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## Alaska Supreme Court Report: Fairness and Access Problems and Recommendations

The Alaska Supreme Court Advisory Committee on Fairness and Access has released the final report from its examination of concerns involving racial and ethnic biases and the operation of the Alaska Court System. The published study, which was prepared by the Alaska Judicial Council, presents the findings and recommendations of the committee and the six subcommittees. According to the report, the committee received almost no complaints of intentional racial or cultural bias by the court system, but it learned about areas of unintentional bias, cultural misunderstandings, inadequate services and lack of accessibility. The

problems of access which emerge through the report are problems of language and communication, of geography and of resources. The committee learned that many people do not understand the justice system and have difficulty using court services. Because the committee cast a wide net, some of the information obtained through its work has importance for the operation of other justice system agencies. As the report itself notes, many of the findings and recommendations have been made before. A few are being somewhat addressed by initiatives already undertaken, and some foundation for implementation of other

recommendations already exists.

### Work of the Committee

The committee and its subcommittees included members of the judiciary and other employees of the state court system, state employees from other agencies, tribal court judges and administrators, human resources specialists, academic researchers, criminal and civil attorneys and community activists.

The work spanned twenty months, from January 1996 through September 1997. The subcommittees investigated distinct, but intertwined, areas of concern: rural access; language and culture; jury composition; disparate confinement; the court as employer and consumer use of the court. The subcommittees heard public testimony in nine locations, examined previous studies, invited experts to speak, and conducted their own research efforts—supported by the Judicial Council, the UAA Justice Center and the Institute for Social and Economic Research (ISER). The wide-ranging effort to gather pertinent information from Alaska residents also included conducting radio call-in shows; speaking at various statewide meetings; and contacting community groups and private individuals by letter and telephone.

### Findings and Recommendations

The following discussion presents the final recommendations of the committee with an overview of the findings on which they

*Please see **Fairness and Access**, page 4*

**Table 1. Estimated Fiscal Impact on Alaska Court System  
of Implementing Recommendations**

Recommendation	Low cost estimate	High cost estimate
<b>A. Implementation of recommendations</b>	\$20,000	\$120,000
<b>B. Ongoing cross-cultural training (per year)</b>	\$20,000	\$30,000
<b>C. Local resources and cooperation with state courts</b>	Potential savings	
<b>D. Diversifying the court system workforce</b> Develop and update affirmative action plan and outreach (\$5,000-\$35,000) New position (\$70,000)	\$10,000	\$105,000
<b>E. Language interpreters</b> Judicial officer training (\$3,000-\$4,000) Paying for indigents (\$100,000-\$150,000 per year) Legal workshop for interpreters (\$5,000-\$7,000)	\$108,000	\$161,000
<b>F. Expanding sentencing alternatives</b>	?	?
<b>G. Study of effects of ethnicity on criminal justice process</b>	\$300,000	\$350,000
<b>H. Expanding the jury pool</b> Reduce burden of serving (\$48,454-\$72,120 per year) Decrease peremptory challenges (potential savings)	\$48,454	\$72,120
<b>I. Public education program (per year)</b>	\$10,000	\$20,000
<b>J. Increased services to rural areas (per year)</b> Judges travel more (\$50,000-\$150,000) Circuit rider (\$150,000-\$300,000)	\$200,000	\$450,000
<b>K. Cultural navigator program (two-year pilot)</b>	\$109,000	\$320,000
<b>L. Simplified forms and translated materials</b> Form revisions (\$40,000-\$70,000) Translations (\$1,250-\$2,000) Videotaping (\$1,000 per minute)	\$41,250	\$72,000
<b>M. Child in Need of Aid proceedings</b>	No additional funding	
<b>Total</b>	<b>\$866,704</b>	<b>\$1,700,120</b>

Source: Appendix C, Report of the Alaska Supreme Court Advisory Committee on Fairness and Access (Anchorage: Alaska Court System, October 1997)

### HIGHLIGHTS INSIDE THIS ISSUE

- An examination of disproportionate referrals of Alaska Native and African American youth in the Alaska juvenile justice system (page 2).

# Minorities Referred at Higher Rates: Analysis of DFYS Data

N.E. Schafer and Richard Curtis

The data analysis discussed here was funded by a gift from Cook Inlet Region, Inc.

In a study of 28,618 referrals to the Alaska juvenile justice system, the Justice Center found considerable disparity between white and minority youth in the rate at which they were referred, the frequency of their referrals and the types of offenses which brought them to the attention of juvenile justice personnel.

A referral comprises paperwork which identifies the youth to the Division of Family and Youth Services (DFYS), specifies the offense behavior and may extensively describe the circumstances surrounding the behavior. Youth usually are referred by law enforcement agencies and the referral may include arrest and detention. The police may have responded to a citizen complaint or acted on a warrant; they may, in the case of shoplifting, for example, have accepted custody of the youth from store personnel; or they themselves may have discovered juveniles engaged in illegal activities. In addition, field probation officers refer youth either for new offenses or for violating the conditions of probation.

