SB 104

#2 Establishing Court of Appeals

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

1/15/80

Date: _____

Mr. Speaker:

(Removed from Rules) 1/15/80

The Committee on JUDICIARY has had SB 104am

"An Act establishing the court of appeals; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with CS for _____ [ ] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Hobart A. Anderson Jr.
Edward Pierce
Patrick G. O'Connell
J. F. Malone

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Fare Matter - Do Not Pass
D. Nolan - D. Not I...
TBuckhalt - No Re...

_____
CHAIRMAN

H 60 (Rev. 12/78)

(9)

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

March 15, 1979

Date: _____

Mr. Speaker:

The Committee on JUDICIARY has had SB 104am

"An Act establishing the court of appeals; eff. date."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[ ] replace with HCS for S SB 104 [ ] same title [X] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Niles H. Anderson / Do Pass

H Limbaugh

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Charles H Lan Do Not Pass

J Burchfield Do Not Pass

Charles H Lan
CHAIRMAN

H 60 (Rev. 12/78)

Original sponsors: Ziegler, Bradley, Meland, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the judiciary; establishing a court of appeals; amending the jurisdiction of the supreme court, the superior court, and the district court; clarifying and amending the sentence appeal and other appellate jurisdiction of the superior court; changing the qualifications of justices and judges; providing that justices and judges may serve as delegates to constitutional conventions; amending the time period in which the judicial council is to provide information to the public concerning judicial officers standing for retention election; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges. The court of appeals is a court of record.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) children's court matters under AS 47.10.010(a)(1) includ-

ing waiver of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

(b) The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(c) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, 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 it is too lenient.

(d) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal from a district court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition, probation and parole, habeas corpus or bail; (2) review the final de n of the superior court on appeal of a sentence imposed by the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the superior court.

(e) The court of appeals may issue njunctions, writs and all other process necessary for the complete exercise of its jurisdi tion.

(f) 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.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the

supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court. Review is in the discretion of the supreme court as set out in AS 22.-05.010(c). In this section, "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law is the same as defined for the justices of the supreme court in AS 22.05.070.

Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of appeals, upon entering office, shall take and subscribe to the oath or affirmation of office required of all officers under the constitution.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide information to the public about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 60 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet as required by AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy

in the supreme court, the court of appeals, the superior court, or the district court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) The monthly salary of a judge of the court of appeals is equal to Step E, Range 29 of the salary schedule in AS 39.27.011(a) for Juneau, Alaska. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(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 the court for a period of more than six months.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

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 court 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 or to the superior court under AS 22.10.020 or AS 22.15.240.

(c) A decision of the superior court on an appeal from an adminis-

trative agency decision may be appealed to the supreme court as a matter of right.

(d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

(e) The supreme court may issue injunctions, writs and all other process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may transfer to the court of appeals for decision a case pending before the supreme court if the case is within the jurisdiction of the court of appeals.

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Consitution of the United States or under the constitution of the state or involves an issue of substantial public interest that should be determined by the supreme court.

(c) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the

Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.070 is amended to read:

Sec. 22.05.070. QUALIFICATIONS OF JUSTICES. A justice of the supreme court shall be a citizen of the United States and of the state, a resident of the state for five [THREE] years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law includes

(1) sitting as a judge in a state or territorial court;

(2) being actually engaged in advising and representing clients in matters of law;

(3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive or employed capacity;

(4) serving as a professor, associate professor, or assistant professor in a law school accredited by the American Bar Association.

* Sec. 6. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such infor-

mation and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior court, or district courts [COURTS] of the state for a period of four years thereafter.

* Sec. 7. AS 22.05.130 is amended to read:

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.

* Sec. 8. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal

case after a plea of guilty, except on the ground that the sentence was excessive, as futher provided by this section. The state has no right to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE], except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 [180] days or more was excessive and the superior court in the exercise of this jurisdiction has the power to modify the sentence appealed from [UPWARD OR] downward. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 9. AS 22.10.090 is amended to read:

Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five [THREE] years immediately preceding his appointment, have been engaged for not less than five years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law shall be as defined for justices of the supreme court in AS 22.05.070.

* Sec. 10. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to

the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

* Sec. 11. AS 22.10.180 is amended to read:

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.

