SB

104

NO. 1

MALONE

DONT THINK ABOUT REVERSAL NAME

6183
− 390
5793

23mo

M E M O R A N D U M January 18, 1980

TO: House Judiciary Committee

Rep. Charles H. Parr, Chairman
Rep. Nels A. Anderson, Jr., Vice Chairman
Rep. Ramona L. Barnes
Rep. Fred E. Brown
Rep. Thelma Bucholdt
Rep. Hugh Malone
Rep. Terry Martin
Rep. Patrick M. O'Connell
Rep. Randy Phillips

FROM: Grant Callow
Alaska Court System

SUBJECT: Revised Supreme Court Caseload Statistics, 1979

Attached are copies of two recent memoranda prepared and circulated by Robert D. Bacon, Clerk of the Suprme Court. The first two pages of Mr. Bacon's statistics provide a brief summary of Supreme Court activity in 1978 and 1979, showing that caseloads have continued to rise. I have also attached a detailed breakdown of filings and dispositions showing trends in the various categories of cases.

I have also attached a press release issued upon publication of the Supreme Court's 2000th opinion. It provides an overall picture of the court's activity since statehood. I have highlighted some important points.

Finally, I have prepared updates of graphs contained in the 1978 Court System Annual Report (pp. A-4, A-5) which also help to illustrate caseload trends.

GC

M E M O R A N D U M January 8, 1980

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Senior Justice Dimond
Arthur H. Snowden II
Grant Callow
Merle Martin
Dick Emerman
Stephanie Cole
Connie Staska
Caroline Hudnall

FROM: Robert D. Bacon

SUBJECT: December 1979 Statistics

Attached is the usual Supreme Court statistical information for the month of December.

Detailed statistical information for the full calendar year 1979 will be prepared and distributed by this office within the next few weeks. Some preliminary, unaudited highlights follow.

	1978	1979	% Change
Filings & Reinstatements	630	656	+ 4
Dispositions	560	634	+13
Pending end of year	624	646	+ 4
Opinions published	237	234	- 1
MO&Js issued	15	38	+153
Opinions & MO&Js	252	271*	+ 8

The court is indeed working harder and falling further behind. The 646 pending cases on December 31 compares with an alltime high of 649 last July.

The court only denied two petitions for review in December, State v. A.P.E.A., No. 4963 (the probation officers' guns case), and North Slope Borough v. Hammond, No. 5034 (the Beaufort Sea case).

RDB RDB

---

* Lyle v. State, No. 3162, was initially decided by an MO&J, which was then published as an opinion. It is counted among both the opinions and the MO&Js, but only once in the total.

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH DECEMBER 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979	656
Dispositions on Merits to December 31, 1979	
By Opinion and Mandate	274[a]
By Memorandum Opinion & Judgment	36
By Summary Order	28
Total Dispositions on Merits	338
Other Dispositions to December 31, 1979	
Dismissals	196
Petition or Application Denied	100
Total Other Dispositions	296
Cases Pending December 31, 1979	646
Reasons for Cases Pending	
Awaiting Record	91
Awaiting Briefs	210
Awaiting Hearing or Submission	50[b]
Submitted/Awaiting Draft Opinion	132
Submitted/Draft Opinion Circulating	108
Awaiting Decision on Granting Petition for Review	21
Awaiting Mandate or Decision on Rehearing	17
Stayed or Remanded	17
Total Pending December 31, 1979	646

a 234 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the mandate is issued in the following year.

b Of these cases, 16 were pending with the central staff.

TABLE II ALASKA SUPREME COURT December 31, 1979	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1978	297	209	51	557	61	6	624
FILED OR REINSTATED THRU 11-30, 1979	272	123	37	432	126	36	594
FILED OR REINSTATED THIS MONTH	33	10	3	46	15	1	62
TOTAL FILED YEAR-TO-DATE	305	133	40	478	141	37	656
Adjustments	-2	-3	+3	-2	+2		0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	63	46	34	143	7	1	151
Affirmed in Part/Reversed or Remanded in Part	8	14	5	27	3		30
Reversed	7	3		10	9		19
Reversed and Remanded	35	17	1	53	6		59
Remanded Only	6	4	2	12	1		13
Sentence Too Lenient				0			0
Bar Disciplinary Action				0		2	2
B. By Memorandum Opinion & Judgment							
Affirmed	18	12	1	31			31
Reversed	1	3	1	5			5
C. By Summary Order		1		1	4	1	6
Affirmed							
Reversed or Reversed & Remanded				0	4	2	6
Other	3		1	4	6	6	16
TOTAL DISPOSITIONS ON MERITS	141	100	45	286	40	12	338
D. Petitions for Review/Originals Denied					80	20	100
E. Dismissals							
By Agreement or by Appellant	71	21	7	99	11		110
By Court	32	16	2	50	19	2	71
On Motion	10	2	1	13		2	15
TOTAL DENIALS AND DISMISSALS	113	39	10	162	110	24	296
TOTAL CASE DISPOSITION	254	139	55	448	150	36	634
Reasons for Cases Pending 12-31, 1979							
Awaiting Record	70	19	2	91			91
Awaiting Briefs	106	83	11	200	8	2	210
With Central Staff	4	4	4	12	4		16
Awaiting Hearing/Submission	20	8	3	31	3		34
Awaiting Draft Opinion	69	44	6	119	10	3	132
Draft Opinion Circulating	57	30	12	99	8	1	108
~~Awaiting Decision on Granting P/R or Orig.~~				0	21		21
Awaiting Mandate or Decision on Rehearing	12	4		16		1	17
Stayed or Remanded	8	8	1	17			17
TOTAL CASES PENDING 12-31, 1979	346	200	39	585	54	7	646

ALASKA COURT SYSTEM NEWS RELEASE

Alaska Supreme Court Issues 2000th Opinion

CONTACT: Robert D. Bacon
Clerk of Supreme Court
(907) 465-3410

December 21, 1979

The Alaska Supreme Court Friday issued its 2000th opinion in its 20-year history.

The 2000th opinion affirmed the two-year prison sentence given to Delbert H. Holmes of Anchorage, convicted of assault with a dangerous weapon.

The Alaska Supreme Court was organized in the fall of 1959. It issued its first opinion one day short of 20 years ago, December 22, 1959. That first opinion, by Justice John H. Dimond, discussed the power of the Alaska Housing Authority to condemn private property for redevelopment projects. Justice Dimond retired from the court in 1971, but is annually recalled to active service on the court and continues to carry a substantial caseload.

While it took more than 14 years, until February, 1974, to reach the 1000th opinion, the second thousand have been published in slightly less than six years.

During 1978 and 1979, the court has published more than 230 opinions each year. By comparison, 47 opinions were published in 1965, 72 in 1970, and 122 in 1975.

Few appellate courts in the country write as many opinions. Some with more judges write fewer.

The total number of cases filed with the Supreme Court has similarly skyrocketed in recent years. It took the court eight and a half years, until May 1968, to reach filing No. 1000. The most recent thousand, from No. 4000 in April, 1978, to No. 5000 in November, 1979, took about a year and a half. The total number of filings for 1979 will probably be between 625 and 650.

The number of filings substantially exceeds the number of published opinions because a large number of cases are disposed of without the necessity of a written opinion. Many cases are settled by the parties after they are filed in the Supreme Court but before they are decided. Also, the court is empowered to deny petitions for review of non-final orders of the Superior Court without an opinion or other statement of reasons, and does so in the majority of such cases.

The membership of the Supreme Court was increased from three justices to five in 1968. It has remained at five since that time.

Growth in the court's workload in the past decade, and resultant delays in the decision of cases, have prompted the court's support for pending legislation to create an intermediate Court of Appeals to review certain classes of trial court decisions, subject to discretionary review thereafter in the Supreme Court. The bill has passed the state Senate and awaits action in the House of Representatives at the forthcoming session.