Each time an incident is reported to DFYS the details are entered into a data base known as PROBER. Though PROBER contains a substantial amount of additional information, in this article we focus on referral events, using data from 1992-1995.

## Demographics of Referrals

We confined our analysis to youth who were 10 to 17 years old at their first appearance in the data set and who were categorized in one of three racial groups—white, Alaska Native and African-American. These three races accounted for 90 per cent of all referrals.

The data are *incident*-based; thus, the number of youth referred is considerably smaller than the number of referrals. The

**Table 1. Referrals — Demographics, 1992-1995**

		Individuals referred		Number of referrals		Mean referrals per person
		N	%	N	%	
<b>Gender</b>	Male	9,547	67.5%	20,769	72.6%	2.18
	Female	4,598	32.5	7,849	27.4	1.71
<b>Race</b>	Alaska Native	3,726	26.3%	9,052	31.6%	2.43
	African American	1,051	7.4	2,502	8.7	2.38
	White	9,368	66.2	17,064	59.6	1.82
	<b>Total</b>	<b>14,145</b>		<b>28,618</b>		<b>2.03</b>

26, 618 referrals accumulated over a four-year period involved only 14,145 individuals, an average of two referrals for each youth in the data set. This information is displayed in Table 1 by race and gender. Note that males accounted for nearly three-quarters of all referrals but were just two-thirds of all youth referred. Although white youth of both genders were two-thirds of all youth referred, they accounted for less than 60 per cent of all referrals recorded, while a smaller proportion of minority youth accounted for a larger percentage of all referrals. These differences are clearer in an examination of the mean (average) number of offenses per youth. Each Native youth accumulated an average of just over 2.4 referrals and each black youth slightly less. White youth, on the other hand, had fewer than two referrals per person.

## Rates of Referrals

Another way of examining racial disproportionality is to examine the *rate* at which each race accumulates referrals. We used as a base for computing such rates Alaska Department of Education (DOE) enrollment figures for grades 5 through 12. Figures, broken down by race and area, were available for each of the four years studied. During each year Alaska Natives constituted about 23 per cent of all youth enrolled in grades 5 through 12 and African Americans

around 5 per cent.

We computed a rate of referral for each 1000 persons in the racial population in question using the enrollment figures and found them consistently higher for minority youth than for white youth (Table 2). The referral rate for each 1000 Alaska Natives in the youth population ranged from a low of 14.2 in 1992 to a high of 16.8 in 1994. The referral rate for white youth ranged from 8.5 to 8.9 per 1000. Referral rates for African Americans were significantly higher than for either other race, ranging from 17.7 to 20.5. (These rates were computed based on DOE enrollment figures. Dropout estimates provided by DOE for the 1995-96 school year suggest that the enrollment-based rates presented in this study may be understated by as much as 4.1 per cent for Natives, 2.5 per cent for African Americans, and 2.7 per cent for whites.)

By this measure, as well as by measures of proportion, minority youth are overrepresented at the initial entry point of the Alaska juvenile justice system. The referral data cannot show us *why* they are overrepresented, but it can provide information on the reasons for the referrals, i.e., the offenses for which the youth are referred.

## Reasons for Referrals

Offense information was entered in the data based on the most serious charge at re-

**Table 2. Referrals and Referral Rates of Youth 10-17 Years Old in Alaska, Statewide, 1992-1995**

	Alaska Native						African American						White						Total	
	Total referrals						Total referrals						Total referrals							
	Population*		Rate per 1000				Population*		Rate per 1000				Population*		Rate per 1000					
	N	%	N	1000	%	N	%	N	1000	%	N	%	N	1000	%	Population	Referrals			
<b>1992</b>	13,728	22.5%	1,947	14.2	30.2%	2,888	4.7%	550	19.0	8.5%	44,341	72.7%	3,949	8.9	61.3%	<b>60,957</b>	<b>6,446</b>			
<b>1993</b>	14,154	22.4	2,065	14.6	31.5	3,221	5.1	570	17.7	8.7	45,776	72.5	3,911	8.5	59.7	<b>63,151</b>	<b>6,546</b>			
<b>1994</b>	15,049	23.0	2,527	16.8	32.9	3,474	5.3	687	19.8	8.9	46,937	71.7	4,478	9.5	58.2	<b>65,460</b>	<b>7,692</b>			
<b>1995</b>	15,578	23.4	2,513	16.1	31.7	3,391	5.1	695	20.5	8.8	47,607	71.5	4,726	9.9	59.6	<b>66,576</b>	<b>7,934</b>			

Row percentages.

\* Population based on figures from "District Enrollment by Ethnicity and Grade, Grades 5-12," Alaska Department of Education, Office of Data Management, FY 92-95.

ferral (if there was more than one charge). We initially categorized referral events as crimes against persons, property crimes, public order crimes and other offenses. However, because these categories include both very serious and very minor offenses, we decided to control for offense severity. We therefore based most of our offense-based analyses on selected crimes either because they were the most numerous in their category or because there was particular public interest in them (Table 3).