* Sec. 12. AS 22.15.160(a) is amended to read:

(a) A district 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 five years [ONE YEAR] immediately preceding his appointment, and (1) have been engaged in the active practice of law for not less than three years immediately preceding his appointment and at the time of his appointment licensed to practice law in the State of Alaska; or (2) have served for at least seven years as a magistrate in the state. The

supreme court may prescribe additional qualifications.

* Sec. 13. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 60 [30] days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 14. AS 22.15.210(a) is amended to read:

(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, a [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.

* Sec. 15. AS 22.15.240 is amended to read:

Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment of the district court in a civil action to the 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 FOR WANT OF AN ANSWER].

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the superior court. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground it is too lenient. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 16. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice,

a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 17. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 18. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 19. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 20. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 21. AS 15.15.030(10) is repealed and re-enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking

to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 22. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals is subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he is thereafter subject to approval or rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on

the judicial ballot in each judicial district of the state for the general election at which approval is sought.

* Sec. 23. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 24. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 25. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 26. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 27. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 28. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 29. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of [EXCEEDING] one year or more may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 30. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may

express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 31. AS 12.55.120 is amended by adding a new subsection to read:

(d) A sentence of imprisonment lawfully imposed by the district court for a term or for aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed by the district court may be appealed to the superior court by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 32. A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978.

* Sec. 33. Notwithstanding the effective date of this Act, operations of the court of appeals shall begin on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 34. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard by or submitted to the supreme court on the briefs on or before that date shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals.

* Sec. 35. It is the intent of the legislature that the court of appeals begin operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for the initial vacancies for judge of the court of appeals.

* Sec. 36. The amendments enacted in secs. 5, 9 and 12 of this Act apply only to justices and judges appointed on or after the effective date of this Act.

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

* Sec. 37 Section 8, Sec. 15 and Sec. 31 of this Act have the effect of changing Rule 31, Rules of Appellate Procedure and Rule 7, Alaska Rules of Criminal Procedure by amending AS 22.07.020(a), AS 22.15.240, AS 01.[illegible] to provide that a petition for hearing to the supreme court may be granted only within 30 days of the decision appealed. AS 12.55

* Sec. 38. Section 29 of this Act has the effect of changing Rule 21, Rules of Appellate Procedure by amending AS 12.55.120(a) to provide that a petition for hearing may be granted only within a time of one year after the decision appealed.

New sec 37 attached

* Sec. 37. Sections 8, 15 and 31 of this Act have the effect of changing Rule 21, Rules of Appellate Procedure and Rule 7, District Court Criminal Rules by amending AS 22.10.020(a), AS 22.15.240, and AS 12.55 to provide that a sentence of 90 days or more imposed by the district court may be appealed.

* Sec. 38. Section 29 of this Act has the effect of changing Rule 21, Rules of Appellate Procedure by enacting and amending AS 12.55.120(a) to provide that a sentence of one year or more may be appealed.

Supreme Court
State of Alaska

CHIEF JUSTICE
JAY A. RABINOWITZ

JUSTICES
ROGER G. CONNOR
ROBERT BOOCHEVER
EDMOND W. BURKE
WARREN W. MATTHEWS, JR

303 "K" STREET
ANCHORAGE, ALASKA
99501
907-274-8611

February 27, 1980

Re: HCSSB 104

Dear Representative:

On previous occasions I have communicated to you regarding the necessity for the legislature's creation of the intermediate appellate court. In addition, Arthur Snowden and his staff have furnished each of you, as well as relevant committees, detailed data pertaining to the need for the creation of such a court. Naturally I wish to reiterate my belief that the establishment of this court is necessary to enable the Alaska Court System to process the expanding volume of appellate litigation and to eradicate delays in the administration of justice.

HCSSB 104, now pending before you, in my view serves their goals well. However, after careful scrutiny of the provisions of this proposed legislation, it is my belief, as well as that of my colleagues on the Supreme Court, that two amendments should be made. (The text of these proposed amendments is attached).

Amendment No. 1 concerns the qualifications for appointment as a district court judge. Present law requires a district court judge to be licensed to practice law in Alaska and to have been a resident of the state for at least one year at the time of his appointment. HCSSB 104 now provides that district court judges have practiced law for three years and have been residents of the state for at least five years. Raising these requirements as provided in the present version of HCSSB 104 in my view is likely to deprive the Alaska Court System of the opportunity to attract talented young lawyers to these positions. Many of our most outstanding district court judges, past and present, would not have been eligible for appointment under the proposed new requirements. Therefore, I think an appropriate compromise which serves all interests is embodied in proposed Amendment No. 1, which would establish a two year law practice and residency requirement for district court judges.