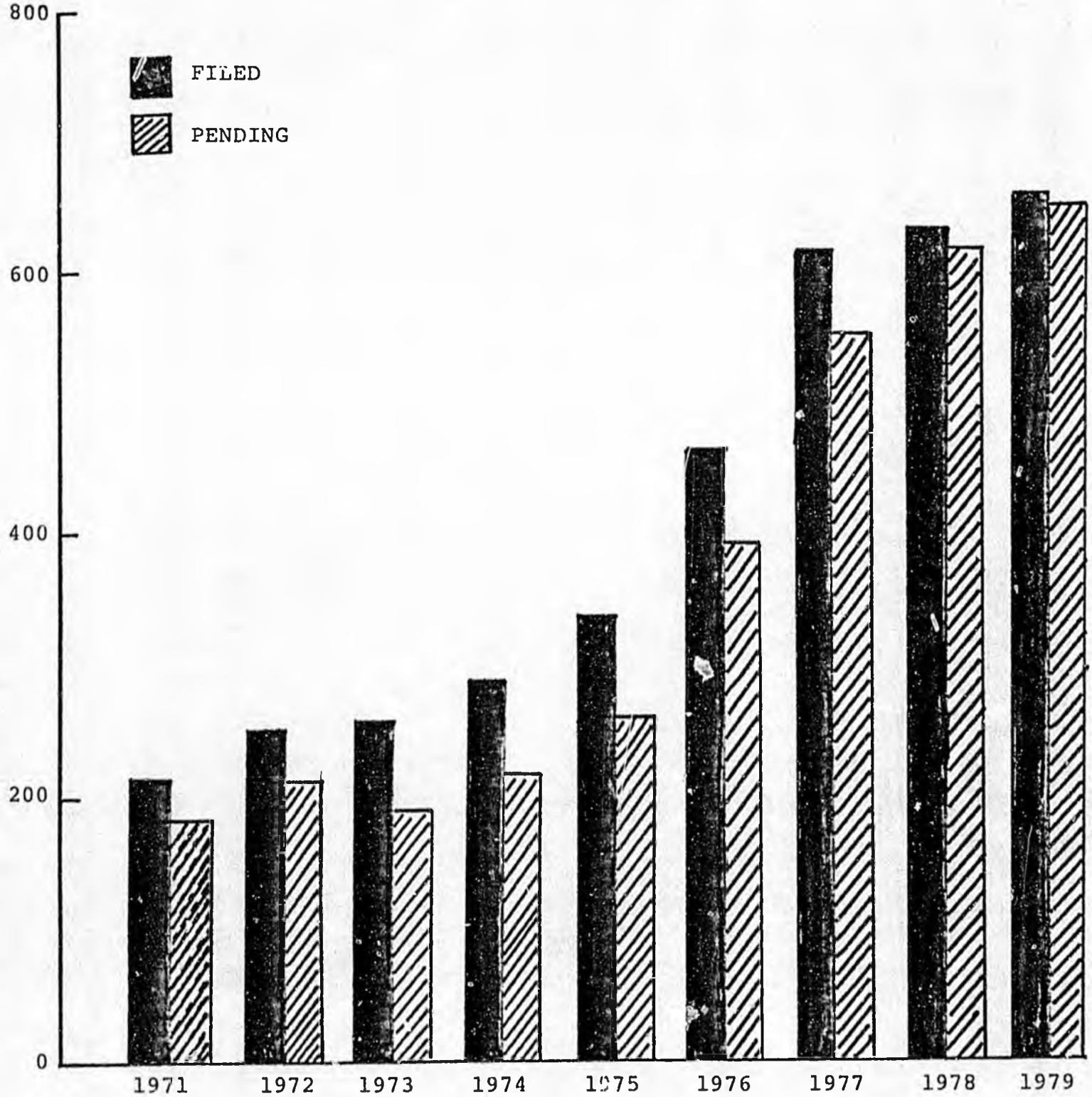
SUPREME COURT

DISPOSITIONS BY TYPE OF DISPOSITION

(1978 and 1979)

TYPE OF CASE	DISPOSITION BY				TOTAL	
	OPINION AND MANDATE ON THE MERITS		DISMISSAL OR OTHER			
APPEALS:	1978	1979	1978	1979	1978	1979
CIVIL	123	141	102	113	225	254
CRIMINAL	103	100	28	39	131	139
SENTENCE	32	45	11	10	43	55
PETITIONS FOR REVIEW	34	40	102	110	136	150
ORIGINAL APPLICATIONS	10	12	15	24	25	36
TOTAL	302	338	258	296	560	634
PER CENT CHANGE 1978 to 1979	+12%		+15%		+13%	

SUPREME COURT
FILINGS & PENDING CASELOAD
1971 - 1979



PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 1

SUBJECT: District Court Criminal Appeals

Providing: (1) One appeal by right to Superior Court;

(2) Discretionary review by intermediate and Supreme Court.

Page 1 Lines 14-16.

Sec. 22.07.020. JURISDICTION. (a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the district or superior court involving:

Lines 25-28.

(b) The court of appeals [HAS APPELLATE JURISDICTION IN ALL ACTIONS AND PROCEEDINGS COMMENCED IN THE DISTRICT COURT AND] may, in its discretion, remand a district court matter to the district or superior court for a trial de novo in whole or in part.

Page 2 Lines 7-11.

(e) An appeal to the court of appeals is a matter of right [IN ALL] only in those actions and proceedings within its jurisdiction that are commenced in the superior court, except that the state has no right of appeal in criminal cases except to test the sufficiency of the indictment or information or to appeal a sentence on the ground that it is too lenient under (d) of this section.

(f) The court of appeals may in its discretion review a final decision of the superior court rendered in an appeal from a district court matter that is within the jurisdiction of court of appeals under AS 22.07.020.

[(f)] (g) A final decision of the court of appeals is binding on the superior court and on the district court unless superseded by a decision of the supreme court.

(h) The supreme court shall prescribe rules of procedure for appeals to the court of appeals.

Page 5 Lines 7-13.

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. [HOWEVER, A PARTY HAS ONLY ONE APPEAL AS A MATTER OF RIGHT FROM AN ACTION OR PROCEEDING COMMENCED IN EITHER THE DISTRICT OR THE SUPERIOR COURT.]

(b) Appeal to the supreme court is a matter of right only in those actions and proceedings [FROM WHICH THERE IS NO RIGHT OF APPEAL TO THE COURT OF APPEALS UNDER AS 22.07.020] not within the jurisdiction of the court of appeals under AS 22.07.020.

Page 7 Lines 19-29 and Page 8 Lines 1-13.

Delete Sec. 7 (proposed amendments to AS 22.10.020(a) relating to jurisdiction of the superior court).

Page 10 Lines 2-11.

Sec. 22.15.240 APPEAL. (a) Either party as a matter of right may appeal a judgment of the district court in a civil action to the [COURT OF APPEALS] superior court. [WHEN THE SUM IN CONTROVERSY IS NOT LESS THAN $50, OR FOR THE RECOVERY OF PERSONAL PROPERTY OF THE VALUE OF NOT LESS THAN $50 EXCLUSIVE OF COSTS IN EITHER CASE, EXCEPT WHEN THE SUM IS GIVEN BY CONFESSION OR WANT OF ANSWER.]

(b) The defendant may appeal a judgment of conviction [GIVEN] rendered in the district court in a criminal action to the [COURT OF APPEALS] superior court. When the judgment is given or a plea of guilty, no appeal may be taken (. . . etc.).

Lines 17-20. (Note: cross-reference to page 8, lines 11-13)

(c) An appeal from the district court shall be taken within thirty days from the date of entry of the judgment. All appeals shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

Page 15 Lines 17-27.

