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ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
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May 8, 1985

MEMORANDUM

TO: Representative Mike Navarre  
ATTN: Pat Malone  
FROM: Jay Livey *JL*  
Legislative Analyst  
RE: Racial Bias in the Application of the Death Penalty in the U.S.  
and the Sentencing of Convicted Felons in Alaska  
Research Request 85-292

NCJRS

AUG 25 1985

ACQUISITIONS

You asked that we provide you with the following information concerning application of the death penalty in Alaska and the United States:

- the race and social class of persons currently under sentence of death in the United States;
- information concerning previous applications of the death penalty in Alaska and the United States; and
- evidence, if any, of discrimination by race or economic condition in sentencing in Alaska.

SUMMARY

Individuals Currently Under the Death Sentence. There are currently 1,470 individuals on death row in the United States: 51 percent of these individuals are white; 42 percent are black; 5.7 percent are hispanic; 1.2 percent are Native American; and .3 percent are Asian. Blacks, hispanics and Native Americans are all disproportionately represented on death row in relation to their portion of the entire United States population.

Death Penalty in the United States. A significant amount of evidence exists that the death penalty in America has been applied in an arbitrary and biased manner. Wolfgang and Riedel found that, from 1945 to 1965, black defendants convicted of rape in eleven predominantly southern states had a significantly greater chance of receiving the death penalty than white defendants convicted of the same crime (13 percent

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to 2 percent). Furthermore, they discovered that the race of the victim was critical. In cases involving a black defendant and a white victim, 36 percent of the defendants were sentenced to death while in all other cases, only 2 percent of the defendants received the death sentence.

Findings in similar studies led the Supreme Court of the United States to conclude that capital punishment was being applied in a capricious and arbitrary manner. In Furman v Georgia (1972), the court declared the capital punishment laws of most states to be unconstitutional. As a result of the Furman case, states drafted new capital punishment laws that contained sentencing guidelines and appeals procedures intended to remove discretionary application of the death penalty. In Gregg v Georgia these state laws were found to be constitutional.

Bowers and Pierce studied the effect of these new laws by examining all cases of criminal homicide in the states of Florida, Texas, Georgia and Ohio that occurred between the passage of new capital punishment laws and 1978. They concluded that the racial sentencing patterns that were observed in the pre-Furman period persisted. Generally, black defendants had a greater chance of receiving the death sentence than white defendants and killers of whites had a better chance of the death sentence than killers of blacks.

Radelet and Vandiver examined the effect of state appeals procedures in mitigating the effect of racially biased sentencing in Florida. Appeals to state supreme courts are one method recognized by the United States Supreme Court of removing arbitrary sentencing in death penalty cases. However, the authors discovered that appeal to the state supreme court did not necessarily compensate for sentencing bias, and, in fact, the decisions of the appeals court reinforced the bias of the lower courts.

We could find no statistical evidence to refute the findings that the death penalty has been discriminately applied. Most statistical evidence presented in favor of the death penalty focuses on the issue of the deterrent effect of capital punishment. However, several proponents of the death penalty, most notably Ernest Van Den Haag, argue that equality in the application of justice, although desirable, is not practical. He argues that society could enforce no law if required to assure that all guilty individuals were punished equally. Furthermore, unequal punishment does not mean that the guilty are any less guilty and deserving of punishment. Therefore, he concludes that racial bias in the application of the death penalty is morally undesirable, but does not necessarily require its abolition.

Sentencing Patterns in Alaska. The Alaska Judicial Council produced a series of reports that studied felony sentencing patterns in Alaska from 1974-1980. The first felony sentencing report which covered the

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period 1974-1976 found that sentencing in Alaska was influenced by the defendant's race, age, education, income and occupation. Black defendants received longer sentences than white defendants in drug and property-related felonies. Defendants under 21 years of age received shorter sentences for drug convictions than defendants over age 21.

