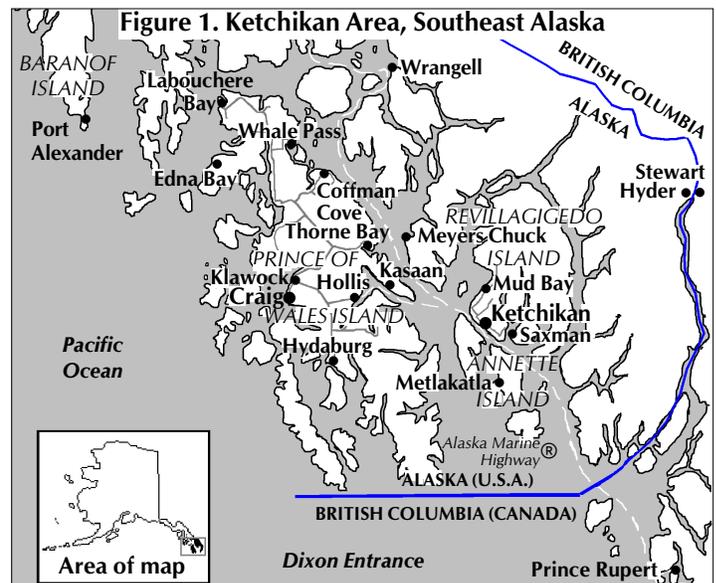


Figure 1. Ketchikan Area, Southeast Alaska

Because Whale Pass had no public accommodations, I slept on the floor of the laundromat, which was actually the back room of a store selling convenience items like cigarettes, coke, potato chips and frozen burritos. The store owner carried me in his boat from where the road ended to my client's home at the end of the point. Her log cabin lacked a telephone as well as indoor plumbing and electricity.

She was charged with theft and criminal trespass; it was alleged that she had taken some gasoline from her neighbor. To prepare the defense, I needed to examine the property boundaries between her cabin and the neighbor's property and to question the townspeople about the character of the complaining witness. My investigation helped me to impeach the witness during cross-examination. The jury acquitted my client, but without the trip to Whale Pass, the result might have been otherwise.

While not all villages on Prince of Wales Island are as remote as Whale Pass, it is common for residents, both there and on Annette Island, to lack telephones. If clients

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HIGHLIGHTS INSIDE THIS ISSUE

- A examination of the case histories of Alaska Native, African American, and white youth with multiple referrals to the juvenile justice system (page 2).
- Current Justice Center research projects (page 8).

Juvenile Referrals: An In-Depth Look

N.E. Schafer

The Justice Center recently completed the second phase of a study of racial disproportionality in juvenile referrals in Alaska. (The study has been funded by a gift from Cook Inlet Region, Inc.) The first phase of the study examined four years of referral data—over 28,000 referrals for over 14,000 juveniles—made available by the Alaska Division of Family and Youth Services (DFYS). A previous *Alaska Justice Forum* article, “Minorities Referred at Higher Rates: Analysis of DFYS Data” (Fall 1997) discussed the results of the Phase I study. For Phase II, we examined in detail a small sample of 112 individuals from the larger data set.

In both the smaller and the larger studies we found that minority youth were disproportionately represented among those who accumulated multiple referrals, that is, those youth who had five or more referrals in their files. In this article we will look only at those 33 children from this sample who had five or more referrals. We will look at individual criminal histories and family backgrounds as revealed in the files.

Alaska Native youth were most likely to have five or more referrals, constituting more than half of all youth in this category (54.5%), while white youth formed only 12.5 percent and African American youth, 37.0 percent. Girls were just about one-fourth of the youth with at least five referrals (24.2%). Eighty percent of the girls who had accumulated five or more referrals were Alaska Native; 20 percent were white. No black females accumulated five or more referrals.

We began by comparing the age of the 33 multiple offenders at the first recorded referral to the age of those with only one referral. Clearly, the older the child is at the first referral, the less time available to accumulate additional referrals before turning eighteen, and the younger the child, the more time available. (We should note that some of our sample were so young at first referral that their referral histories may not have been complete at the time data were collected in Fall 1997.) We found no significant difference in the mean age at the time of first referral for white youth between those who had only one referral and those who had accumulated five or more. However, for Alaska Native and black youth who had accumulated five or more referrals, the age at the first referral was significantly lower than for those who had only one. For white youth with one referral the mean age was 14; for offenders with multiple referrals,