Amendment No. 2, attached, involves appeals of district court criminal cases. Under the present bill, these are appealable as a matter of right only to the superior court. This allows for prompt review with minimal costs to the parties. Traditional standards of justice, however, provides that more than one judge be involved in a full appellate review. Thus, district court criminal cases should be appealable from the superior court to the court of appeals as a matter of right. The proposed amendment would balance the need for prompt, inexpensive review with the need to provide a full appellate hearing. While most district court cases go no further than the superior court, the important cases do get appealed. The way should be open for these cases to get full appellate review as a matter of right.

My thanks for your consideration in this matter.

Sincerely yours,

Jay A. Rabinowitz
Chief Justice

A M E N D M E N T

Offered in the HOUSE By:

TO: HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 104

Page 10, line 26:

Delete "five" and insert "two" in its place.

Page 10, line 28:

Delete "three" and insert "two" in its place.

A M E N D M E N T #2

Offered in the HOUSE By:

TO: HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 104

Page 2, line 17:

Delete "may in its discretion (1) review" and insert "has jurisdiction to review (1)" in its place.

Page 2, line 21:

Delete the word "review".

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: 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:

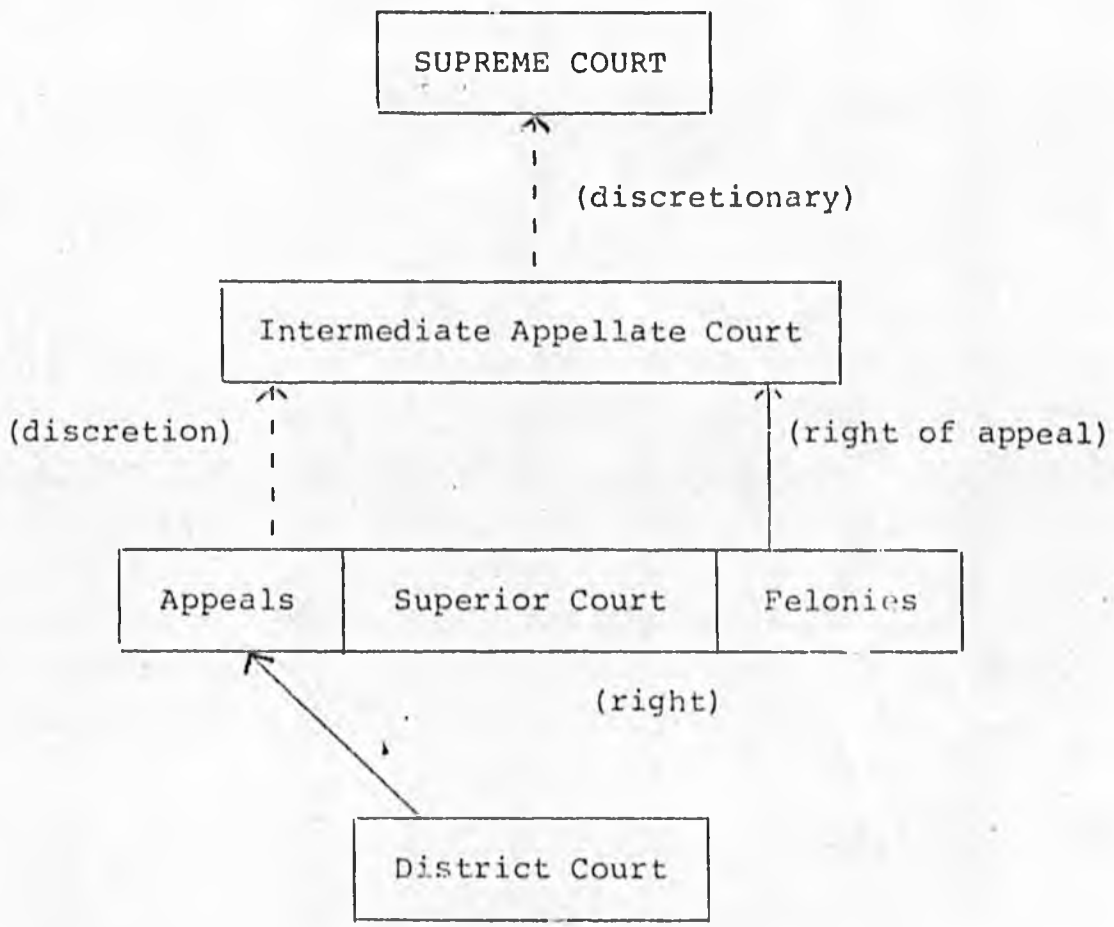
1. Review of District Court Criminal Cases (Amendment No. 1).