Low income meant a longer drug felony sentence, while education beyond high school meant a shorter one. Professionals and individuals in supervisory positions received generally shorter sentences for a drug conviction than individuals in "blue collar" positions.

A subsequent study of sentencing for felony convictions, covering the period 1976-1979, indicated that although some of the racial bias in sentencing had disappeared, it still persisted among black defendants convicted of drug felonies. In addition, this study found that the type of defense attorney was significant in determining sentence length. Among fraud and drug-related felonies, representation by a court appointed attorney was associated with longer sentences while representation by a public defender was associated with shorter sentences.

The third felony sentencing report analyzed all felony convictions during 1980. This report concluded that the impact on sentencing caused by the type of attorney had been eliminated. Also, the report found that previous racial bias in sentencing had been eliminated.

#### PERSONS CURRENTLY AWAITING EXECUTION IN THE UNITED STATES

Although we could find no current information concerning the economic class of individuals currently awaiting execution, Table 1 provides a summary of the race of each of these individuals. As the table indicates, of the 1,470 condemned persons, 727 (49.2 percent) are non-white while 752 (50.8 percent) are white. According to the 1980 census, the portion of the United States population that was black, hispanic and American Indian was 12 percent, 6.43 percent and .62 percent respectively. A comparison of the racial composition of the United States population with the racial composition of death row inmates indicates that blacks, hispanics and Native Americans are all disproportionately represented within the group of prisoners under sentence of death.

TABLE 1

Race of Persons Under Sentence of Death

<u>Race</u>	<u>Number</u>	<u>Percent</u>
White	742	50.8
Black	620	42.0
Hispanic	84	5.7
Native American	18	1.2
Asian American	5	.3
Total	1,479	100

Source: American Civil Liberties Union.

\* \* \* \*

CAPITAL PUNISHMENT IN ALASKA AND THE UNITED STATES

Eight men have been executed in Alaska; all of these executions occurred between 1903 and 1950.<sup>1</sup> Reference has been made to a ninth execution, but our research has not confirmed this event. Of the eight men known to have been executed, two were white, three were Alaska Natives, two were black and the race of one was unknown. Although the number of executions is too small to statistically analyze for patterns of discrimination, it is evident that non-Whites have been executed in Alaska in disproportionate numbers. However, without knowing the nature of the offenses for which the men were executed or the numbers and types of offenses for which other defendants were not executed, it is impossible to prove a pattern of discrimination in the application of the death sentence in Alaska.

The American Civil Liberties Union reports that since 1972, 38 individuals have been executed in the United States. Of this number, 12 (32 percent) were black. These data, combined with the information concerning death row prisoners in Table 1, indicates that a disproportionate number of black individuals have been executed or are currently

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<sup>1</sup>Correspondence between Charles Zibulka and the Alaska Historical Library, August 10, 1965.

sentenced to death. These statistics, however, do not by themselves prove discrimination in the application of capital punishment. To prove discrimination, it is necessary to show that differences in sentencing occurred for similar crimes. Three studies that focus on this differentiation in sentencing are discussed below.

Wolfgang and Riedel studied cases of rape from the period 1945 to 1966 in eleven predominantly southern states.<sup>2</sup> Sample counties from each state were chosen and, from these counties, information concerning 3,000 rape convictions from 230 counties was collected. Because the study addressed only sentencing differences among convicted defendants, the effect of racial factors on the criminal justice process prior to sentencing were not considered.

Wolfgang and Riedel analyzed 1,265 cases from five states and found that, of the 823 cases in which blacks were convicted of rape, 110 black defendants (13 percent) were sentenced to death while among the 442 whites convicted of rape, 9 (2 percent) were sentenced to death. The authors also discovered that a disproportionate number of black defendants whose victims were white were sentenced to death. From a total of 1,238 convictions in six states, 317 involved a black defendant and a white victim and 921 involved all other combinations of defendant and victim: including black/black, white/white and white/black. Of the 317 black defendants whose victims were white, 113 or approximately 36 percent were sentenced to death while in the other 921 cases, 19 (2 percent) of the convicted defendants were sentenced to death.<sup>3</sup>

However, as mentioned previously, these statistics do not necessarily prove racial discrimination in sentencing. To examine the issue of racial discrimination, it is necessary to study the data and to determine if other variables may be present that explain the sentencing differences.