Table 1. Number of Referrals by Race and Gender

	Male		Female		Total	
	N	%	N	%	N	%
Alaska Native						
1 referral	5	22.7%	1	7.7%	6	17.1%
2 to 4 referrals	5	22.7	6	46.2	11	31.4
5 or more referrals	12	54.5	6	46.2	18	51.4
Total	22		13		35	
African American						
1 referral	10	37.0%	5	50.0%	15	40.5%
2 to 4 referrals	7	25.9	5	50.0	12	32.4
5 or more referrals	10	37.0	0	0.0	10	27.0
Total	27		10		37	
White						
1 referral	12	52.2%	9	52.9%	21	52.5%
2 to 4 referrals	8	34.8	6	35.3	14	35.0
5 or more referrals	3	13.0	2	11.8	5	12.5
Total	23		17		40	
Total						
1 referral	27	37.5%	15	37.5%	42	37.5%
2 to 4 referrals	20	27.8	17	42.5	37	33.0
5 or more referrals	25	34.7	8	20.0	33	29.5
Total	72		40		112	

it was 14.35. However, the mean age of single referral for Alaska Native youth was 15.5 while for Native multiple offenders it was 12.6. Black single referral youth had a mean age of 15, while those with multiple referrals had a mean age of 13.5 at the first referral.

It is worth presenting the details of the referral histories for some of the multiple offenders to understand the scope of the delinquency. In our study, we paid particular attention to any mention in files of alcohol, weapons, and gang behavior because these are current social concerns. We will look at males and females separately.

Male Multiple Offenders

Two Alaska Native males began their lengthy referral histories at extremely young ages—five and seven. The five-year-old lived in a Native community. He was charged with concealment of merchandise for shoplifting a package of nuts worth \$.99. A month later, with a friend, he burned down a shed, causing \$400 in damage. At age nine he was charged with criminal trespass in the second degree for entering the village school through an unlocked back door. He and his friend played in the room but took nothing from it. At ten, the boy was referred in connection with a missing/stolen bicycle, but since nothing linked him to the theft, the charge was dismissed. His next referral was for minor in possession of alcohol at age

sixteen. Five children were involved but only one was drunk; there was no evidence that this youth was drinking. At age sixteen he was arrested for DWI, and at seventeen he was charged with criminal trespass: He was in a store from which he had been banned. Six months later, at age seventeen, he was arrested for driving with a suspended license.

The child who began his career at age seven was charged the first time with breaking windows on a trailer in the village in which he lived. There was no incident report in the file, but the event was entered into the log. His next referral occurred when he was almost sixteen. He was intoxicated and charged with minor consuming alcohol. His mother was unable to come for him because she herself was intoxicated, so he was released to another relative. He was referred three more times for minor consuming—all in less than a year. At age seventeen, he was charged with criminal mischief in the third degree as well as minor consuming. He stole a snowmachine while drunk. He was referred to an alcohol program.

These two young boys were not involved in threatening delinquent behavior, though in some cases the behavior was costly. One of the youth had serious alcohol problems and resided in a community where alcohol use and abuse were viewed with alarm. Local concerns may make law enforcement officials more likely to formally intervene in such cases. In contrast, in Anchorage,

such behavior was often treated informally, with relatively few referrals to DFYS for underage drinking.

Two other Native males were very young at their first referrals—one was eleven and the other twelve. Each lived in a small village and each was first referred for burglary. The younger was later referred for three more burglaries, criminal mischief, assault (four counts), and probation violations. That he was intoxicated was mentioned only once in the file. The twelve-year-old began with a charge of burglary at the village store. (The door was ajar but nothing was missing.) He later was charged with theft for stealing money from a teacher. He accumulated another burglary charge, two assault charges, and a referral for harassment (with a friend, he made annoying phone calls to police). There was no mention of alcohol in his file.

Only two more files of Native males had alcohol references. In one case, all five referrals were for minor consuming alcohol. Another boy was referred several times for burglary and criminal mischief, but intoxication was mentioned only once in the file. In another case, drinking was suspected but not proven. The referrals for this youth were for burglary, criminal mischief, and/or theft.

Theft, criminal mischief (vandalism), and burglary were common charges in the remaining files, with fourth degree assault also appearing in several files. There was one referral for misconduct involving a weapon, but this was the only charge involving possible danger to others. The vandalism was often very costly—e.g., slitting tires on all the cars in a one or two-block area—but it usually involved a group. The thefts and burglaries were usually quite minor (cigarettes, beer, candy, soda). The assaults were often fights.

Among the African American youth three were referred for the first time for burglary, one for a charge of vehicle tampering and theft, one for criminal mischief, two for misdemeanor assault, and the remainder for theft.

An examination of the three burglars is illustrative. The first, age thirteen, was charged with burglary after entering a house with some companions intending to steal a gun. The following March, now fourteen, he was referred for criminal trespass. He had agreed to stay away from the community recreation center but kept returning, and police were called. Just two months later he was charged with theft for stealing cigars and a lighter from a grocery store. The following month he was charged with vandalism. He had been with other young males on bicycles who were breaking into

parked cars. In a matter of weeks he was trespassing at the recreation center again, and a month after that he was detained for violating his probation and released after two days. Two weeks later he was again shoplifting cigars. At the end of the month he was again detained for violating probation. He was adjudicated in court and placed in a group home. Ten days later he was charged with assault for threatening another resident with a knife. In November, still aged fourteen, he was institutionalized.