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.

TABLE I

ALASKA SUPREME COURT CASE FILINGS 1970-1977

	1970	1971	1972	1973	1974	1975	1976	1977
Regular Appeals and Sentence Appeals Filed	172	197	188	195	208	249	364	470
Petitions for Review Filed	33	12	45	49	60	81	86	126
Original Applications Filed	12	6	16	11	22	7	16	17
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		NUMERICAL	PERCENTAGE
Increase all Categories	1970-71	-2	--
	1971-72	+34	16%
	1972-73	+6	2%
	1973-74	+35	14%
	1974-75	+47	16%
	1975-76	+129	38%
	1976-77	+147	3..%
Increase Appeals and Sentence Appeals	1973-74	+13	7%
	1974-75	+41	20%
	1975-76	+115	46%
	1976-77	+106	29%

TABLE XI

ALASKA SUPREME COURT CASE FILINGS 1975-1977

	1975	1976	1977	% Increase 1975-1977	%Increase 1976-1977
Appeals					
Civil	151	214	251		
Criminal & Juvenile	76	119	156		
Sentence	22	31	63		
Total Appeals	249	364	470	90%	29%
Petitions for Review	81	86	126		
Original Applications	7	16	17		
Total Filings	337	466	613*	73%	32%

*Case filings for 1977 include 22 reinstated cases.

TABLE III

ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	Opinion and Mandate	Summary Disposition by Order	Dismissed by Court or Parties	Review Denied	Total
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	21		19		40
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	3	4	11		18
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT
FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

Civil Appeals and Cross Appeals	
Pending 12/31/76	218
Filed or Reinstated 1977	251
Total	469
Disposition	
By Opinion and Mandate	120
By Summary Order	5
Dismissed	76
Total	201
Pending 12/31/77	268
Criminal and Juvenile Appeals	
Pending 12/31/76	132
Filed or Reinstated 1977	156
Total	288
Disposition	
By Opinion and Mandate	54
By Summary Order	1
Dismissed	33
Total	88
Pending 12/31/77	200

Sentence Appeals	
Pending 12/31/76	16
Filed or Reinstated 1977	63
Total	79
Disposition	
By Opinion and Mandate	21
Dismissed	19
Total	40
Pending 12/31/77	39
Petitions for Review	
Pending 12/31/76	20
Filed 1977	126
Total	146
Disposition	
Opinion and Mandate	16
By Summary Order	7
Dismissed or Withdrawn	13
Review Denied	67
Total	103
Pending 12/31/77	43

TABLE IV (Continued)

Original Applications	
Pending 12/31/76	5
Filed or Reinstated 1977	17
Total	22
Disposition	
Opinion and Mandate	3
By Summary Order	4
Dismissed	11
Total	18
Pending 12/31/77	4

Total Pending Cases December 31, 1976	391
Total Filings and Reinstatements 1977	613
Total	1004
Total Dispositions 1977	450
Total Pending December 31, 1977	554

TABLE V

ALASKA SUPREME COURT
REASON FOR CASES PENDING DECEMBER 31, 1977

	CASES AWAITING					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
Appeals							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	6	9		19	1	4	39
Total Appeals	137	125	36	183	6	20	507
Petitions for Review		12	1	26	2	2	43
Original Applications			1	3			4
TOTAL	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	188	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163

Percent of Increase	1961-1977	600%
Percent of Increase	1968-1977	354%
Percent of Increase	1976-1977	41%

TABLE VII

ALASKA SUPREME COURT
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	35
TOTAL MOTIONS	1274

*Almost all were unopposed motions to extend time to file briefs and other papers.

member file
SB 104 am

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE 283-7167

April 17, 1979

Representative Terry Gardner
Speaker of the House of Representatives

Representative Charles Parr
Chairman - House Judiciary Committee

Representative Hugh Malone

Representative Patrick McConnell

Senator Clem Tillion
President - State Senate
Pouch B
Juneau, Alaska

Dear Mr. Parr:

Enclosed please find a copy of a resolution which was passed by the Kenai Peninsula Bar Association at its April 13, 1979 meeting, supporting the creation of an intermediate criminal appellate court. We felt that it was important for the legislature to be aware that this bar association is very much in favor of the creation of an intermediate court of criminal appeals, in light of the strong opposition to such a court voiced by the Tanana Bar Association.