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<sup>2</sup>Marvin Wolfgang and Marc Riedel, Racial Discrimination, Rape, and the Death Penalty, from Death Penalty In America edited by Hugo Adam Bedau, Oxford University Press, 1982.

<sup>3</sup>The discrepancy in the number of cases and number of Black defendants who received the death sentence occurs because data from different states was used for each analysis discussed. Although Wolfgang and Riedel collected information from eleven states, they selected seven states for further analysis. Because the data from these seven states were not uniform, the authors found it necessary to selectively use the data depending on the analysis undertaken.

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Wolfgang and Riedel studied the relationship between the imposition of the death sentence and the following nonracial variables: offender characteristics (age, marital status, prior criminal record, previous imprisonment, employment status); victim characteristics (age, marital status, dependent children, reputation); relation between victim and offender; and the circumstance of the offense (contemporaneous offense, type of entry and location of offense). After testing these nonracial variables, the authors discovered that:

Not one of these nonracial variables has withstood the test of statistical significance. That is, in none of the seven states carefully analyzed can it be said that any of the nonracial factors account for the statistically significant and disproportionate number of blacks sentenced to death for rape...<sup>4</sup>

After eliminating nonracial factors, Wolfgang and Riedel conclude:

It cannot be said that blacks are more frequently sentenced to death because they have a longer prior criminal record than whites, because they used more force on the victim, because they committed a robbery or burglary, because they entered premises without authorization...because they more frequently attacked persons under the age of sixteen, and so forth. All the nonracial factors "wash out", that is, they have no bearing on the imposition of the death penalty in disproportionate numbers upon blacks. The only variable of statistical significance that remains is race.<sup>5</sup>

The bias that Wolfgang and Riedel discovered in the application of the death sentence was the basis of the argument used in 1972 by the Supreme Court in Furman v Georgia, which set aside the death penalty in all of the states. The court ruled that, although capital punishment was not unconstitutional per se, state laws that allowed the death sentence to be used unfairly and arbitrarily violated the "cruel and unusual" punishment clause of the eighth amendment of the Constitution of the United States.

As a result of the Furman case, states drafted new capital punishment laws written to address the arbitrary application problem that the Supreme Court identified. These state laws provide sentencing guidelines to be used by judges and juries and a method of automatic appeal to state supreme courts in attempts to reduce capricious use of the death penalty. The Supreme Court reviewed these state laws in Gregg v Georgia in 1976 and found them to be constitutional.

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<sup>4</sup>Bedau, The Death Penalty In America, page 204.

<sup>5</sup>Bedau, The Death Penalty In America, page 204.

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Bowers and Pierce analyzed the application of the post-Furman capital punishment laws (that were affirmed by the Supreme Court in the Gregg case) of the states of Florida, Texas, Georgia and Ohio.<sup>6</sup> The authors examined cases of criminal homicide that occurred in each state between the time that the new laws became effective and 1978. Table 2 summarizes information concerning the probability of receiving a death sentence in these states based on the race of the offender and victim.