The second burglar's referral history began when, at fifteen, he entered a neighbor's house in an effort to help his codefendant retrieve his stereo. He admitted to his involvement in the plan and to taking a gun. He was referred for a second burglary, committed just two days later, but was found not to be involved, although his probation officer believed he knew about the burglary. The following month he was charged with assault in the fourth degree and criminal trespass for threatening students and staff at the bus loading after school. He and his codefendant threatened to kill the teacher who tried to stop them. The next month he was charged with misconduct involving weapons and theft when, in a burglary with an adult codefendant, he broke into a sports store and stole cash and two rifles. (His mother turned in the one he kept.) The same month he was referred for stealing snowmachines, and he was petitioned on all the charges from the previous two months. A couple months later he was referred for throwing rocks through the windows of a school. In the following year he and his codefendant started a fire in a school locker. A year later he was charged with theft.

The third burglar began his career just weeks before his sixteenth birthday. He entered a residence with others, stole items and vandalized. He knew the daughter of the house and believed all had been invited in. He returned to help clean up broken eggs. Later the same year he was accused of involvement in an incident with several others who were attacking other youths with baseball bats. Also the same year he was charged with criminal mischief when, with others, he set a fire in a laundromat. Still sixteen, he was charged with misconduct involving a controlled substance. Drugs and money were found in his school locker. The same year he was charged with reckless endangerment for shooting a friend in the leg. He and the friend maintained it was accidental. Several months later he was a passenger in a stolen car and a gun was found under the driver's seat. This was a probation violation as well as a new charge. He was institutionalized and released from custody

about eighteen months later, just after his nineteenth birthday.

These three black juveniles caused a great deal of trouble entailing considerable expense. They also were involved in weapons violations, increasing their perceived dangerousness. Four other black repeat offenders had weapons violations among their later referrals, and most included in their referral histories violent behavior or threats of violence. In one case the last referral was for murder.

A comparison with the three white males who accumulated at least five referrals reveals considerable differences. One of the white offenders began his referral history at age eleven. With his brother he was charged with criminal mischief for spraying gang graffiti. A month later he stole a pizza and was referred to a shoplifting program. The next month the brothers were caught stealing car stereos and the subject also admitted to stealing a purse. He was referred again four months later for assault on a fellow junior high student, again in company with his brother. Four more referrals were based on charges of assault—one against his mother's boyfriend, one against a teacher at school, and one against a neighbor at whom the youth pointed a gun after being caught stealing from his van. At his last referral he was fourteen years old.

The second youth began at age fifteen with two referrals for underage drinking. The second of these also involved theft. The next two referrals were for criminal mischief, followed by one for violation of probation. The last referral was for theft—two months before the juvenile turned eighteen.

The third white youth accumulated nine referrals, the first for theft at age fourteen. (This file also includes reference to two incidents prior to the first referral, which are notes rather than formal referrals.) The boy left home threatening suicide and his mother called the police. The following day she saw him and tried to get him to go with her. He threatened her with a knife. Apparently some legal process occurred because he was next referred for violating a domestic violence order. Then he was referred for shoplifting. He left the state and returned. Eight months after the theft he was referred for misconduct involving a weapon (a BB gun) when police caught him and his friends throwing rocks at streetlights. Three weeks later he was caught driving a stolen vehicle; the next day he was referred for theft (shoes taken from a store); and a week after that for stealing from a grocery store. Six months later he was reported as a runaway. Almost

Juveniles (continued from page 3)

two years later he was referred for disorderly conduct. At this point he was within two weeks of his eighteenth birthday.

Clearly the records of these multiple offenders vary considerably by race. Alaska Native youth tended to accumulate referrals in villages for behavior which would very likely be ignored or resolved informally in a large city. Native youth whose records were accumulated in cities were less likely to be referred for alcohol violations, though their referrals for property offenses sometimes included consumption of alcohol.

African American boys who accumulated at least five referrals had referrals for assault and weapons violations as well as property offenses. We should note that nearly all African American youth in the sample lived in urban areas. Among the ten multiple black offenders, one lived outside Anchorage, but spent time there, and two lived in Fairbanks. The remainder were referred in Anchorage.

The white youth with at least five referrals were quite different from one another. One was referred in a small town for liquor violations and minor theft; his record sounds as if it could be that of one of the Native villagers. Another seemed to be involved in gang or gang "wannabe" behavior, and a third appeared to have been emotionally or mentally disturbed.

A recurring theme among those with multiple referrals was that the youth's home life was at least questionable, if not dysfunctional. The sixteen-year-old white drinker was on his own in a fishing town; both parents were out of state. The gang-involved boy lived with his mother and brother. According to intake notes, his mother was not particularly concerned with his behavior. He was in a residential psychiatric facility more than once.