For example, of 4,078 referrals for crimes against persons, only 40 (less than one tenth of one per cent) were for the crimes of murder in the first or second degrees, manslaughter or criminally negligent homicide. The majority (61%) were for misdemeanor assault (assault in the fourth degree) so we used this charge in our analyses of crimes against persons. For crimes against property we focused on burglary (the only felony), criminal mischief and misdemeanor theft: these accounted for two-thirds of all property crime referrals. Referrals for possession/consumption of alcohol were the most numerous in the public order category. We also included referrals for misdemeanor drug possession because drug abuse is perceived as a growing problem.

The row percentages in Table 3 show the proportion of referrals for each offense attributable to each racial group. For offenses against persons, minority youth are represented in proportions greater than their representation in the general youth population.

For referrals on the three selected property offenses of burglary, criminal mischief and theft in the third or fourth degrees, Native youth were overrepresented in the first two, but represented slightly under their proportion in the general population for theft. Misdemeanor theft is the only referral offense for which white youth were represented in proportions which approximated their percentage of the general youth population. They were responsible for approximately 70 per cent of all thefts in the data base, while they constituted 72 to 73 per cent of all youth enrolled in school in 1992, 1993, 1994 and 1995.

Referrals for alcohol offenses were accumulated by Alaska Native youth in greater numbers than for any other racial group. They accounted for 54.5 per cent of all referrals for minor alcohol offenses, while white youth accounted for 44.7 per cent. African American youth were seldom referred for alcohol violations: only 34 of 2,500 referrals of black youth were for this behavior.

There are regional differences in referrals for this offense. Because the regions differ greatly in population, the rates of re-

**Table 3. Referral Distribution by Charge Across Primary Racial Groups, 1992-1995**

	Alaska Native		African American		White		Total referrals
	N	%	N	%	N	%	
<b>Offenses against persons</b>	<b>1,398</b>	<b>34.3%</b>	<b>498</b>	<b>12.2%</b>	<b>2,182</b>	<b>53.5%</b>	<b>4,078</b>
Assault 4	880	35.5	304	12.3	1,297	52.3	2,481
<b>Offenses against property</b>	<b>4,082</b>	<b>26.0%</b>	<b>1,466</b>	<b>9.3%</b>	<b>10,170</b>	<b>64.7%</b>	<b>15,718</b>
Burglary	934	37.3	152	6.1	1,418	56.6	2,504
Criminal mischief 3 & 4	825	31.2	259	9.8	1,557	59.0	2,641
Theft 3 & 4	1,162	17.8	751	11.5	4,623	70.7	6,536
<b>Public order offenses</b>	<b>2,838</b>	<b>43.5%</b>	<b>252</b>	<b>3.9%</b>	<b>3,427</b>	<b>52.6%</b>	<b>6,517</b>
Possession/consumption of alcohol	2,297	54.5	34	0.8	1,886	44.7	4,217
Misconduct w/ controlled substances	175	19.5	46	5.1	677	75.4	898
<b>Other offenses</b>	<b>734</b>	<b>31.8%</b>	<b>286</b>	<b>12.4%</b>	<b>1,285</b>	<b>55.7%</b>	<b>2,305</b>
<b>Total referrals</b>	<b>9,052</b>	<b>31.6%</b>	<b>2,502</b>	<b>8.7%</b>	<b>17,064</b>	<b>59.6%</b>	<b>28,618</b>

Row percentages.

ferral for this offense make a better comparison. In the northern region, where the Alaska Native population is high, some communities exhibit strong legal proscriptions against drinking. In this region the rate of referral per 1000 Native youth in the region ranged from 3.6 to 4.3. In Anchorage, on the other hand, there were only 323 referrals for alcohol in all four years. The rate per 1000 Native youth in Anchorage only went above one per 1000 in 1995 (1.1). In 1992 it was 0.2. Clearly there are regional variations in the types of offenses for which youth are referred as well as differences by race.

**Data on Individuals**

Because the referral data are *incident-based*, we have been discussing incidents rather than people. As we have already noted, there are more referrals than people since some individuals accumulate several referrals. Indeed, 116 youth accumulated 15 or more referrals during the period studied. Three had 18 referrals—the highest

number listed. Two-thirds of the youth appeared only once in the data set; of these, 70 per cent were white, 65 per cent were black and 60 per cent were Native. We limited our analysis of individuals to those whose full referral history was in the data set by selecting only those individuals whose history indicated no prior record. This left us with a sample of 11,799 youth referred one or more times in 1993, 1994, 1995 and 1996. We examined the data on individuals on the basis of gender as well as race. Table 4 describes these youth and includes the mean number of referrals committed by each individual in that category. For example, the 2,696 white females in the data base accumulated a total of 3,938 referrals—an average of 1.46 referrals per person.