As the table indicates, in all four of the states, black defendants whose victims were white had the highest probability of receiving the death sentence. White offenders whose victims were also white had the next highest probability of receiving the death sentence followed by black offenders/black victims and white offenders/black victims. Based on these statistics, Bowers and Pierce note that:

...Stark difference by race of both offender and victim in all four states are apparent...The racial pattern is consistent across states and similar to the experience under pre-Furman statutes. Thus, black killers and the killers of whites are substantially more likely to receive a death sentence in all four states. And, as in the pre-Furman era, race of the victim tends to overshadow race of the offender as a basis for differential treatment...<sup>7</sup>

Bowers and Pierce went on to question the possibility that the increased probability that blacks and killers of whites receive the death sentence more often than other homicide defendants is due to the nature of the crimes committed. The nature of the crime seems particularly relevant in the post-Furman period because many of the state laws upheld by the Supreme Court provide sentencing guidelines to judges and juries based on aggravating factors related to the crime. For example, in Florida and Georgia, if the homicide is committed during the course of another felony, such as rape or robbery, the homicide qualifies for the death sentence. To test the impact that the crime has on the chances of receiving the death penalty, the authors tested homicide data from Texas, Florida and Georgia by race of offender and victim for two separate categories: murders committed in the course of committing another felony (felony type) and murders committed in the absence of another felony (nonfelony type).

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<sup>6</sup>William Bowers and Glenn Pierce, Racial Discrimination and Criminal Homicide Under Post-Furman Capital Statutes, from The Death Penalty In America, edited by Hugo Adam Bedau, Oxford University Press, 1982.

<sup>7</sup>Bedau, The Death Penalty In America, Page 209.

TABLE 2

Probability of Receiving a Death Sentence for Criminal Homicide,  
 by Race of Offender and Victim for Selected States from Date of  
 Enactment of Capital Punishment Law Through 1977

<u>Offender/Victim Combination</u>	<u>Estimated Number of Offenders</u>	<u>Persons Sentenced to Death</u>	<u>Overall Probability of Death Sentence</u>
Florida			
Black/White	240	53	.221
White/White	1,768	82	.046
Black/Black	1,922	12	.006
White/Black	80	0	.000
Georgia			
Black/White	258	43	.167
White/White	1,006	42	.042
Black/Black	2,458	12	.005
White/Black	71	2	.028
Texas			
Black/White	344	30	.087
White/White	3,616	56	.015
Black/Black	2,597	2	.001
White/Black	143	1	.007
Ohio			
Black/White	173	44	.254
White/White	803	37	.046
Black/Black	1,170	20	.017
White/Black	47	0	.000

Source: Bedau, The Death Penalty In America, Page 209.

\* \* \* \*

Bowers and Pierce found that although the death penalty is much more likely to be imposed in felony-type murders, this application does not explain the racial differences observed in Table 2. In fact, in each of these three states, whether looking at felony or nonfelony-type murder, a black offender whose victim is white has a greater chance of receiving the death sentence than any other offender/victim combination.

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A white offender and white victim is the next most likely combination to result in the death sentence followed by the black offender/black victim and white offender/black victim. This ordering by offender/victim combination, which is similar to the order found in Table 2, indicates that controlling for felony or nonfelony-type homicide does not account for racial bias in sentencing.

From the data analyzed, Bowers and Pierce came to the following conclusion:

The data in this section point to more than arbitrariness and discrimination in isolation. They reflect a twofold departure from even-handed justice which is consistent with a single underlying racist tenant: that white lives are worth more than black lives. From this tenant it follows that death as punishment is more appropriate for the killers of whites than for the killers of blacks and more appropriate for black than for white killers. Either discrimination by race of offender or disparities of treatment by race of victim of the magnitudes we have seen here are a direct challenge to the constitutionality of the post-Furman capital statutes. Together these elements of arbitrariness and discrimination may represent a two-edged sword of racism in capital punishment that is beyond statutory control.<sup>8</sup>

The United States Supreme Court in the Gregg decision affirmed the death penalty laws of several states in part because they contained rules that would guide judges and juries in deciding who would receive the death penalty and who would not. The Supreme Court's view was that these provisions would help to eliminate the arbitrary use of the death penalty. The Florida death penalty law contains a provision that allows defendants to appeal the death penalty directly to the state supreme court.