The third boy may also have been involved in a gang. His father lived out of state. His mother refused to take him in after he threatened her. The police then took him to shelters after arrests. He was admitted to a psychiatric facility in Anchorage and to another in the lower 48. He was diagnosed at the psychiatric hospital as a sociopath destined for more criminal behavior.

The Alaska Native multiple offenders seemed to come from broken families where alcohol was a problem. Only two of these youth lived with both parents. Two lived with their fathers, the remainder with mothers and/or grandparents. Field notes in several files mentioned intoxicated parents (e.g., mother too drunk to come for him; all adults in home were intoxicated). One boy seemed often to be left with others

while his mother was away; his referrals seemed correlated with her absence. Others were in group homes for some part of their referral histories. In one case the village tribal council said a youth could not return to the village (although he did). At least one had a sibling in jail and some had siblings as co-offenders.

The African American multiple offenders were all from cities—primarily Anchorage or, in one case, a growing community near Anchorage. That youth was living with a friend and did not know where his parents were, although he knew that his father recently had been released from prison. Two other files noted jailed or imprisoned parents. Three more lived with grandparents, but at least one of these youth was so out of control he was placed in shelters and group homes for much of the time covered in his referral history. Three of the black youth lived with aunts or uncles. Several files noted moves to the lower 48 to stay with other parents or relatives. One of the African American boys, whose record reflected minimal "dangerousness," was in multiple placements in Alaska—two foster homes, two mental health facilities, one temporary shelter, and one residential group home.

It is clear that youths who accumulated several referrals did not have very stable living situations. In some cases their homes could only be described as chaotic. In some cases parents and guardians refused to take the boy in; in two, the parent requested more severe sanctions. In only one case was abuse by parents established in the file, but some of the files were not complete.

Female Multiple Referrals

In our sample, there were only ten females who accumulated at least five referrals. Eight were Alaska Native and two were white. These girls were in living situations which were just as chaotic as those of the boys.

The girl with the least stable home life lived with mother, father, grandparents, and foster parents, and in a psychiatric facility and a residential group home. She began her referrals with a charge of minor consuming alcohol. She next was referred for trespass when she went into a fast food restaurant from which she had previously been barred. She was referred again for minor consuming alcohol and then for misconduct involving a controlled substance. She was referred for driving her grandfather's car without his permission or a license. She was also referred for criminal trespass at the high school, from which she had also been barred. She accumulated six



Alaska Justice Forum

Editor: Antonia Moras
Editorial Board: Cassie Atwell, Allan Barnes, Robert Congdon, Richard Curtis, Robert Langworthy, Lisa Rieger, John Riley, Nancy Schafer, Lawrence Trostle, Darryl Wood
Typesetting and Layout: Melissa Green

Justice Center, Robert Langworthy, Director

Alaska Justice Statistical Analysis Unit, Allan Barnes, Director

Published quarterly by the Justice Center and the Alaska Justice Statistical Analysis Unit at the University of Alaska Anchorage, 3211 Providence Drive, Anchorage, AK 99508; (907) 786-1810; fax 786-7777; Internet address ajjust@uaa.alaska.edu; World Wide Web <http://www.uaa.alaska.edu/just/>

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University of Alaska Anchorage
ISSN 0893-8903

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more referrals, including some probation violations and leaving placement in a substance abuse program.

One Alaska Native girl, whose history began at age nine, lived in a Native village. She was initially referred for second degree burglary and criminal mischief. She and a companion had entered a daycare center through an unlocked door. They did considerable damage to the premises and stole some dolls. Her record does not show another referral until age fifteen, when she was charged with underage drinking after being found staggering on the beach. She accumulated four more referrals, each including underage drinking. One of these four also involved a charge of DWI; another included assault in the fourth degree (she kicked a police officer).

Minor consuming alcohol featured prominently in the referral histories of other Alaska Native females, with one girl accumulating thirteen referrals in a two-year period, ten of which included minor consuming alcohol. Only one file contained no reference to alcohol. This girl had six referrals for theft and one for burglary.

One of the white girls who had at least five referrals came from a very chaotic living situation. Her mother asked the state to take her because she was so unmanageable. She had several placements and was institutionalized at the training school. She continually ran away from home and appears to have been involved with an adult male who dealt cocaine. He may have been her pimp, although her referral record does not reflect prostitution. The record includes several assaults, some on her mother, some on other girls. The record also includes misconduct involving a controlled substance, attempted escape, burglary, and theft.

The other white female lived with both parents. She was referred three times for minor consuming alcohol, twice in conjunction with other offenses. Her record included a theft, a burglary, and criminal trespass. She was also referred for being suspected of receiving money which her brother had stolen.

The Alaska Native girls who appeared in the five-or-more-referrals category could be differentiated by place of referral. Girls who lived in villages or small towns were more likely to accumulate referrals for minor consuming alcohol than were urban-dwelling girls. Police priorities, visibility, and local concerns may play a role.