Delete (Concurrent jurisdiction of superior court and court of appeals over district court criminal appeals pending at the time the act goes into effect).

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 1 (Alternate)

SUBJECT: District Court Criminal Appeals

Providing: (1) Appeal by right to Superior Court;

(2) Appeal by right to the Court of Appeals from an appeal decision by the Superior Court.

Page 1 Lines 14-16.

Sec. 22.07.020. JURISDICTION. (a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the district or superior court involving:

Page 2 Lines 14-15.

(g) The supreme court shall prescribe rules of procedure for appeals to the court of appeals.

Page 5 Lines 7-10.

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. [HOWEVER, A PARTY HAS ONLY ONE APPEAL AS A MATTER OF RIGHT FROM AN ACTION OR PROCEEDING COMMENCED IN EITHER THE DISTRICT OR THE SUPERIOR COURT.]

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 2

SUBJECT: Compensation of Court of Appeals Judges

Providing: (1) Individual responsibility for opinion or decision within six months of date of referral.

Page 4 Lines 26-29 and Page 5 Line 1.

"(b) A salary warrant may not be issued to a judge of the court of appeals until he has filed with the state officer designated to issue salary warrants an affidavit that no matter referred to the judge for opinion or decision has been incompleted or undecided by him for a period of more than six months."

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 3

SUBJECT: Judicial officers as delegates to Alaska Constitutional Convention

Providing: (1) Supreme, superior, and district court judges may file for election as delegate to Constitutional Convention.

Page 7 Lines 18-19. (Insert new section as follows:)

Sec. 22.05.130. RESTRICTIONS. A supreme court justice while holding office may not practice law, nor engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with his performance of his judicial duties, nor may he hold office in a political party, or hold any other office or position of profit under the United States, the state, or its political subdivisions. A supreme court justice filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

Page 9 Lines 8-9. (Insert new section as follows:)

Sec. 22.10.180. RESTRICTIONS. A superior court judge while holding office may not practice law, nor engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with his performance of his judicial duties, nor may he hold office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions. A superior court judge filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

Page 9 Line 29. (Insert new section as follows:)

Sec. 22.15.210. RESTRICTIONS. (a) A district judge, while holding office, may not practice law, nor engage in the conduct of any other profession, vocation or business for profit or compensation, which conduct would interfere with his performance of his judicial duties, nor may he hold

office in a political party, or hold any other office or position of profit under the United States, the state or its political subdivisions, except that, with the approval of the chief justice of the Alaska Supreme Court, the district judge may be appointed deputy clerk of the superior court and may hold the office of United States magistrate. A district judge who files for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 4

SUBJECT: Qualifications for district court judge

Providing: (1) One-year residency requirement

(2) Two-year practice of law requirement

Page 9 Lines 11-14.

(a) A district court judge shall be a citizen of the United States and of the state, at least 21 years of age, a resident of the state for at least one year immediately preceding his appointment, have been engaged for not less than two years immediately preceding his appointment in the active practice of law, and at the time of his appointment be licensed to practice law in the state. The active practice of law shall be as defined for supreme court justices.

PROPOSED AMENDMENTS TO HCSSB 104

AMENDMENT NO. 5

SUBJECT: Effective date of Court of Appeals Bill

Providing: (1) Immediate effective date;

Page 16 Lines 15-16.

*Sec. 37. This Act takes effect immediately in accordance with AS 01.10.070(c).

M E M O R A N D U M January 23, 1980

TO: House Judiciary Committee
Rep. Charles H. Parr, Chairman
Rep. Nels A. Anderson, Jr., Vice-Chairman
Rep. Ramona J. Barnes
Rep. Fred E. Brown
Rep. Thelma Bucholdt
Rep. Hugh Malone
Rep. Terry Martin
Rep. Patrick M. O'Connell
Rep. Randy Phillips

FROM: Grant Callow, Alaska Court System

SUBJECT: Proposed amendments to the Court of Appeals Bill, HCSSB 104

This memo has been prepared in an effort to assist the House Judiciary Committee in the final drafting of its legislation concerning the creation of an intermediate appellate court. It addresses a number of concerns that have been raised by the Committee, Ms. Berck, and the Supreme Court. Five amendments have been offered for the Committee's consideration that attempt to alleviate these concerns, and are appended.

The following is brief commentary addressing each area of concern:

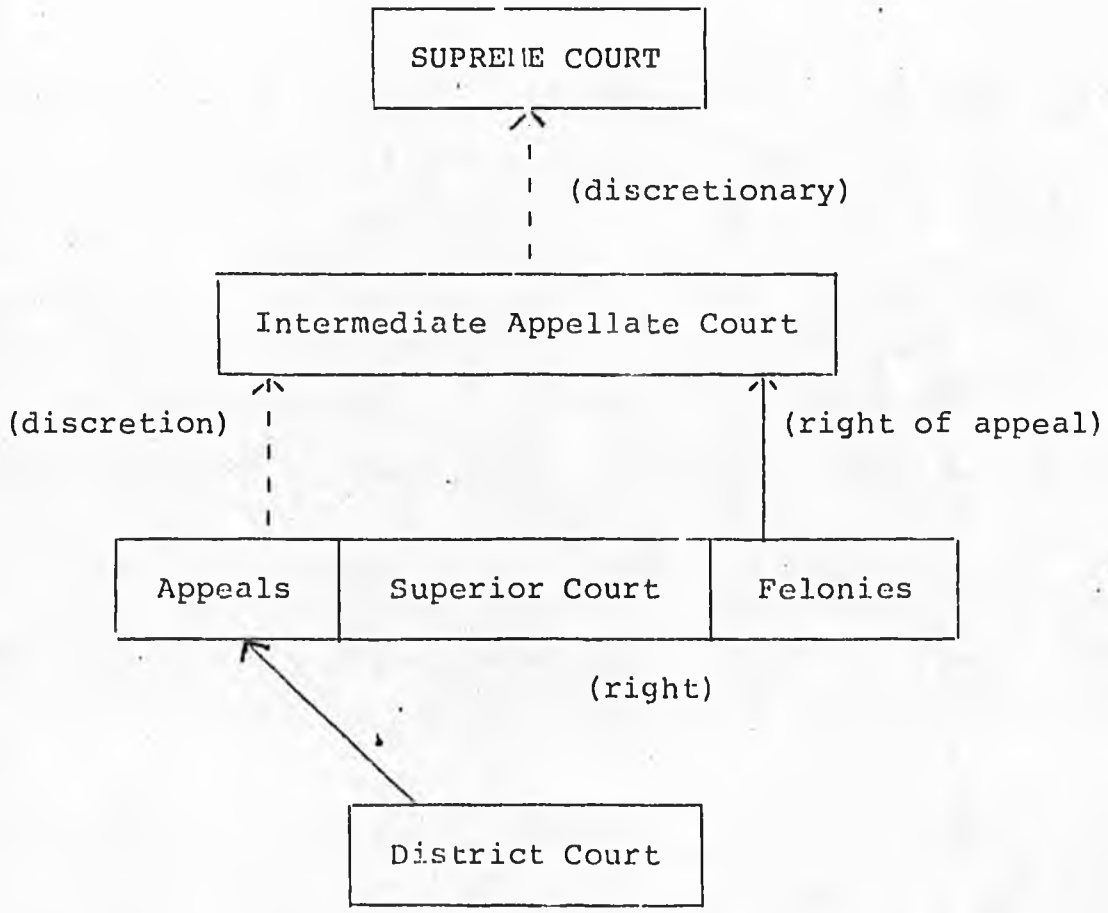
1. Review of District Court Criminal Cases (Amendment No. 1).