Radelet and Vandiver have studied all direct appeals made to the Florida Supreme Court between January 1, 1972 and December 31, 1981.<sup>9</sup> The authors, after examination of previous studies, concluded that the death penalty in Florida is given disproportionately to black defendants. The purpose of this study, then, was to determine if the supreme court appeals procedure was helping to lessen this sentencing bias.

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<sup>8</sup>Bedau, The Death Penalty In America, Page 215.

<sup>9</sup>Michael Radelet and Margaret Vandiver, The Florida Supreme Court and Death Penalty Appeals, Journal of Criminal Law and Criminology, 1983, Vol. 74, No. 3, page 913.

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The study discovered that the Florida Supreme Court reversed nearly one-half of the death penalty cases reviewed between 1972 and 1981. The two most important factors concerning a change in sentencing were related to the legal environment. The strongest predictor of a supreme court reversal of a death sentence was a jury recommendation of life imprisonment that was ignored by the sentencing judge. The second best predictor was the number of victims; as the number of victims increases, the supreme court is less likely to change the original sentence.

Radlett and Vandiver, however, discovered three other factors that relate to nonlegal issues that impact the appeals decision of the court: defendant's race, victim's sex and the interaction between victim's sex and defendant's race. Their statistical analysis shows that white defendants are slightly more likely to receive a favorable decision than black defendants (50 percent versus 54 percent), and those with female victims are slightly more likely to have their death sentences changed than those with male victims.

However, the statistical impact of the defendant's race can be skewed by considering the victim's sex. For example, 39 percent of the black defendants with female victims had their death sentences changed compared with 61 percent of the white defendants with female victims. Of the 23 cases with a black defendant and a female victim, 20 of the victims were white. Among the cases of a black defendant and male victim, 50 percent of the sentences were changed while among the cases involving a white defendant and a male victim only 42 percent of the death sentences were changed.

Based on their statistical findings, Radlett and Vandiver conclude:

While the identification of extra-legal correlates of decisions at one point in the capital sentencing process is noteworthy, its principal importance emerges in the context of comparison with other racially biased decisions made at earlier points. That is, although the death penalty in Florida is given disproportionately to black defendants, the Florida Supreme Court is not correcting the discrepancy in its decisions on direct appeals. In fact, the relationship between the defendant's race and outcome indicates the possibility that the Supreme Court is reinforcing the biases against black defendants which may be observed at earlier stages of the criminal justice process...<sup>10</sup>

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<sup>10</sup>Radlett and Vandiver, page 925.

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Although we contacted several reputable sources of criminal justice information including the National District Attorney Association, The Justice Center at the University of Alaska-Anchorage (and through them the Bureau of Justice Statistics), the American Bar Association and the National Conference of State Legislatures we could find no statistical studies that refute the conclusion that the application of the death penalty is racially biased. (We are still attempting to contact several sources and should these contacts provide any relevant information, we will forward it to you.)

Most of the literature in support of the death penalty concerns the issues of deterrence and the general protection of society. Although the question of deterrence is discussed extensively in the literature, it is not the major focus of this memorandum.<sup>11</sup>

However, one argument made in the face of charges of discriminatory application of the death penalty is that it is impossible to enforce any law equally. This reasoning argues that penalties could never be applied if society insisted that penalties be inflicted on a guilty person only if they are inflicted on all guilty people.

Furthermore, proponents of this view contend that justice does not necessarily demand equal application to be valid. Ernest Van Den Haag notes:

The utilitarian (political) effects of unequal justice may well be detrimental to the social fabric because they outrage our passion for equality before the law. Unequal justice also is morally repellant. Nonetheless, unequal justice is still justice. The guilty do not become innocent or less deserving of punishment because others escape it. Nor does any innocent deserve punishment because others suffer it. Justice remains just, however unequal, while injustice remains unjust, however equal. While both are desired, justice and equality are not identical. Equality before the law should be extended and enforced--but not at the expense of justice.<sup>12</sup>

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<sup>11</sup>The House Research Agency has collected a variety of information on the deterrent effect of the death penalty. Also see House Research memoranda 82-161 (Capital Punishment) and 85-185 (Capital Punishment Costs and Effect on Murder Rates).