Conclusion

It is important to note again that in this article we have looked at a very small subsample of juvenile offenders—33 individuals who each accumulated five or more referrals before turning eighteen. Any conclusions drawn from this examination must take into account the limited size of the sample. What this in-depth examination does suggest is that lengthy referral histories may be associated with age at first referral and with location at first referral. The review of individual files also revealed, unsurprisingly, that the family and living situations of these 33 multiple offenders were particularly unstable.

N.E. Schafer is a professor with the Justice Center. The report on which this article is based, A Comparison by Race of Juvenile Referrals in Alaska: Phase II Report, is available in Adobe Acrobat PDF format on the Justice Center Web Site at http://www.uaa.alaska.edu/just/reports/pdf/9501_02b.pdf. The Phase I report, Disproportionate Representation of Minorities in the Alaska Juvenile Justice System, is available at http://www.uaa.alaska.edu/just/reports/pdf/9501_02a.pdf.

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could afford to come to Ketchikan by plane or boat, we met in my office. Often, however, because they could not afford plane fare, we met right before the court date—or not at all.

Clients arrested or charged during a time not corresponding with the traveling calendar appeared in court by themselves. There were no private attorneys practicing on Prince of Wales. If a client specifically requested to speak to an attorney, the magistrate for the district court called to inform me that I had been appointed to a new case. It was not unusual for me to receive a phone call from the magistrate asking me if I could take part in a telephonic proceeding already in progress.

Because I did not live in the community where the court was located, it was common for clients to seek advice about their cases from the district court magistrate or the local police. The magistrate, an attorney, usually responded to questions from defendants with the advice to call me. Local police officers, however, were not always as meticulous about protecting the rights of defendants and on more than one occasion spoke with an individual in violation of the right to counsel.

Kodiak

Similar geographic characteristics exist on Kodiak Island, but the Kodiak public defender's office handled only the one island rather than three islands. The four Native villages on the island were accessible only by boat or plane, and the same pretrial communication problems existed. Financial and time constraints made it difficult for me to visit my clients and, as in the Southeast villages, many clients lacked telephones.

Because the holding facility—two small rooms—could only handle a limited number of prisoners, clients in custody for more than a few days in Kodiak were transported to Anchorage, several hundred miles away. The Kodiak facility also lacked a clean, private space for attorneys to meet with clients.

Because of the difficulties in transporting clients back and forth, the court held many hearings telephonically, making it difficult for me to ensure that the client did not say anything to hurt his case. For example, I represented one client who was

charged with stealing the purse of an official's wife and attempting to cash checks on her account. Although the client had been offered a "deal," I believed that the client was being treated more harshly because of the identity of the victim. When the judge asked the client questions to determine if he was entering a plea voluntarily, the client said, "Well, Miss King thinks I'm getting the shaft."

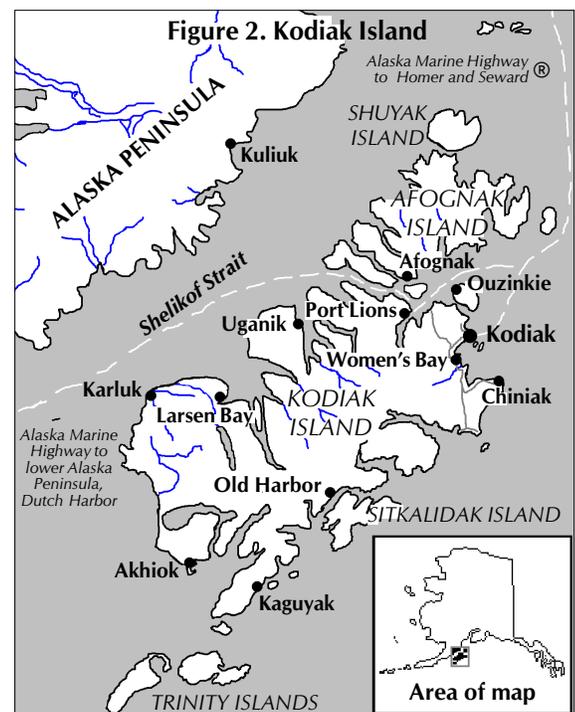
What could I say? I did think he was getting the shaft but if I tried to cover up the comment or explain it away my client wouldn't trust me and if I didn't explain it away, the prosecutor and the judge won't trust me.

After my client's comment, the judge asked me what I thought. I said that I felt that the district attorney's office was prosecuting the case more aggressively because of the identity of the victim. I also said that the client understood he was not obligated to accept the offer.

Kotzebue

Kotzebue and the Northwest Arctic Borough presented the most extreme geographical problems. I was the only public defender for the entire borough, an area of over 37,000 square miles where communities range in population from over 600 in Selawik to less than 200 in Deering. Kotzebue itself has a population of around 3,000. Although I lived in Kotzebue, where

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the courthouse is located, many of my clients lived in villages accessible only by boat, plane, snowmachine, or dog team. Again, caseload and time constraints made regular village travel impossible.