The present version of the Court of Appeals bill being considered by the Committee provides that district court criminal cases may be appealed directly to the intermediate appellate court. Serious concern has been expressed over the desirability of providing such direct review, with criticism focusing on the two major following points:

a. Cost. With the intermediate appellate court based in Anchorage, the cost of appealing a district court case is likely to be prohibitive to the average defendant in district court. Although that court may periodically sit in Fairbanks and Juneau, it seems unlikely this could provide district court defendants with the access to review that the superior courts of the state now provide in terms of geographic dispersion. In addition, the superior courts are better able to supervise the district courts on a regional level, thus helping to insure greater consistency in the district court decision-making.

b. Volume and Delay. While the figures for 1979 are not yet complete, the number of district court appeals statewide increased over 150 percent. For reasons indicated above, an increase is likely to continue. The most important criminal appeals, of course, will come from the superior court, and therefore should be the primary focus of the intermediate appellate court work. The increase in district court appeals, therefore, is likely to create an undesirable balance in the intermediate court's caseload. It also appears that the superior courts have been valuable in "weeding out" frivolous appeals. Finally, the number of superior court judges make that court level better able to absorb increased district court appeals especially in high volume areas where cases can be allocated and adjusted to workload.

Given these concerns, it seems desirable to continue to channel district court criminal appeals through the superior court. This can be accomplished while at the same time insuring that important cases will still have access to further appeal by providing that cases can be appealed further with certification by the superior or appellate court. This can be diagramed as follows:



CRIMINAL APPEAL DIAGRAM

This version has the advantage of preserving the "one right of appeal" rule for all criminal cases originating in either district or superior court. This would be accomplished by changes offered in Amendment No. 1, attached.

(Amendment No. 1 - Alternate)

If the Committee decides that all criminal cases should be appealable as a matter of right from the superior court (including superior court appeal decisions from district court criminal cases), then the changes offered in Amendment No. 1 - Alternative, attached, would accomplish this objective.

2. Compensation of Court of Appeals Judges (Amendment No. 2).

The present version of HCSSB 104 places a restriction on any judge of the court of appeals receiving his salary warrant if the court has any opinions or decisions pending more than six months. However, the statutes relating to the supreme court, superior court, district court and magistrates place an individual responsibility on each judge or justice. This is the recommended provision in Amendment No. 2.

In the court of appeals, each case will be assigned to an individual judge for preparation of the opinion, as is the present practice in the supreme court. It is the judge's responsibility to assume that in each case assigned to him, a draft opinion is circulated to the other members of the bench for comment, and a final opinion is issued. He has no control over the cases assigned to other judges, and should therefore not be personally penalized for delay created by other members of the court of appeals.

3. Judges Serving as Delegates to Constitutional Convention (Amendment No. 3).

The present version of the Committee's draft provides that a judge of the court of appeals may seek election as a delegate to a constitutional convention of the state or the United States. (Page 4, lines 17-20 of Committee Draft). This is consistent with sound public policy, allowing all branches of government to be represented at such proceedings. To clarify this, similar statutes relating to supreme court justices and superior and district court judges should be amended to be consistent with the language in the Committee's version of the court of appeals bill.

Suggested amendments have been offered as Proposed Amendment No. 3, attached.

4. Qualifications for District Court Judge (Amendment No. 4).

The present version of HCSSB 104 amends the qualifications for applicants to the district court, by placing a residency requirement of five years instead of the present one year. This would have the effect of reducing the number of qualified applicants for each judicial vacancy. Since Alaska has no law school, a five-year residency requirement would generally result in applicants with five years of legal experience. In a sample of 11 district court positions, the Judicial Council verified that five of the judges who were appointed would not have been eligible to apply with a five-year residency requirement in effect. Assuming that the Judicial Council nominates and the Governor selects only the most qualified applicants, in 5 of these 11 positions a less qualified applicant would have been appointed.

Rather than impose a greater residency requirement, Proposed Amendment No. 4 would establish a two-year practice of law requirement, in place of the no experience requirement in the present law. This would assure that an applicant had some experience, as well as a year's residency in Alaska, before he could apply for a judgeship.

5. Effective Date of Court of Appeals Bill (Amendment No. 5).

Amendment No. 5 establishes an immediate effective date, to permit the Judicial Council to begin advertising as soon as possible for the new judgeships. It requires several months to advertise for, screen, and appoint a new judge and for the new judge to close down his previous practice and begin active duty. The actual effective start-up date for the court of appeals is projected to be July 1, 1980, and the fiscal note requests funding effective that date. However, if recruitment is not commenced prior to that date, it could be October or later before the court is in operation.

M E M O R A N D U M January 23, 1980

TO: Members of the House Judiciary Committee

FROM: Grant Callow
General Counsel, Alaska Court System

SUBJECT: Future Supreme Court Caseload Trends

The volume of appellate cases is expected to continue increasing, sometimes dramatically, for the following reasons:

1. Economic and Social Growth. Although the state is presently experiencing a recession, it is most certainly going to be temporary. There is no reason to believe Alaska is going to return to what it was ten or even five years ago. The pressures for development are strong, and come from all sectors of society. Indeed, present indications are that a positive growth trend may resume very soon. Major expansions of the state's infrastructure--roads, bridges, port facilities, etc.--have been proposed, along with a large infusion of capital into the housing market. The gas pipeline is also likely to provide a "mini-boom." Major efforts are being undertaken to expand the bottomfishing industry and tourism as well. These are but a few examples. All this means an expansion of building, commerce, and population, which in turn leads to more contract disputes, regulation challenges, personal injuries, divorces and domestic violence and, regrettably, probably increased crime. History shows that as such phenomena increase, so do court caseloads.

2. Traumatic Economic Changes. Although court caseloads normally rise in direct relation to absolute growth, as indicated above, traumatic economic changes in the economy, either up or down, cause heightened stresses that lead to a flurry of litigation. The pressures of the recession that Alaska has been experiencing are expected to be reflected in increasing caseloads in the future.

3. Changes in the Law. Major changes in both Alaska and federal law have created a wide variety of new legal issues to be resolved. The new Alaska Criminal Code, with its sweeping revisions, has made obsolete many prior interpretive rulings of the Supreme Court. The new code's substantive and categorical changes will provide the basis for far many more new appellate issues and hence a predictable caseload increase. This will more than offset any possible reduction in sentence appeals because of the new code's reduction in sentencing discretion. It is also worth noting that the abolition of plea-bargaining has had a major impact in the appellate caseload. Because more cases have gone to trial, more have been appealed. Between 1974 and 1976 the number of criminal cases appealed increased over 100 per cent. Similarly, changes in the United States Supreme Court--the ascendency of the "Burger Court"--are also likely to have an impact on state court appellate caseloads. Important new decisions involving civil rights (such as the Bakke case), and fourth amendment search and seizure law, to name but two examples, have opened up areas of the law that appeared relatively settled during the decade of the "Warren Court." Such federal changes can and do increase state court appeals.

4. Increase in Alaska Attorneys. In the past decade, the number of lawyers in the state has increased dramatically, in the order of 400 per cent or more. There are presently in excess of 1,200 attorneys in the state, with well over 100 bar applicants gaining admission to practice each year. This expansion in the number of lawyers, coupled with a recent United States Supreme Court ruling allowing attorney advertising, serves to increase the awareness and availability of legal action to the average person.

5. Relative Youth of Alaska Case Law. An important means of ensuring state autonomy in a federal system, the "common law" or "rule by decision" in each state requires time to develop. The Alaska

Supreme Court has issued over 2,000 opinions and yet its body of common law, compared to nearly every other state, remains relatively undeveloped. Literally hundreds of issues that have long since been settled in other jurisdictions still have yet to be presented to the Alaska courts. Thus, compared to other states, Alaska provides particularly fertile ground for litigation. This helps explain why there has been, and will continue to be, higher levels of appeals in Alaska than in many other states.