<sup>12</sup>Ernest Van Den Haag, In Defense of the Death Penalty: A Practical and Moral Analysis, from The Death Penalty in America, edited by Hugo Adam Bedua, Oxford University Press, 1982, page 324.

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Proponents of this view recognize that the death penalty may not be equally applied to all defendants. However, they maintain that no law can ever be equally applied and to apply the law unequally does not invalidate the justness of applying it to those who are guilty. Racial bias in the application of the death sentence is morally undesirable and should be eliminated, however, the existence of the bias does not necessarily argue for elimination of the death sentence.

#### CRIMINAL JUSTICE IN ALASKA

Since 1977, the Alaska Judicial Council has produced three reports that analyze the reasons for variations in length of sentences for felony convictions and two reports that analyze misdemeanor sentences. The first report contained information on felony convictions for the period 1974-1976, the second for the period 1976-1979 and the third for 1980. In each of the felony studies, all convictions for the study period were assigned to one of six felony classes: murder/kidnapping, violent felonies, property offenses, fraud offenses, drug offenses and morals offenses. However, the first and last classes, murder/kidnappings and morals offenses, were excluded because not enough cases were available for meaningful statistical analysis. Felonies within the remaining four categories were analyzed to isolate the factors that contributed to the length of sentence received by defendants. A similar classification scheme was used to analyze the misdemeanor sentences. The findings of these studies are summarized below.

#### Alaska Sentencing Felony Patterns (1974-1976)<sup>13</sup>

The largest single factor that affected the length of felony sentences was the type of crime that was committed. In fact, this variable explained more of the variation in sentence length than any other factor.

The defendant's criminal history also had a positive relationship on the length of the sentence for all four of the felony classes studied in depth. Having a prior felony or misdemeanor record meant a longer sentence, ranging from 38.6 months longer for violent felony to 4.4 months longer for burglary, larceny, receiving and concealing.

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<sup>13</sup>Alaska Felony Sentencing Patterns: A Multivariate Statistical Analysis (1974-1976), Alaska Judicial Council, April 1977.

Multiple convictions also increased the sentence, particularly in cases of multiple felonies. However, in two felony classes, violent felonies and fraud felonies, the fact that there were other unrelated charges against the defendant, even though he or she had not yet been convicted, meant a longer sentence: 27.3 months for violent felonies and 7.4 months for fraud felonies.

The effect of the judge's "strictness" or "leniency" was also found to be an important variable in sentence length.<sup>14</sup> For example, a defendant convicted of a violent felony and sentenced by a "strict" judge received a sentence estimate to be 45.6 months longer than a sentence imposed by a judge who was not "strict". In cases of drug felonies, judicial "strictness" added an estimated 22 months to the sentence. "Leniency", although affecting sentence length, did not have as great an impact as on sentence length as "strictness".

In two felony classes, violent felonies and fraud felonies, the fact that the defendant had been unemployed 18 months or more out of the two years prior to prosecution was positively related to longer sentences. For violent felony convictions, it was estimated that unemployment for the two years preceding the conviction could mean an increased sentence of up to 18.8 months. For fraud felonies, the additional sentence length caused by unemployment was estimated to be 6.9 months.

The study found that the defendant's race, age, income, education level and occupation had a significant impact on the length of sentence received for drug-related felonies and a less significant impact on other felony classifications. All of the personal characteristics mentioned above were associated with the length of sentences for drug related felonies. Defendants that were under 21 years of age received sentences that were generally 9.3 months shorter than if the defendant was older than 21 years. Being black contributed an estimated 11.9 months to the defendant's sentence. Low income meant a longer drug felony sentence (about 6.2 months) and education beyond high school meant a shorter sentence by 6.4 months. A "blue collar" worker received a sentence for conviction of a drug felony that was 7.2 months longer than a professional or individual in a supervisory position would receive.