Bail

Persons who are incarcerated before trial seem to have very different outcomes in their cases than those released awaiting trial. Pretrial detention interferes with a defendant's ability to defend himself; it compromises his ability to work and deprives his family of emotional and economic support. A detainee is unable to meet as freely with his attorney and is hindered in his ability to help investigate his case. Because these factors possibly contribute to an increased rate of conviction of defendants who are detained pretrial, the problems surrounding bail and pretrial detention in rural Alaska are particularly troublesome.

Since most of rural Alaska does not have jail facilities, clients must be transported out of their communities if they are arrested and unable to post bail. This complicates defense preparation. Both Craig on Prince of Wales Island and Metlakatla have short-term holding facilities. If defendants are not able to post bail within one or two days they are transported to Ketchikan, where the jail houses individuals awaiting trial. As previously mentioned, Kodiak has a temporary facility that holds defendants for as long as a week. Defendants unable to post bail within that time frame are transported to Anchorage, an hour away by plane. Defendants from villages outside of Kodiak are transported first to Kodiak and then to Anchorage, two plane rides away from home.

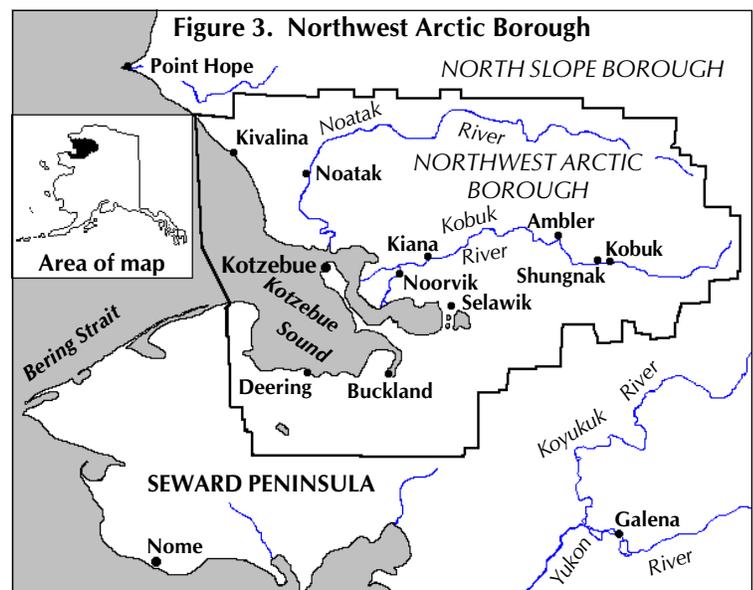
In the Northwest Arctic Borough, anyone arrested in a village and not released immediately by a magistrate would be transported to Kotzebue. None of the local villages has holding facilities. For example, a defendant arrested in Point Hope would be transported several hundred miles to Kotzebue for arraignment. Flying from Point Hope to Kotzebue involves a 45-minute plane flight at a cost of \$120. The defendant may not know anyone in Kotzebue and again, because of the lack of phones, he may be unable to reach family or friends to ask for bail money. If the defendant cannot bail out within a couple of days, he or she is transported to Nome—another one and a half hour plane ride with a round-trip cost of \$300.

In addition to the absence of support from family and friends, visits with an attorney are difficult and infrequent if a client is held in a different town. Once an individual was transported from Kotzebue to Nome, or from Kodiak to Anchorage, it was very difficult for me to visit. The demands of my caseload made it possible for me to visit jails in Nome and Anchorage about once every six weeks.

Communication by telephone is also complicated. Although clients could call collect regularly, I was not always in my office to accept the call. Inmates can also call family and friends collect during specific times, but, again, these personal contacts may lack regular access to a phone.

The following journal passage describes my frustration with trying to represent a client from Deering who was in custody in Kotzebue:

A lot of people here do not have the resources to pay bail and the courts are not inclined to give OR releases [release from jail on one's own recognizance and promise to appear for future court dates], at least not in cases where someone has an ongoing problem, like M who just got out of jail last week for assaulting his wife and then ends up in jail again on Friday. The court imposed a \$1500 cash bail. We have some possible third party custodians. Now B . . . wants him to come home and help take care of the kids. But she was just in court on Thursday seeking a restraining order. She has since dropped her charges and now tomorrow she wants to go to court and ask the judge to let M go home. The judge actually denied her last request to withdraw her restraining order which is fairly unusual. So M probably will not get out of jail, even though he has a fairly good third party custodian but no way to get to his house which is in Deering and so he'll be stuck here in Kotzebue and then



he'll be transported to Nome and we'll have to deal with trying to get him out of jail after he has served a long period of time in jail. The jail seems to transport clients really quickly so if I don't get to them out right away they are off to Nome and then everything is just that much more complicated. [Initials have been changed.]