M E M O R A N D U M January 23, 1980

TO: House Judiciary Committee
Rep. Charles H. Parr, Chairman
Rep. Nels A. Anderson, Jr., Vice-Chairman
Rep. Ramona L. Barnes
Rep. Fred E. Brown
Rep. Thelma Bucholdt
Rep. Hugh Malone
Rep. Terry Martin
Rep. Patrick M. O'Connell
Rep. Randy Phillips

FROM: Grant Callow, Alaska Court System

SUBJECT: The establishment of limits on sentence appeals by sentence length.

This memo has been prepared in response to certain concerns expressed by the Committee members at the January 18, 1980, meeting. Although it cannot, and does not, present a legal opinion of the Supreme Court, it does provide some explanations that hopefully will prove to be helpful.

Given the problem of expanding appellate caseloads, there is justified concern for the costs to the taxpayers in providing criminal defendants the right to sentence review where relatively short sentences are involved. Clearly a balance must be struck between important competing interests. In considering the recent Supreme Court decision[1] regarding its authority to hear sentence appeals, it is important to note that the ruling does not mean that such cost-benefit balancing must be, or will be, ignored. The Wharton decision does not say all sentences are appealable; rather, it implies that the responsibility for striking a proper balance rests to some degree with the Supreme Court.

In establishing a 45-day sentence limit for appeals, the Court was required to engage in such balancing. The balance thus struck does not appear to have done the taxpayers a disservice. In the entire 10-year history of sentence review in Alaska, only one sentence was appealed to the Supreme Court by the defense, on the sole ground of excessiveness, that fell below the time periods of

---

1. Wharton v. State, 590 P.2d 427 (Alaska 1979).

the statutes.[2] That was the Wharton case, and involved a sentence of exactly one year. The 45-day rule was enacted in 1976, and yet it took three years for a "test case" to be brought before the Court.

Similarly, there appears to have been no problem with excessive sentence appeals from district to superior courts as a result of the court rule. Of the total 5,451 sentences imposed by the district courts in 1978, the average sentence was only 8 days. Nor did this vary significantly at the regional level. The average length of the 746 district court sentences in Fairbanks that year was 10 days; of the 300 sentences in Juneau, 9 days; and of the 2,725 sentences in Anchorage, 7 days.[3] These figures, of course, are well below the 45-day sentence limit. It is also noteworthy that in 1978, 69 criminal appeals from the district courts were filed in the Anchorage superior court. There were 10 such appeals filed in Juneau, and only 3 in Fairbanks.[4] Although data on what percentage of these were sentence appeals is not available, there has been no indication by the superior court judges that such sentence appeals have been burdensome.

Finally, it must be noted that the Wharton decision does not render the time limits set by statute meaningless. Indeed, the reasoning of the opinion suggests that while the Court has the authority to strike a balance by setting appeal limits below the statutory figures, it could not, even under the pressure of a heavy caseload, set limits in excess of those specified by statute. This is because the statutes represent a guarantee of certain minimum rights. Thus, in terms of separation of powers, a balance has been struck as well.

Please advise if you have any further questions or comments.

---

2. Three other cases were brought before the court involving sentences under the statutory limits, but the challenges were based upon constitutional and procedural claims rather than excessiveness. Stock v. State, 526 P.2d 3 (Alaska 1974); Sprague v. State, 590 P.2d 410 (Alaska 1979); Amidon v. State, Opinion No. 1999 (Alaska 1979). For jurisdictional purposes, total jail sentence is the controlling factor. Sandvik v. State, 564 P.2d 20 (Alaska 1977); Andrews v. State, 552 P.2d 150 (Alaska 1976).

3. Source: 1978 Alaska Court System Annual Report, p. D-35.

4. Source: 1978 Alaska Court System Annual Report, p. C-27.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M August 21, 1979

SUBJECT: Distinction between a "legislative court" and a "constitutional court" (Work Order 7307)

TO: Charles Parr, Chairman
House Judiciary Committee

FROM: Richard A. Bradley
Legislative Counsel

The Judiciary Committee has asked that I explain the difference, if any, between a "legislative court" and a "constitutional court". The Committee is concerned with the question whether a legislative court possesses the same inherent powers as a constitutional court. Finally, the Committee asked that the various existing courts be characterized as either constitutional or legislative. [These questions may be asked in the context of SB 104, the "court of appeals" bill, but they do not depend upon the content of that bill for their meaning.]

I. The Differences.

The constitutional frameworks present in the United States and in the States of the Nation typically establish courts; the constitutions also typically grant to the legislature the authority to establish other courts.

Under the Federal Constitution, judges of constitutional courts, who exercise "the judicial Power of United States", are appointed under Art. III, §1. Judges of legislative courts are appointed under the power granted to Congress by Art I, §8, ¶9 to constitute tribunals inferior to the Supreme Court. On limited occasions Congress blends its authority and the "judicial power of the United States" is conveyed to courts established under Art I. 1/ The Territorial courts

---

1/ Since the "judicial power of the United States" is not granted to courts established under Art. I, the full logic of Federal cases does not apply to the Alaska situation. Compare Art. IV, §1 of the Alaska Constitution.

in Alaska prior to Statehood were courts of this blended character. American Insurance Company v. Canter, 1 Pet. (U.S.) 511 (1828).

The Alaska Constitution contains similar though different concepts. Thus, Art. IV, §1 of the Alaska Constitution provides:

> The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. 2/

A constitutional court is, then, a court established in the constitution in specific particulars; a legislative court is one where its establishment and responsibilities are discretionary with the legislature. An implied corollary of this principle recognizes that the constitutional courts very likely will enjoy constitutional protections which may or may not be extended to other courts not established in the Constitution. Art. IV has a number of provisions reflecting this principle.

Thus, Supreme Court justices and Superior Court judges shall be

> "citizens of the United States and of the State, [and] licensed to practice law in the State.

Judges of the constitutional courts [the Supreme and Superior Courts] must be nominated by the judicial council and appointed from those nominees by the governor. Art. IV, §5. These judges are subject to electoral confirmation on a nonpartisan ballot under §6. They are retired under the provisions of §11 and they may be removed only by impeachment under §12 [or by rejection under §6]. Their compensation is protected under §11. They are restricted in their activities during the time they hold office by §14.

2/ Notwithstanding this suggestion that the jurisdiction of courts shall be prescribed "by law", it seems that in a broad sense, the constitution of the state establishes the jurisdiction of the Supreme court ["the highest court of the State, with final appellate jurisdiction." Art. IV, §2(a)] and of the Superior court ["the trial court of general jurisdiction." Art. IV, §3].

In opposition to all this judges of legislatively established courts [all courts except for the Supreme and Superior Courts]

> shall be selected in a manner, for terms, and with qualifications prescribed by law. Art. IV, §4.

I think it is significant to note that the determination whether the constitutional protections are extended to judges not specified in the constitution is, in the constitutional framework, not accidental. The constitution could well have extended these listed protections to any member of the judiciary, whether or not the court on which the member sits is constitutionally defined. 3/

The history of the District Court since Statehood is perhaps the best example of this principle at work. The court was established in 1959 by Ch. 184. Initially it was described as the "district magistrate court". Ch. 24, SLA 1966 shortened the name to its present form. Initially, a district magistrate was appointed by a superior court judge, served at the judge's pleasure, and was not required to be an attorney. Under present law, a district judge is appointed under a legislative formulation that follows the constitutional formula of Art. IV, §5 for judges of the supreme and superior courts. And the procedure has received constitutional review and approval in Delahay v. State, 476 P.2d 908 (1970). The judge is subject to retention elections which parallels the provisions of Art. IV, §6.