The sentence length for other types of felony convictions also was affected by these personal characteristics. A black individual convicted of a property felony was likely to receive a sentence that was 6.5 months longer than the sentence received by all other offenders for

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<sup>14</sup>"Strict", "lenient" or "other" is determined by comparing the mean sentence length of each offense class with the sentences imposed by the judge.

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similar offenses. A "white collar" professional was likely to receive a sentence that was 4.6 months shorter than a "blue collar" worker for a conviction for fraud.

A defendant with a history of drug dependence was more likely to receive a longer sentence for fraud but not necessarily for violent felonies and property-related felonies.

#### Alaska Felony Sentences 1976-1979<sup>15</sup>

As a result of the findings of racial disparities in sentencing that surfaced during the first judicial council study, the legislature appropriated funds for a follow-up study to include all felony convictions between 1976 and 1979. This study used the same classifications of felony convictions but divided the data into urban and rural segments.

The methodology used to analyze data in this study is virtually identical to the methods used in the previous study. Within each class of felony, the most significant factors associated with the increase or decrease of a typical sentence were identified and their impact determined.

In comparing the results of the urban data with the findings of the previous study, the authors concluded that:

Analysis of our new (1976-1979) data indicates dramatic reduction in sentencing disparity by race. Racially disproportionate sentences among property and fraud offenses have completely disappeared. In addition, our analysis indicates that, other things being equal, native defendants convicted of violent felonies (class 2) actually receive a sentence less than those of either blacks or whites.<sup>16</sup>

In fact, the study found that, for violent felonies, Native defendants received sentences 15.6 months less than those imposed on blacks and whites. However, the study also found that blacks convicted of drug-related felonies in the period 1976-1979 continued to receive sentences that were approximately 11.4 months longer than those received by other defendants convicted of drug felonies. One other socio-economic factor

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<sup>15</sup>Nicholas Maroules and Theresa White, Alaska Felony Sentences: 1976-1979, Alaska Judicial Council, November 1980.

<sup>16</sup>Alaska Felony Sentences 1976-1979, page 13.

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was found to be significant: for fraud felonies, defendants with monthly incomes of less than \$500 received sentences that were 4.2 months less than defendants with income over \$500 per month.

It was also discovered that the type of defense attorney representing the defendant seemed to influence sentence length. Among both fraud and drug-related felonies, representation by a court-appointed attorney increased sentence length 15.4 and 11.9 months respectively. However, among drug convictions, representation by a public defender decreases the sentence length by 8.7 months.

As in the previous study, the defendant's prior record, the number of contemporaneous offenses committed and the "strictness" or "leniency" of the judge impacted the sentence length. It was also discovered that in almost all felony classes, presentence reports submitted by probation officers significantly impacted the length of the sentence. In addition, if the defendant was in jail prior to trial (did not make bail or was not released on his or her own recognizance) the sentence was substantially increased.

The analysis of 1976-1979 felony data also included sentencing patterns for rural Alaska. However, due to the small number of fraud, drug and morals cases, the only felony classes that could be analyzed for sentence length factors were violent and property felonies.

Within the category of violent felonies committed in rural Alaska, the most significant influence on length of sentence was the specific offense. Conviction for rape resulted in sentences that were 55.5 months longer than the average length of sentence for violent felonies, while sentences for manslaughter/negligent homicide convictions resulted in sentences that were 78.4 months longer than typical violent felony sentences. This contrasts with urban sentence length in which convictions for rape resulted in the greatest contribution to sentence length.

As in the data presented in the earlier study and the urban component of this study, sentence length for violent felonies was substantially increased if the defendant had a prior felony conviction. Each prior felony conviction contributed 26.9 months to sentence length. Also, the custodial status of the defendant proved to be significant. If the defendant did not make bail or was not released on his or her own recognizance, a typical sentence was increased by 24 months. An unfavorable characterization of the defendant in the presentence report increased sentence length by 16.1 months.