The gender differences are instructive. The percentage of individual females (34.3%) is greater than the percentage of referrals attributed to them (29.9%). They are presumably more likely than male youth to be referred only once. There are, how-

*Please see Minority Referrals, page 4*

**Table 4. Distribution of Persons, Age, and Referrals by Race and Sex, 1992-1995**

	Number of people referred		Mean age at first referral	Mean number of referrals	Total number of referrals	
	N	%			N	%
<b>Alaska Native</b>	<b>2,882</b>	<b>24.4%</b>	<b>14.66</b>	<b>2.10</b>	<b>6,045</b>	<b>28.3%</b>
Male	1,827	63.4	14.56	2.22	4,048	67.0
Female	1,055	36.6	14.84	1.89	1,997	33.0
<b>African American</b>	<b>873</b>	<b>7.4%</b>	<b>14.71</b>	<b>2.10</b>	<b>1,788</b>	<b>8.4%</b>
Male	576	66.0	14.71	2.05	1,341	75.0
Female	297	34.0	14.71	1.51	447	25.0
<b>White</b>	<b>8,044</b>	<b>68.2%</b>	<b>15.05</b>	<b>1.68</b>	<b>13,527</b>	<b>63.3%</b>
Male	5,348	66.5	15.06	1.79	9,579	70.8
Female	2,696	33.5	15.03	1.46	3,948	29.2
<b>Total</b>	<b>11,799</b>		<b>14.93</b>	<b>1.81</b>	<b>21,360</b>	

Column percentages.

**Minority Referrals**  
(continued from page 3)

ever, differences by race, with a larger percentage of referrals of Native females (33.0%) than of either African American (25.0%) or white females (29.2%). Indeed, Alaska Native girls amassed a higher average number of offenses (1.89) than white boys (1.79).

Studies conducted in other states have suggested that girls are more likely to be entered into the juvenile justice system for their own protection, while boys are more likely to be referred for the protection of the public. We therefore continued to use gender in our analysis of offense behavior by race. Because 73.6 per cent of the individuals were referred for the first time for the offenses we selected to control for severity, we have confined our analysis to these in Table 5. This table includes only those who had no prior record noted in their PROBER file.

Among Native youth, *numerically* more girls than boys have been referred for possession/consumption of alcohol. This charge accounts for 35 per cent of all first referrals for Native females. More white girls than Native girls were referred for this offense, but as a percentage of all of their first referrals it was a distant second. For white females, the primary first referral charge was misdemeanor theft; 48.3 per cent of white girls were referred for this. An even larger percentage of African American girls was referred for theft (63.3%). Theft was first for a greater proportion of white (30.9%) and black boys (39.8%) as well, but in neither case do their proportions approach those for girls. We note also that a larger percentage of girls than boys was referred for misdemeanor assault. This difference was found among the minority groups; white boys and girls were referred for assault in the fourth degree in nearly equal percentages.

The data presented in this article cannot

be used to assess the degree to which race influences the decision to refer youth to DFYS. Certainly minorities are disproportionately referred. The extraordinary number of referrals of Native youth for possession/consumption of alcohol suggests that the agencies making the referrals view this behavior differently for Native than for white or black youth. The data also show strong differences between highly urban Anchorage and the more rural parts of the state in the types of activities for which youth are referred. While these may result from different law enforcement priorities, they may also result from greater criminal opportunities in the city. The differences by region will be the subject of a future *Forum* article.

*Nancy Schafer is a professor at the Justice Center. Richard Curtis is a research associate with the Center. Cassie Atwell of the Justice Center also contributed to the data analysis presented in this article.*

**Table 5. First Referral for Selected Offenses by Race (Individuals), 1992-1995**

	Alaska Native				African American				White				Total					
	Male		Female		Male		Female		Male		Female		Male		Female		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
Assault 4	135	7.4%	110	10.4%	62	10.8%	46	15.5%	357	6.7%	170	6.3%	554	7.1%	326	8.1%	880	7.5%
Burglary	250	13.7	39	3.7	38	6.6	4	1.3	504	9.4	62	2.3	792	10.2	105	2.6	897	7.6
Criminal mischief 3 & 4	190	10.4	66	6.3	58	10.1	12	4.0	544	10.2	140	5.2	792	10.2	218	5.4	1,010	8.6
Theft 3 & 4	282	15.4	248	23.5	229	39.8	188	63.3	1,655	30.9	1,302	48.3	2,166	27.9	1,738	42.9	3,904	33.1
Possession/consumption of alcohol	348	19.0	368	34.9	3	0.5	3	1.0	495	9.3	387	14.4	846	10.9	758	18.7	1,604	13.6
Misconduct w/ controlled substances	30	1.6	18	1.7	7	1.2	5	1.7	237	4.4	90	3.3	274	3.5	113	2.8	387	3.3
Other	592	32.4	206	19.5	179	31.1	39	13.1	1,556	29.1	545	20.2	2,327	30.0	790	19.5	3,117	26.4
<b>Total</b>	<b>1,827</b>	<b>15.5%</b>	<b>1,055</b>	<b>8.9%</b>	<b>576</b>	<b>4.9%</b>	<b>297</b>	<b>2.5%</b>	<b>5,348</b>	<b>45.3%</b>	<b>2,696</b>	<b>22.8%</b>	<b>7,751</b>	<b>65.7%</b>	<b>4,048</b>	<b>34.3%</b>	<b>11,799</b>	

**Fairness and Access**  
(continued from page 1)

were based. (The recommendations themselves are quoted directly from the report.) The committee did not rank its recommendations, but, to the degree possible, it evaluated the financial cost and impact of each. (See Table 1.)