One particularly difficult case involved a deaf client from Kiana who was detained in Nome. He was arrested for sexual abuse of a minor, then transported from Kiana to Kotzebue. When I could not find a suitable bail arrangement, he was transported to Nome. I could not call him in jail, so he had to call me collect using the deaf translator phone service, hoping that I would happen to be in the office when he called. For me to visit him in jail cost several hundred dollars and a full work day.

The seasonal rhythm of work in rural Alaska also contributes to unusual complexities in the criminal justice process. Summer is work time in most of rural Alaska, the time of gathering food for the coming year. Many clients traveled from their regular homes to fish camps. Even those that lived in Kotzebue moved to the beaches to be near the harvesting sites.

In Kodiak and Ketchikan, clients involved in commercial fishing could be away from land for long periods of time. Because they felt that it was too difficult to meet required court appointments and work with an attorney, clients often chose to plead guilty, do their jail time (or get it deferred if possible) in order to end the case. This may have resulted in innocent clients being punished, or the state obtaining easy convictions which it might not otherwise

have gotten if the clients had been willing to go to trial. Alaska Natives simply could not afford the time for protracted litigation, especially with minor misdemeanor cases, so pleading guilty or no-contest was the easiest, and often the most sensible, solution. Hence, when I asked my clients if they would like a bail hearing, a common response was, "I'll just do my time and get it over with."

Court Proceedings

The geographic problems described often prevented my client and me from being at the same place for a court proceeding. The judge usually appoints a public defender at the first court appearance, the arraignment, but Alaska law requires that defendants appear before a judge or magistrate within 24 hours of arrest. The conflict between the two rights in rural Alaska is resolved by holding the hearing within 24 hours and appointing an attorney as soon as possible.

Clients are required to participate in court proceedings, but this participation may be telephonic. If a client is detained in a facility located in a different place from the courthouse, the Department of Corrections arranges to transport the defendant to the proceeding if possible. However, transportation is sometimes impossible either because of inclement weather or a lack of state troopers available to provide transportation. In addition, clients sometimes requested not to be transported because they did not want the disruption of being moved back and forth between facilities. Clients with prison jobs would lose their positions if transported. Because of all these factors, it was common for either myself or my client to participate in a court proceeding telephonically.

The following passage describes representing a client from Metlakatla at a change of plea hearing. I never met the client in person.

J pled out to one count of minor in possession (the state dismissed theft 4) for sticking a bottle of Jim Beam inside his coat. He did this while standing at the counter of the liquor store while his wife bought a couple of cases of beer. He says he was playing a joke and didn't intend to steal it, and besides if he had intended to steal it it would have been a pretty stupid thing for him to do it in such an open and obvious way. But J lives in Metlakatla and he didn't want to go to trial or come to Ketchikan for court. So he pled out at trial call without ever having consulted with me

in person about his case. [Initials have been changed.]

In this case the client might have felt otherwise about taking his case to trial if it had been possible to hold the trial in Metlakatla or if he and I had had regular contact with each other and had established a better relationship.

Jury Selection and Composition

Alaska Administrative Rule 15 requires that juries (both grand and petit) be selected from those who reside within a 50-mile radius of the courthouse. This 50-mile limitation excludes those who fall outside the radius, often those living in the smallest Alaska Native villages. Both the Alaska and United States Supreme Court have interpreted the fundamental right to a jury of one's peers as imposing a *vicinage* requirement—the right to have a jury include residents from one's own village—but this vicinage requirement is often not met in rural Alaska. For example, the client from Whale Pass discussed earlier did not have anyone from her community in the jury pool for her trial in Craig because Whale Pass lies more than 50 miles from the court. Similarly, clients from Point Hope would not have anyone from their community in the jury pool for a trial in Kotzebue.

The exclusion of residents of rural villages is particularly noticeable when the trial is held in towns such as Ketchikan, Craig or Kodiak where the majority population is white. Natives from rural villages are tried by people from larger urban areas who, in all likelihood, are white. (In Kotzebue, the majority population is Inupiat, so even if people from the defendant's village do not sit on his jury, there will likely still be Inupiat on the jury).

I discovered a particularly noteworthy example of juror exclusion while practicing in Ketchikan. While representing a young Tsimshian Indian from Metlakatla, I learned that the court in Ketchikan systematically excluded residents of Annette Island from serving on juries on the basis of the unpredictability of weather in Southeast Alaska, which often made travel difficult or impossible. After I filed a motion challenging the constitutionality of this exclusion, the Superior Court judge, himself unaware of the practice, changed the selection process by administrative order. No one knew how long the practice had been in effect.

In addition, during the period I worked in the Southeast, the Superior Court usually held major felony trials for all three of the islands in Ketchikan. The jury pool for

Ketchikan trials was drawn only from Revillagigedo Island, where Ketchikan is located (and, after the judge changed the practice, Annette Island). Defendants from Prince of Wales Island would not have persons from their communities on the jury because of the 50-mile radius rule. This practice had implications for Haida clients because the largest Haida community in the Southeast—Hydaburg—is located on Prince of Wales Island. The majority Alaska Native population on the island of Ketchikan is Tlingit. Thus, an Alaska Native client from Hydaburg was likely to get a predominantly white jury (because the majority population in Ketchikan is white) and, to the extent that Alaska Natives served on the jury, they were more likely to be Tlingit than Haida.