Two background/socio-economic factors were also found to influence sentence length. A "bad" discharge from the military was found to increase sentence length by 52.9 months while having a monthly income of less than \$500 increased sentence length by nearly 9 months.

The factors influencing sentencing for property felonies were similar to those influencing violent felonies with two exceptions. First, the employment status of the defendant influenced sentence length in two ways. Being employed for thirty days or more at the time of the conviction reduced sentences by 3.3 months while seasonal employment reduced a sentence by 3.9 months. Secondly, race was significantly associated with sentence length. Blacks convicted of property felonies received sentences that were 2.2 months longer than sentences received by white or Native defendants.

Alaska Felony Sentences: 1980<sup>17</sup>

Alaska Felony Sentences: 1980 is the third report in the series of statistical studies concerning felony sentencing in Alaska. This report analyzes all felonies committed in Alaska during 1980 with an emphasis on the impact of the revision of Alaska's criminal code in 1980. For the purposes of this memorandum, however, we will continue to concentrate on the personal characteristics and socio-economic factors that influence sentence length rather than structural changes in the criminal justice system.

In comparing the outcomes of the 1976-1979 study with the results of the 1980 study, the Judicial Council concluded that "the present analysis of 1980 offenses reveals that racially disproportionate sentencing outcomes have been totally eliminated."<sup>18</sup> A second finding related to the influence of the type of attorney in sentencing outcomes. The Judicial Council reports that:

Our analysis of the felony sentencing reveals that the earlier attorney-type outcome differences have been completely eliminated. Differences in sentence outcomes according to type of defense attorney did not survive the screening in any class of offense, strongly suggesting that the Court System's response eliminated the problem.<sup>19</sup>

The 1980 study found that, in general, sentence length for all classes of felonies was influenced by one or more of the following: the specific crime committed, the record of the defendant, the number of contemporaneous convictions, the presentence report, presumptive sentencing, if the defendant was jailed at the time of conviction and the "strictness" or "leniency" of the sentencing judge.

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<sup>17</sup>Alaska Judicial Council, Alaska Felony Sentences: 1980, December 1982.

<sup>18</sup>Alaska Felony Sentences: 1980, page 57.

<sup>19</sup>Alaska Felony Sentences: 1980, page 59.

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Alaska Misdemeanor Sentences: 1980<sup>20</sup>

Alaska Misdemeanor Sentences: 1980 analyzes sentences imposed by Alaska judges and magistrates in misdemeanor cases during 1980. The study concentrated on two types of relationships: defendant characteristics and sentence length and community characteristics and sentence length. Three types of defendant characteristics influenced the length of the sentence: financial status (which was based on an index which considered type of attorney, employment status and bail or custody status at the time of sentencing), prior criminal history and history of treatment for alcohol or drug problems. The study determined that wealthy defendants tended to receive shorter sentences for vehicular and disorderly conduct convictions than nonwealthy defendants. However, the defendant's wealth did not affect sentencing for violent, property or alcohol/drug offenses.

Prior criminal history and treatment contributed more to sentence length than wealth did. Prior conviction for felony offenses added 22.4 days to violent misdemeanor convictions and 58.7 days to property offenses. Defendants who had been referred to alcohol or drug programs in the past, but had not attended the program, received longer sentences than those defendants who finished these programs: 24.6 days for violent offenses, 49 days for vehicular offenses and 7 days for alcohol/drug offenses.

Community characteristics were also found to influence sentencing. Fines were required far less frequently in Nome, Bethel and Barrow than in other areas. In addition, the actual fines that were paid in these three locations tended to be less. However, defendants in Nome and Bethel were more likely to serve time in jail than defendants in other areas of the state for vehicular offenses, violent offenses, and disorderly conduct.

I hope that this information is useful. If you require additional research, please contact us.

JL

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<sup>20</sup>Alaska Judicial Council, Alaska Misdemeanor Sentences: 1981, December 1983.