And while the question is presently academic, it is likely that the legislature could in its discretion abolish the present scheme for the district judges without constitutional problems. While the legislature may embellish, clarify, and interpret the general framework established in the constitution for the Supreme and the Superior courts, it seems clear

---

3/ Another way of stating this conclusion is that I resist the suggestion implied, perhaps, in your request, that there is any general doctrine of law applicable to constitutional courts. Rather, any discussion of the implications of these terms simply raises questions of constitutional interpretation which are unique to each jurisdiction. If the matter is covered in the constitution, its statements establish the law. If the matter is not stated in the constitution, the legislature may prescribe the law.

that these courts themselves may not have their character altered in a fashion inconsistent with the constitutional provisions.

These then are the differences between the two kinds of courts. For a constitutional court, the legislature is limited in its ability to experiment by the character of the framework established in the constitution.

For a legislative court, the legislature may follow a constitutional pattern in its establishment of legislative courts, but it is under no obligation to do so. Thus, the legislature may establish a court and provide that the members of the court serve for life, at the pleasure of the governor, are confirmed by the legislature, are elected on partisan, competitive ballots, may have their compensation reduced during tenure. Judges can be attorneys or non-attorneys; can be full-time or part-time.

In short, the legislature may exercise broad discretion in its establishment of legislative courts. Lopez v. Anchorage, ___P.2d___ (No. 1863, Alaska, June 22, 1979).

II. Inherent powers.

The Committee asked whether a legislative court would possess the same inherent powers as a constitutional court.

The answer to the question must be viewed as somewhat tentative because of certain ambiguities in the constitution as well as in the question itself.

The constitution is somewhat ambiguous. It provides that "the jurisdiction of [all] courts shall be prescribed by law". Art. IV, §1. This phrase would otherwise suggest that the powers of the court, inherent or otherwise, derive from legislative enactment.

At the same time, the constitution establishes the larger part of the Supreme and Superior court jurisdiction: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Art. IV, §2(a)]. "The superior court shall be the trial court of general jurisdiction...." [Art. IV, §5].

AS 22.05 and AS 22.10 contain very few provisions not directly implied in the constitutional provisions relating to the Supreme and Superior Court. As a result, the Alaska Constitution is the primary source of the jurisdiction of the two courts.

The question itself is ambiguous because many of the powers of a court that are viewed by attorneys as inherent to a court's basic operation are the result of statute. Thus the power of the courts to issue writs in aid of their jurisdiction would logically be implied if it did not exist by statute. However, it does exist by statute [AS 22.05.010(a); 22.10.020(a)] and is therefore arguably not an inherent power.

There are a number of concerns of a court that may be viewed as inherent.

1. Finality of judgement. In Hayburn's Case, 2 Dall. 409 (1792), the Federal courts refused to act on a petition for a pension since the Act of Congress granting the responsibility to the district courts allowed the Secretary of War and the Congress to review the decision. This review function was viewed as making the administration of the law non-judicial in nature and therefore not within the "judicial power of the United States".

To a large extent the question of granting non-judicial powers to courts is politically moot; I am unaware of any law invalidated or left unenforced by the Alaska courts because of this requirement.

Note that Art. IV, §1 grants the judicial power not only to the Supreme and Superior courts, but also to courts established by the legislature. I assume that a legislative court would therefore possess this requirement.

2. The contempt power. It seems that it is unarguable that all courts in Alaska possess by their nature the power to sanction contempts. Civil Rule 90 suggests this conclusion.

And if there is any doubt on the question, venerable language of the U.S. Supreme Court is instructive:

> The power to punish for contempts is inherent in all courts; its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice. The moment the courts of the United States were called into existence and invested with jurisdiction over any subject, they became possessed of this power." Ex parte Robinson, 19 Wall. (U.S.) 505 (1874). 4/

3. Issuance of writs. In Federal courts, the power to issue writs has historically been granted by Congress. Section 13 of the 1789 Judiciary Act was the original source. While the Act gave the power to issue writs under common law principles, the Federal courts have traditionally concurred in the view that an act of Congress is necessary to confer the judicial power to issue writs.

Note that the Supreme court and the Superior court are specifically granted the power to issue writs. AS 22.05.010(5) and 22.10.020(a) both authorize the issuance of "all writs" necessary to the courts' jurisdiction. The district court is implicitly denied the authority to issue writs by the denial to it of equitable jurisdiction. AS 22.15.050(2).

4. Admission and discipline of attorneys. The generally recognized principle of the common law holds that "it rests exclusively with the Court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed." Chief Justice Taney in Ex parte Secombe, 19 How. (U.S.) 9, 13 (1857).

In Alaska, the Supreme Court has the "inherent and final power and authority to determine standards for admission to the practive of law in this State". In re Stephenson, 511 P.2d 136 (Alaska 1973). Only that court has the power to suspend an attorney from the practice of law. Weaver v. Superior

---

4/ The power of contempt in the Federal system has had statutory derivation since §17 of the Judiciary Act of 1789, 1 Stat. 73, 83. In Michaelson v. United States, 266 U.S. 42 (1924), Justice Sutherland questioned the authority of the Congress to qualify the contempt power: "the attributes which inhere in that power and are inseparable from it can neither be abrogated [by Congress] nor rendered [by it] practically inoperative." (Bracketed material added.)

Court, 572 P.2d 425 (Alaska 1977); Esch v. Superior Court 577 P.2d 1039, 1043-1044 (Alaska 1978). The control that the Supreme Court and other courts in Alaska have over those appearing before them is the power of contempt. There is no question whether any state court possesses this power, supra.

III. Status of present courts.

The Supreme Court and the Superior Court in Alaska are constitutional courts as that phrase has been used in this memorandum.

They are the only two courts that can ever claim that designation under the present provisions of Art. IV of the Constitution.

Any other court presently in existence or hereafter created in the context of existing constitutional provisions will necessarily be a legislative court. The district court established under AS 22.15 is a legislative court and the proposal for an intermediate appellate court -- the court of appeals -- will be a legislative court.

RAB:slk

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M March 30, 1979

SUBJECT: Constitutionality of court of appeals bill (SB 104)

TO: Representative Charles H. Parr, Chairman
House Judiciary Committee

FROM: Billy G. Berrier
Director
Division of Legal Services

You have asked whether a constitutional amendment is needed to create a court of appeals and whether there is a constitutional right of appeal to the Supreme Court.

The legislature has the constitutional power to establish courts in addition to the supreme court and the superior court which are established by the constitution. This right is clearly recognized in Section 1, Article IV of the constitution which provides:

> SECTION 1. The judicial power of the State is vested in a supreme court, a superior court and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law. (Emphasis added.)

Therefore no constitutional amendment is necessary to establish the court.

Under the United States Constitution, appellate review in state courts is not required. In Griffin v. Illinois, 351 US 12, 100 L ed 891, 76 S Ct 585 (1956), a leading case by the United States Supreme Court holding that while appellate review is not required, if granted at all it may not be limited so that some persons because of poverty may not effectively exercise the right of appeal of a criminal conviction, the court stated:

"It is true that a state is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all."

In a concurring opinion, Justice Frankfurter elaborated on this saying:

The admonition of de Tocqueville not to confuse the familiar with the necessary has vivid application to appeals in criminal cases. The right to an appeal from a conviction for crime is today so established that this leads to the easy assumption that it is fundamental to the protection of life and liberty and therefore a necessary ingredient of due process of law. "Due process" is, perhaps, the least frozen concept of our law -- the least confined to history and the most absorptive of powerful social standards of a progressive society. But neither the unfolding content of "due process" nor the particularized safeguards of the Bill of Rights disregard procedural ways that reflect a national historic policy. It is significant that no appeals from convictions in the federal courts were afforded (with roundabout exceptions negligible for present purposes) for nearly a hundred years; and, despite the civilized standards of criminal justice in modern England, there was no appeal from convictions (again with exceptions not now pertinent) until 1907. Thus, it is now settled that due process of law does not require a State to afford review of criminal judgments.