The report notes that twenty-nine per cent of Alaska residents lack ready access to justice system services because of geographic isolation. The problem is particularly acute in the Second and Fourth Districts. (See Figure 1.) Budgets cuts imposed on state agencies have worsened the problems of access.

To increase rural access, the committee recommended that:

- The Alaska Court System should establish its presence in rural areas not now being served and should increase its presence

in underserved areas. It should encourage and fund judicial travel to local hearings, trials and sentencings, and send “circuit-riding” judges to rural areas.

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

- The Alaska Court System should establish and maintain a high quality telephone system.

- The Alaska Court System should expand use of technology to improve court access for rural residents.

The report notes that the language, structure and proceedings of the court system can combine to present a barrier to understanding even for English-speaking residents and that the system can be even more incomprehensible to those from non-English lan-

guage backgrounds and different cultural traditions. With reference to public education, the committee recommended:

- The Alaska Supreme Court should encourage judges to educate the public about the justice system.

- The Alaska Court System should use technology to improve public education about the justice system.

1990 U.S. Census data indicate that approximately 11 per cent of the Alaska population speaks a language other than English at home. Studies from both other states and Alaska reveal problems with the provision of due process and equal protection when parties in a court procedure are not fluent in English. The committee made a number of recommendations related to the difficulties which language group minorities face in court.

- The Alaska Court System should train judicial officers in the appointment and su-

pervision of language interpreters in civil and criminal proceedings.

- The Alaska Court System should recruit and train local interpreters of commonly used languages.

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

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

Related to the findings and recommendations on languages was one emphasizing the need for cross-cultural training within the judicial system:

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

The findings of the subcommittees particularly looking at rural and language and cultural issues resulted in a number of recommendations involving resources which are already available or are developing.

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

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

The work of several of the subcommittees resulted in the following recommendations on communication:

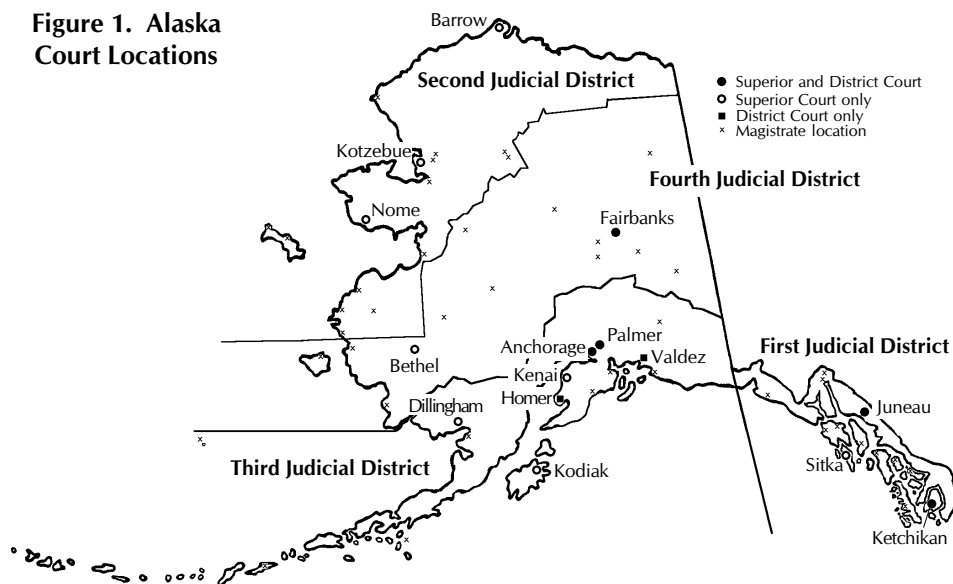
- The Alaska Court System should use clear, simple language in its forms and other publications.