Probation and Parole

Many of the problems in complying with pretrial conditions also affect individuals on probation and parole. The probation conditions which judges typically impose can be difficult for rural Alaskans to meet because they involve attending treatment programs that do not exist in the bush. This means that offenders from rural communities are obliged to remain in urban areas during probation or parole and, thus, they are removed from their support systems and possibly more likely to fail. Most villages do not have resident probation officers, also probably contributing to a higher failure rate.

The experience of an older Alutiiq man from the village of Karluk exemplified the difficulty that some villagers have complying with probation conditions. This client was initially charged with a felony for chasing his nephew with a knife. The state reduced the charge to a misdemeanor in exchange for his no-contest plea, and the judge sentenced him to probation, allowing credit for time served in jail, with the condition that he seek alcohol treatment.

The alcohol treatment screening involved a two-part procedure that the defendant had to do in person, rather than over the phone. The screening took place on two consecutive Wednesday nights and the flight from Karluk to Kodiak was \$76 one way. The client traveled to Kodiak for the alcohol screening and the counselor recommended that he attend an intensive outpatient program that met twice a week for six weeks. This man, who was in his sixties, lived on a limited income. He did not have a place in Kodiak where he could live during the treatment, nor could he afford to fly back and forth twelve times over the course of

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six weeks. Karluk had no alcohol programs that he could attend. I left Kodiak before learning if this client had successfully completed the program, but even if this individual did manage to complete all of the probation requirements, many people in similar situations could not.

To the greatest extent possible the court,

prosecutors, public defenders and troopers may want to look at some of the practical problems addressed by this article and consider making changes to the system. Some changes could occur relatively easily because most communities have some form of tribal court or council already in place. The state could experiment with returning the prosecution of minor misdemeanors to the community level. Tribal courts and councils might adjudicate minor offenses and

provide follow-up. Probation and supervision at the local level, integrating community values, would more likely succeed than the current system. Such an approach would also save the state much-needed revenues which are currently being used to fund transportation and incarceration.

Rachel King is an attorney with the American Civil Liberties Union in Washington, D.C. She formerly worked in the Alaska Office of the Public Defender.

Justice Center Project Highlights

Darryl Wood, Assistant Professor with the Justice Center at the University of Alaska Anchorage, has received a grant of \$50,000 from the National Institute of Justice to study the issue of attrition within the Village Public Safety Officer (VPSO) program. The program, which currently provides policing and other public safety services to 85 Alaska Native villages, has suffered from a high rate of attrition since its inception. Wood will examine the extent of turnover in the VPSO program and seek to identify why former officers left their positions as well as why current VPSOs continue. An analysis of VPSO personnel records will be conducted to document the extent of the turnover problem and to identify patterns in the employment records which might be associated with the problem. A survey of both former and current officers will elicit information about decisions to leave or continue VPSO service. The study will begin this summer and continue through early 1999.

The following is a list of other current Justice Center research and public education projects. For further information about any of these please contact the Center.

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| Alaska Natives: Careers in Corrections (JC 9501.05)—John Riley | Jails and Fire Safety (JC 9905)—N.E. Schafer, Sandy Belfield |
| Brady Statute Data: Establishing Noncriminal Classifications for DPS (JC 9615)—Lawrence C. Trostle, Allan R. Barnes | Judicial Candidates Evaluation and Retention Election Surveys (JC 9005, JC 9819)—Richard W. Curtis |
| The Structure of Large Municipal Police Organizations During the Community Policing Era (JC 9805)—Robert H. Langworthy | 1997 Campus Crime Reporting (JC 9207.07)—Cassie Atwell |
| Community Jails Data Base (JC 9810)—N.E. Schafer, Richard W. Curtis | Juvenile Justice and Delinquency Prevention Jail Monitoring Project (JC 9802)—N.E. Schafer, Richard W. Curtis |
| Review and Analysis of Childhood Abuse among Incarcerated Offenders (JC 9809)—Robert H. Langworthy, Allan R. Barnes, Richard W. Curtis | A Videotape for Working with Crime Victims from Other Cultures (proposal pending; JC 9906)—Antonia Moras |
| Patterns of Adjudication for DWI Arrestees (JC 9818)—Robert H. Langworthy, Bernard Segal, Peter Crum | Child Welfare and Alaska Native Tribal Governance: A Pilot Project in Kake, Alaska (proposal pending; JC 9910)—Lisa Rieger |
| Processing SHO-CAP Juveniles (JC 9903)—N.E. Schafer | Correlates of Probation Revocation in Alaska (proposal pending; JC 9912)—Robert H. Langworthy |

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