Nor does the equal protection of the laws deny a State the right to make classifications in law when such classifications are rooted in reason. "The equality at which the 'equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions." . . .Again, "the right of appeal may be accorded by the State to the accused upon such terms as in its wisdom may be deemed proper." McKane v. Durston, 153 US 684, 687, 688, 38 L ed 867, 686, 14 S Ct 913. The States have exercised this discriminating power. The different States and the same State from time to time have conditioned criminal appeals by fixing the time within which an appeal may be taken,

> by delimiting the scope of review, by shaping the mechanism by which alleged errors may be brought before the appellate tribunal, and so forth.

The clause in our constitution that is the equivalent of the Sixth Amendment is Section 11 of Article I which provides:

> "SECTION 11. In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury of twelve; except that the legislature may provide for a jury of not more than twelve nor less than six in courts not of record. The accused is entitled to be informed of the nature and cause of the accusation; to be released on bail, except for capital offenses when the proof is evident or the presumption great; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

The Alaska Supreme Court has taken the position that it is not limited by decisions of the United States Supreme Court or the United States Constitution when it expounds the Alaska Constitution since our constitution may have broader safeguards than the minimum federal standards. It applied this rule of construction to the Sixth Amendment in Baker v. City of Fairbanks, 471 P.2d 386 (1970).

There are, of course, no decisions directly on point in Alaska. Corpus Juris Secundum States:

> "In criminal prosecutions an appeal or a writ of error will not lie from an intermediate appellate court to the higher court except in cases in which it is authorized by constitution or statute"

citing numerous cases supporting that rule. In Baker the court said:

> "What is ultimately persuasive to us is the strong indication by other courts that fundamental fairness under the Fourteenth Amendment requires the extension of procedural safeguards in the administration of criminal justice to an area of crimes once deemed outside the pale of protection."

The right at question here is being able to appeal, as a matter of right, to the final appellate court in the court from a decision of an intermediate appellate court. Review by the Supreme Court still exists under the bill but the review is in the discretion of the Supreme Court.

Fundamental fairness clearly does not require appeal as a matter of right in all cases to the final appellate court of a state.

BGB:jdn

Alaska Court System
State of Alaska

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501

(907) 274-8611

March 23, 1979

Hon. Charles H. Parr
House of Representatives
State of Alaska
Pouch V
Juneau, AK 99811

Dear Representative Parr:

The Legislature currently has before it HCR 2, the bi-annual recommendations of the Salary Commission concerning the compensation of various public officials, including judicial officers. The Commission developed these recommendations after extensive research and analysis over a period of two years. The proposed salaries in HCR 2 are in fact substantially less than the initial recommendations of the Commission, due to the necessity of complying with the President's Wage and Price guidelines.

The last judicial pay raise was implemented on July 1, 1975. If the Legislature does not adopt the Salary Commission recommendations, this will mean that for the five and one-half years from July 1, 1975 through January 1, 1981, the judiciary will have received no salary increase and will in fact find its salaries reduced in purchasing power by as much as 40 percent due to inflation. If the Legislature adopts the Salary Commission recommendations, the judiciary will receive pay raises amounting to less than three percent per year over the five and one-half year period. While this minimal judicial salary increase is less than half that received by other State employees during the comparable period (estimated at 6 to 7% per year), these salary levels are supported by the Court System in light of the restrictions imposed by the President's guidelines.

When the Salary Commission was established in 1976 the following language was enacted by the Legislature: "It is the policy of the Legislature that the Commission determine the salary schedule and retirement benefits for public officers based upon equitable relationships being maintained among State positions." The underlying purpose of establishing a commission was to develop a rational approach to the setting of salaries rather than relying on a strictly political system of salary setting. The recommendations in HCR 2 represent a judicious balance between the various competing factors in salary setting, including equitable relationships among State positions, cost of living, public opinion, comparison to other states, and salaries in the private sector.

In January 1978 this office prepared a judicial compensation position paper to assist the Commission in developing its salary recommendations. A copy of this 1978 paper is attached for your information. In reviewing the paper, the following updated information should be kept in mind:

1. An additional 10 percent increase in cost of living in 1978.

2. State employee pay raises ranging from seven to ten percent are under consideration for 1979.

3. Twenty-seven states increased their judicial salaries between July 1, 1977 and July 1, 1978. This dropped the salary ranking of the supreme court on a national scale to 41 out of 50 and the superior court to 35 out of 50 (adjusted on the cost of living determined by the Bureau of Labor Statistics for higher budget for a four-person family).

If you have any questions concerning the attached compensation paper, I would be glad to discuss these with you at your convenience,

Sincerely,

Richard P. Barrier
Deputy Administrative Director

Attachment

M E M O R A N D U M

January 3, 1979

TO: Chief Justice Rabinowitz
Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Justice Dimond
Arthur H. Snowden, II
Susan Burke
Connie Staska
Jim Babb
Merle Martin
Caroline Hudnall

FROM: Robert D. Bacon, Clerk

SUBJECT: December 1978 Statistics

Attached are preliminary statistical tables for the month of December, 1978.

In a few weeks, this office will issue a more detailed annual statistical report containing information for the full year 1978, including average times that various classes of cases are pending, and making comparisons to prior years.

Some preliminary information revealed by this report: during 1978, there were 630 cases filed or reinstated, up from 613 in 1977. However, the number of appeals declined from 470 to 447, the number of petitions and original applications increased from 143 to 183. During 1978, the court disposed of 560 cases, including 302 on the merits. The comparable figures for 1977 are 450 and 231. At the end of 1978 there were 624 cases pending, an all-time high, and a 12.6% increase over the 554 cases pending on the docket one year ago.

During December, only 24 cases were closed, including only 11 on the merits. These are the smallest numbers for any month in more than two years. The 129 cases under submission and awaiting a draft opinion appears to be the largest number ever.

BH for

RDB

ALASKA SUPREME COURT December 31, 1978	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
ENDING DECEMBER 31, 1977	265	207	36	508	41	5	554
FILED OR REINSTATED THRU November 30, 1978	230	118	55	403	141	24	568
FILED OR REINSTATED THIS MONTH	26	17	1	44	15	3	62
TOTAL FILED YEAR-TO-DATE	256	135	56	447	156	27	630
Adjustments	+ 1	- 2	+ 2	+ 1		- 1	0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	42	56	23	121	8	2	131
Affirmed in Part/Reversed or Remanded in Part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and Remanded	26	19	2	47	2		49
Remanded Only	11	5	3	19			19
Sentence Too Lenient			1	1			1
For Disciplinary Action						2	2
B. By Memorandum Opinion & Judgment							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order							
Affirmed	2	1		3	3		6
Reversed or Reversed & Remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	123	103	32	258	34	10	302
D. Petitions for Review/Originals Denied					85	14	99
E. Dismissals							
By Agreement or by Appellant	69	18	8	95	4		99
By Court	27	9	3	39	12	1	52
On Motion	6	1		7	1		8
TOTAL DENIALS AND DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITION	225	131	43	399	136	25	560
Reasons for Cases Pending December 31, 1978							
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting P/R or Orig					16	1	17
Awaiting Mandate or Decision on Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8		19	3		22
TOTAL CASES PENDING December 31, 1978	297	209	51	557	61	6	624

TABLE I

ALASKA SUPREME COURT

1978 STATISTICAL SUMMARY

Total Cases Pending: December 31, 1977	554
Cases Filed or Reinstated, 1978	630

Dispositions on Merits to Dec. 31, 1978

By Opinion and Mandate	248[1]
By Memorandum Opinion & Judgment	14
By Summary Order	40
Total Dispositions on Meri s	302

Other Dispositions to Dec. 31, 1978

Dismissals	159
Petition or Application Denied	99
Total Other Dispositions	258
Cases Pending Dec. 31, 1978	624

Reasons for Cases Pending

Awaiting Record	125
Awaiting Briefs	179
Awaiting Hearing or Submission	54[2]
Submitted/Awaiting Draft Opinion	129
Submitted/Draft Opinion Circulating	79
Awaiting Decision on Granting Petition for Review	17
Awaiting Mandate or Decision on Rehearing	19
Stayed or Remanded	22
Total Pending Dec. 31, 1978	624

225 total awaiting decision

1 237 opinions have been published to date. The numbers differ because in consolidated cases and cross-appeals, more than one case is often disposed of in a single opinion. Moreover, opinions published late in December of one year do not produce case dispositions until the following year.