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

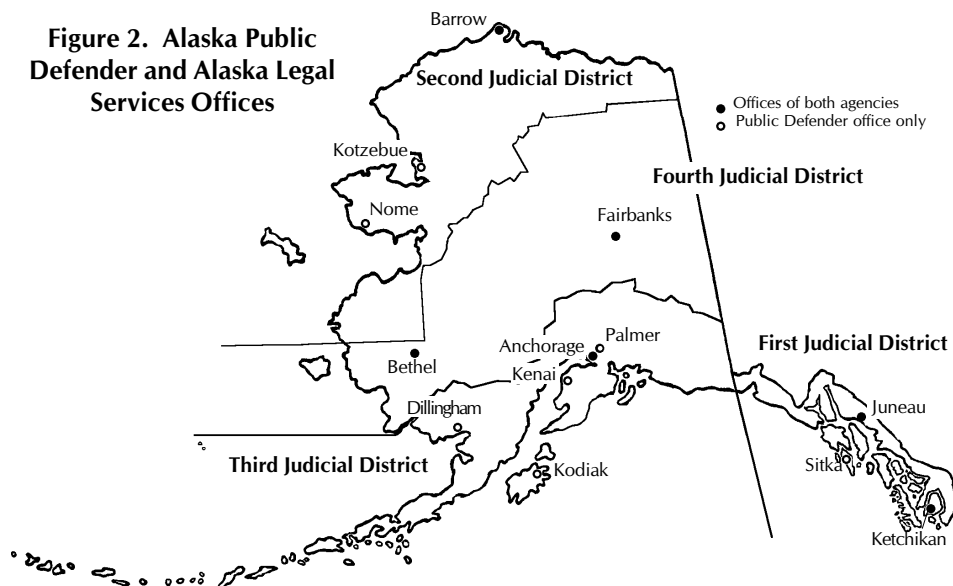
- The Alaska Court System should translate the audio portion of the arraignment videotape into commonly used languages in each court location.

The work of many of the subcommittees suggested that further in-depth study is needed of the ways in which the criminal justice process may be unfair to minorities. The proposed study should examine charging, dismissal, arrest and release decisions, pleas, trials, sentencing, and probation re-

**Figure 1. Alaska Court Locations**



**Figure 2. Alaska Public Defender and Alaska Legal Services Offices**



Source of maps: Justice Center

vocations. In addition, the court system and other criminal justice agencies should continue to collect data about ethnicity and the criminal justice process. The Advisory Committee on Fairness and Access made the following recommendation:

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

The recommendation resulting from the work of the Disparate Confinement Subcommittee echoes similar ones made by the Alaska Sentencing Commission, the Alaska Native Commission and several bush conferences over the last twenty years:

- Judicial officers should make greater

use of local sentencing alternatives. It is particularly important to rely on culturally relevant sentencing options for ethnic and racial minorities.

The findings of the Jury Composition subcommittee resulted in several important recommendations. The Alaska Court System compiles the statewide master list of prospective jurors from the Permanent Fund Dividend list—a universally inclusive source—but at present, residents of 125 Alaska communities are not called for jury service because of distance or cost constraints. This places a heavier burden in rural court locations on those who are in the pool. The 1995 statutory change in the number of peremptory challenges permitted in crimi-

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## Fairness and Access (continued from page 5)

nal cases has required courts to bring in larger groups for jury selection, also plac-

ing a heavier burden on those who are available. Some evidence also exists that responsiveness to the jury summons varies by ethnic group.

- The Administrative Director of the

Alaska Court System and the presiding judge in each judicial district should identify ways to include as many residents as possible in the jury pool.

- The Alaska Court System should work

## Public Comments

*The following is a representative selection from the public testimony presented in the "Report of the Alaska Supreme Court Advisory Committee on Fairness and Access." (The quotations have been transcribed as they appeared in the report.)*

"The court should improve access to rural communities. When defendants are brought to hub cities to be arraigned, there is no involvement from the community. Tribal courts could handle many of these local offenses. We sent a questionnaire that went out to villages in the region asking whether the current system is working. The answer was 'no.' Isolation, remoteness, large geographical jurisdictions and clashes between Native and western ideas of justice were cited as problems. Also mentioned were language bias, lack of control, dependence on outside justice services and lack of coordination between villages and state agencies." — *Tribal services paralegal, Association of Village Council Presidents*

"Not only are there differences in Native languages, but people also have difficulty in understanding legal terms such as 'litigation.' A Native person on a panel asked the meaning of the term. Later other members said they did not know the meaning either but were afraid to ask the question." — *Bethel juror*

"Explanations are not enough; examples must also be given. Just because the public defender explains our rights doesn't mean it's really clear. We have little urban contact, so we need an explanation of your ways and meaning." — *Indian Child Welfare Act worker, Tuntutuliak*

"Filipinos do not understand the American legal system. Many Filipinos cannot afford a lawyer or feel they are charged too much when they can. Many still think in their native tongue. It is a comfort to them to have an interpreter, but also a cultural interpreter." — *Member of the Anchorage Filipino community*

"Not only is language a problem, but people don't know how the court works, how to address a judge, how to plead. Their language use can be considered rude because they don't know. Attorneys should have someone like me work with clients so I can instruct my people how to behave in court. Thank you for doing this survey." — *Indian Child Welfare Act worker, Alakanuk*

"When people who do not speak English show up at arraignment, they are detained for another 24 hours and then assigned a public defender. Sometimes the court never does explain their rights to them." — *Public defender, Anchorage*

"One parent had a child removed from the home in an ICWA case. The mother didn't speak English and no one explained to her what was happening and that she would be allowed no further contact with her child." — *Indian Child Welfare Act worker, Bethel*

"I am an Eskimo elder who wishes to share some concerns that should get the attention of all agencies who come to the village to hold meetings, get public opinion, etc. Lots of us elders grew up in the turn of the century when the education system did not exist. The subsistence life in itself was a good education, but now we are often asked to reply to questions and issues that we don't understand. I feel there needs to be help in place for us elders who don't fully understand English, can't read well, and

generally can't understand what is going on. Someone needs to take the time to translate and make issues clear for us so that we could understand and give meaningful replies and comments. I fell that we, the elders, have much to share and to teach our younger generations." — *Elder, Golovin*

"The Juneau Hispanic community numbers over 800 people at present. There is one attorney and one investigator for the Public Defender Agency who speak Spanish. We sometimes hear of people who went to jail without having any idea of why they had been arrested. We have offered to serve as volunteer interpreters, but have only been called a couple of times in the past seven years, and never in a juvenile case. The federal courts do a better job of certifying and paying interpreters. We have heard an interpreter give defendants legal advice, including advising them about what to plead. Translating properly requires an understanding of legal procedures and the appropriate role of the translator, as well as an ability to speak the language." — *Two Hispanic Juneau residents*

"The court rule on interpreters was changed several years ago to make defendants responsible for their own interpreters. It almost offends me that before the court can even advise the person, the person has to pay for an interpreter. Placing this burden on the defendant or on the Public Defender is ill-advised." — *Office of Public Advocacy contract attorney*

"The court should maintain a library of tapes in several languages to advise defendants of their rights. Spanish, Tagalog, Russian, Korean, and perhaps Vietnamese are needed in Juneau. If possible, those making the tapes should consider the need for tapes in Spanish dialects. I have never seen anyone read the Spanish written materials on rights that judges can give out at arraignments. People coming to court often cannot read in any language." — *Juneau district attorney*

"Presentence reports do not always portray the lives of defendants from minority cultures." — *Juneau resident*

"Cultural misunderstandings are common with Korean clients, who are litigation-averse and hesitant to make direct confrontational statements about another person, even in cases where child custody is at issue." — *Office of Public Advocacy contract attorney, Anchorage*

"If there is a group who seems to be suffering from lack of access, it is recent immigrants. The court is much more in tune with the Natives than Koreans and Albanians. They don't quite know what to do with them and so they just muddle along." — *Attorney in private practice*

"The new immigration laws are causing unequal treatment of many ethnic groups. I know of one man who has been incarcerated for 14 months at Cook Inlet Pretrial and has had seven different public defenders, none of whom spoke Spanish. He cannot express himself adequately in English. He has not yet been tried. He does not want to sign summary deportation papers because he says he is innocent. The court system should

to increase the likelihood that citizens will respond to requests for jury service, and to reduce the burdens of jury service for those who do report.

- To decrease the number of prospective

jurors called but not used, the Alaska Court System should ask the Alaska Legislature to decrease the number of peremptory challenges available to the parties in criminal cases.

The subcommittee looking at the court system as employer found that, with some exceptions, disproportionately few minor-

*Please see **Fairness and Access**, page 8*

provide translators, at its own expense. I am aware of several people who could be certified, although some people who translate in court suffer from lack of legal training.” — *Member, Latino Lions*

“Greater local control would allow for agreements between the court and local tribes. This arrangement would allow the court system to take justice to the bush and relieve it of an expensive responsibility. There might be occasional concerns about how things are done, but overall it would be beneficial to the state.” — *Private practitioner, Juneau*

“There is need for more local control. The magistrate should be able to act as an elder or father figure, and hold informal meetings with juveniles to resolve problems. A magistrate could also act as a mediator rather than a judge in small claims matters. Small claims matters are too expensive and time-consuming, and mediation would be more effective.” — *Round-table discussion, Kake*

“Small misdemeanor cases should be turned over to tribal courts. Possibly the state could help fund a village jail house.” — *Council President, Tuntutuliak*

“The state court should at least consider releasing minor offenders to the supervision of the tribal council. The elders and the tribal council then could counsel the offenders. Tribal councils would be willing to take on the responsibility of third party supervision and would feel comfortable reporting violations to the judge. Many councils in other villages in the region would feel the same way. The tribal council could send the offender back to the state court system if they did not cooperate.” — *Napaskiak resident*

“Alternative sentencing is important. Everyone in the system needs to be more creative with sentencing misdemeanants. Villages, AVCP [Association of Village Council Presidents], tribal courts and the local council all can play a role in imposing meaningful consequences on convicted offenders. Alternative sentences should bridge the cultural gap between the court system and the rural residents’ concepts of justice.” — *Anchorage lawyer with cases in Bethel*