2 Of these cases, eight were pending with the Central Staff.

TABLE I

1978 RECAPITULATION

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
Pending Jan. 1, 1978	268	200	39	507	43	4	554
Filed	253	133	53	439	156	27	622
Reinstated	3	2	3	8	0	0	8
Adjustments[a]	-2	+5	-1	+2	-2	0	0
Closed	225	131	43	399	136	25	560
Pending Dec. 31, 1978	297	209	51	557	61	6	624

a Accounts for cases converted from one category to another during 1978, and for correction of erroneous classifications of certain cases pending January 1, 1978.

TABLE II

1978 DISPOSITIONS

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	TOTAL
A. By Opinion & Mandate:							
Affirmed	42	56	23	121	8	2	131
Affirmed in part/reversed or remanded in part	24	7	2	33	1		34
Reversed	2	7		9	2	1	12
Reversed and remanded	26	19	2	47	2		49
Remanded only	11	5	3	19			19
Sentence too lenient			1	1			1
Bar disciplinary action						2	2
Total Dispositions by Opinion & Mandate	105	94	31	230	13	5	248
B. By Memorandum Opinion and Judgment:							
Affirmed	6	5	1	12			12
Reversed	1	1		2			2
C. By Summary Order:							
Affirmed	2	1		3	3		6
Reversed or reversed and remanded	8			8	12		20
Other	1	2		3	6	5	14
TOTAL DISPOSITIONS ON MERITS	133	103	32	258	34	10	302
D. Petitions for Review/ Originals denied					85	14	99
E. Dismissals:							
By Agreement or by appellant	69	18	8	95	4		99
By court	27	9	3	39	12	1	52
On motion	6	1		7	1		8
TOTAL DENIALS & DISMISSALS	102	28	11	141	102	15	258
TOTAL CASE DISPOSITIONS	225	131	43	399	136	25	560

TABLE III - HISTORICAL[a]

		1975	1976	1977	1978
A.	FILINGS[b]				
	Civil Appeals	151	214	251	256
	Criminal Appeals	76	120	156	135
	Sentence Appeals	22	32	63	56
	Total Appeals	249	366	470	447
	Petitions for Review	81	86	126	156
	Originals	7	16	17	27
	TOTAL	337	468	613	630
B.	DISPOSITIONS				
	Civil Appeals	193	141	201	225
	Criminal Appeals		67	88	131
	Sentence Appeals	12	33	40	43
	Total Appeals	203	241	329	399
	Petitions for Review	84	82	103	136
	Originals	10	12	18	25
	TOTAL	299	335	450	560
C.	DISPOSITIONS				
	On Merits	c	148	231	302
	P/R and Orig. Denied	c	52	67	99
	Dismissals	c	135	152	159
	TOTAL	299	335	450	560
D.	OPINIONS PUBLISHED	122	142	189	237
E.	PENDING END OF YEAR				
	Civil Appeals	148	218	268	297
	Criminal Appeals	76	132	200	209
	Sentence Appeals	17	16	39	51
	Total Appeals	241	366	507	557
	Petitions for Review	16	20	43	61
	Originals	1	5	4	6
	TOTAL	258	391	554	624

a The figures for cases pending at the end of 1977 plus 1978 filings minus 1978 dispositions do not equal cases pending at the end of 1976 due to reclassifications and corrections. See footnote a to Table I. The same is true from 1975 to 1976.

b Includes reinstatements.

c Breakdown unavailable.

TABLE IV

CASES PENDING: DECEMBER 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Origi	TOTAL
Awaiting Record	67	50	8	125			125
Awaiting Briefs	78	70	12	160	14	5	179
With Central Staff	5	3		8			8
Awaiting Hearing/Submission	33	10	1	44	2		46
Awaiting Draft Opinion	54	40	22	116	13		129
Draft Opinion Circulating	38	24	6	68	11		79
Awaiting Decision on Granting Petition for Review or Original					16	1	17
Awaiting Mandate or Decision On Rehearing	11	4	2	17	2		19
Stayed or Remanded	11	8		19	3		22
TOTAL	297	209	51	557	61	6	624

Re: fiscal note

she said that the
7/80 figure is for 6 mos.

start-up is expected
for Jan of 80.

The FY/81 figure is
for the whole
fiscal year

(c) ◦ Factory Ok

F

Points Criminal

— 200 + cases

— 20 Judges / CTS / Point.

— 2 Tier system

[Motion] Supreme Ct ◦

P5 - ratios

P8 DATA

P26 RIGHT TO APPEAL

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST SB 104
Bill/Resolution No.
Title An Act Establishing the Intermediate Court of Appeals
Requested by Senate Judiciary Committee Date 2/9/79

II. FISCAL DETAIL
Agency Affected Alaska Court System
Program Category Affected Due Process
Budget Request Unit(s) Affected Alaska Court System

EXPENDITURES (Thousands of Dollars)

		FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100	PERSONAL SERVICES		177.5	376.2	398.8	422.7	448.1
200	TRAVEL		15.0	31.8	33.7	35.7	37.9
300	CONTRACTUAL		57.2	121.3	128.5	136.3	144.4
400	COMMODITIES		5.0	10.6	11.2	11.9	12.6
500	EQUIPMENT		25.0				
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		279.7	539.9	572.2	606.6	643.0

FUNDING (Thousands of Dollars)

GENERAL FUND		279.7	539.9	572.2	606.6	643.0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		10	10	10	10	10
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Attachment I - FY 80 Budget Detail

IV. DATE February 12, 1979 PREPARED BY Richard Barrier
AGENCY Alaska Court System
PHONE 264-0545

Original: Legislative Finance
cc: Budget and Management

ATTACHMENT I - FY 80 BUDGET DETAIL

This budget detail for FY 80 is based on the assumption that the effective date of this bill will be July 1, 1979 and that the intermediate court will be operational on January 1, 1980. The fiscal note incorporates all new costs associated with the intermediate court.

With the creation of the intermediate court, and the lessening of the Supreme Court caseload, it will be possible to reduce the FY 80 Supreme Court budget in a number of areas. The request for legal externs, $30,078, can be deleted, travel expenses reduced by $20,000, and contractual costs reduced by $15,000 on an annual basis. Additionally, the Supreme Court is considering reductions in other budget areas, including the deletion of the central legal staff positions in the Supreme Court office, $85,493, and several budget items in the Trial Court and Administration components.

Personnel:	3 judges: $54,370 + $5,900 benefits		$180,810
	3 secretaries, range 13: $17,940 + $5,971 benefits		71,733
	3 law clerks, range 15: $20,796 + $6,652 benefits		82,344
	1 court clerk, range 10: $14,820 + $5,227 benefits		20,047
			$354,934
Travel:			$30,000
Contractual:	Space rental - 4,500 sq. ft. at $1.10	$59,400	
	Phone, postage	20,000	
	Equipment rental	30,000	
	Other misc.	5,000	
			114,400
Commodities:			10,000
Equipment:			25,000
			534,334

FY 80 EXPENSE

One-time costs:	Equipment	$ 25,000
Operating Costs:	(1/2 year)	254,667
		$279,667