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

“Barrow seems to be the only place around here where people are called for jury duty, since there is no budget to bring people in from the villages, so Barrow bears the entire burden.” — *Employee, North Slope Borough*

“Jury pools are not representative of Natives in Juneau, and more trials should be held in the villages.” — *Office of Public Advocacy contract attorney, Juneau*

“The courts should use venues other than Bethel for misdemeanor and felony trials, since it is more costly to bring jurors into Bethel than to send the parties and the judge out to the villages. Having more trials in the villages also would help educate rural Alas-

kans about the criminal justice system.” — *Anchorage lawyer with cases in Bethel*

“Jury service is too time consuming and interferes with subsistence activities. Few Natives like to be put on the spot to judge a person. My grandmother taught me that if I judge someone, I in turn would be judged even more harshly. I understand that the law requires people to serve on juries, however.” — *Tribal services paralegal, Association of Village Council Presidents*

“It’s very intimidating to Natives to walk into a courtroom and have everyone be white.” — *ICWA worker, Bethel*

“I would like to see more minorities working for the court. Asians are afraid to apply for job with the court system because they feel intimidated. I have encouraged members of my own Filipino community to apply for jobs but they say they will not apply because they think they won’t be hired. They think they will be labeled. The Filipino community tries to encourage them. The court system should include a statement on its position announcements that minorities are encouraged to apply. About 200 Asians reside in Fairbanks—there is an Asian-American group and a Korean-American group.” — *Fairbanks resident*

“We have had several complaints regarding custody cases. There have been custody cases in which a court custody investigator has been assigned to a case but does not meet with the client until shortly before trial. Most Alaska Natives don’t communicate well with professionals because they feel intimidated so this does not give the custody investigator adequate time to fully explore and recognize what is in the best interest of the Native child. Another issue that has been raised is that custody investigators deal with Alaska Native children on a daily basis, making vital decisions about our children’s future, but have little or no education on the Alaska Native culture.” — *Native advocate, Alaska Native Justice Center*

“I see the need for more Native and African American guardian ad litem.” — *Division of Family and Youth Services employee, Fairbanks*

“In the villages, the troopers often can not come out for small crimes. Juveniles thus are not corrected until they do something serious.” — *Bethel resident*

“I feel handicapped by having to do so much of my work over the phone. It is hard to interview people without being able to look them in the eye, and hard to gauge things at telephonic hearings. It would be good if we could go out to the villages more.” — *Assistant public defender, Nome*

“For the amount of Natives in the overcrowded Alaska prison system, we are certainly not seeing very many Native correctional officers. Sometimes seeing a Native officer would help relieve mental stress. It would help to talk over some important issues facing the incarcerated Native inmate, like issues at his home, his hometown, or within Corrections. It would be a great help if there were enough Native hired staff.” — *Inmate, Spring Creek*

“Alaska Legal Services provides a great service for Native people and should be better funded.” — *Employee, Copper River Native Association; law enforcement officer, Anchorage*

## **Fairness and Access** (continued from page 7)

ity group members work in the court system, particularly in higher range positions. The work of the subcommittee led to the following recommendations.

- The Alaska Court System should develop a new affirmative action plan and update it annually.

- The Alaska Court System should assess and eliminate practices that adversely affect minority job applicants.

The work of many of the subcommittees revealed that a major problem with access to the court system is a lack of understanding of its workings which is particularly complicated by language and cultural differences. It was recommended that the Alaska Court System implement a program of "cultural facilitators." Programs such as these exist in Canada and other states. The Alaska Court System has already proposed a pilot project to the Bureau of Justice Assistance for funding.

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

Much testimony expressed concerns about the way children's proceedings are handled. For example, a recent Judicial Council study found that Alaska Native children are adjudicated as in need of aid at higher rates than children of other groups. In addition, concerns were voiced about apparent lack of knowledge on the Indian Child Welfare Act (ICWA) among participants in the justice process. (To address such concerns and other aspects of Child in Need of Aid proceedings, the court system has already appointed a committee—

the CINA committee.) The Advisory Committee made the following recommendations:

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

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

Finally, the Advisory Committee on Fairness and Access, citing the model used by Oregon for the implementation phase of a similar project, asked for the establishment of an ongoing committee.

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

### **Other Institutions**

Some of the findings of the committees have direct relevance for other justice system agencies. Moreover, many of the changes recommended for the court system will affect its interaction with other agencies. For these reasons, the committee prepared a list of recommendations, many of which have been proposed before, for other agencies and institutions involved in the justice arena which reflect those offered to the court.

### **Other Material**

In addition to presenting the recommendations of the Advisory Committee with their estimated fiscal impact and transcriptions of public testimony, the report includes material on language and cultural groups, charts on distribution of



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state justice system resources, tables with rates of incarceration by ethnicity and crime, and a bibliography. The report is thoroughly cross-referenced.

*Copies of the report discussed in this article are available from Alaska Court System. Further information about the work of the various subcommittees can be obtained from the Alaska Judicial Council.*

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