Very truly yours,

Ken Cusack

KENNETH J. CUSACK
President
Kenai Peninsula Bar Association

KJC/aj

Encl.

STATE
of ALASKA

MEMORANDUM

member file
SB 104

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

DATE: April 20, 1979

FILE NO:

TELEPHONE NO:

FROM: Stuart C. Hall, Commissioner
Alaska Public Utilities Commission
Cheri C. Jacobus, Chairman
Alaska Pipeline Commission

SUBJECT: Senate Bill 104 am (Establishing Court of Appeals)

Pursuant to your conversation with Commissioner Hall on Friday, April 6, in Juneau, we submit our comments on SB 104. This is not a position paper of the Department of Commerce and Economic Development nor of the agencies on which we serve; it represents the individual and collective concerns of the writers.

SB 104, establishing an intermediate appellate court, represents one of the options that the Judicial Council has had under consideration for some time to alleviate the workload of the Supreme Court, particularly in the area of the criminal appeals. The other options were: expansion of the membership of the Supreme Court to seven justices and creation of an appellate division of the Superior Court (as in New York State). Instead, the Judicial Council and the state court system opted for the intermediate appellate court. A significant number of other states provide for such a court. We have no position as to whether such a new court is wise or unwise.

Proponents of the legislation refer to this proposed new court as a "Court of Criminal Appeals" and indicate that this court was intended to provide appellate relief in the criminal law area only. The drafters of the legislation, however, have included in the new court's jurisdiction "appeals to the superior court from a decision of an administrative agency".

This concerns us because it creates a third level of appellate review of decisions of the regulatory commissions. We believe this is entirely unnecessary. If a third level of appellate review is added, we believe the APUC will require a third staff attorney to juggle the various cases under review, and this will contribute to "regulatory lag". The new court's jurisdiction will similarly impact the ATC, APC and ACFEC. The Supreme Court is not presently burdened by appeals from the APUC's decisions or those of any of the other principal regulatory agencies (ATC, APC, etc.). We believe only two levels of appellate review are required to ensure compliance with applicable statutes, constitutionally prescribed due process, etc. At the federal level, appeals from the decisions of the FCC, FTC, ICC, FERC and like agencies are taken directly to the Circuit Courts of Appeal. They do not start in the trial court of general jurisdiction, the federal district court. As the Jager case makes clear, to this point in time in Alaska, the Superior Court has acted as the intermediate appellate court. Jager v. State, 537 P.2d 1100, 1106 (Alaska, 1975). If an intermediate court of appeal is created, there is no need for the superior court to perform that function. Consequently, we believe the Superior Court should be bypassed in favor of review by the new Court of Appeals. Ideally, SB 104 am should be further amended to so provide, as should the Administrative Procedure Act (APA). We attach proposed amendments to SB 104 am accomplishing that purpose.

The Judiciary Committee should consider that different types of administrative appeals are heard by the courts under the APA, such as:

(1) appeals from the regulatory commissions;
(2) appeals from denials of various benefits, e.g., unemployment insurance, workmen's compensation, or those administered by the Department of Health & Social Services;
(3) appeals from adoption of regulations, or declaratory judgments concerning the regulations of the various administrative bodies, including the APUC, Department of Fish & Game, Environmental Conservation, etc.

Further SB 104 does not define "administrative agency".

We are advised that the drafters of this legislation did not intend that appeals from our decisions would have three appellate reviews. The effect of this bill, however, would be three appellate reviews. Another provision in the bill does allow the Supreme Court, by rule, to bypass the Court of Appeals for appeals from administrative agencies' decisions and further provides that those decisions would be heard by the Supreme Court after a Superior Court review. We do not regard this as the "clean" approach. We believe SB 104 should be amended to provide for direct appeals from the regulatory commissions' decisions to the Court of Appeals. The drafters concede that the approach in the bill as drafted is not a good one.

cc: Charles Webber, Commissioner
Dept. of Commerce & Economic Development

Keith Specking
Legislative Assistant to the Governor

Proposed amendments to SB 104am (Per Cheri C. Jacobus and Stuart C. Hall)

On page 1, line 25, after "agency", insert:

", other than those agencies set out in (e) of this subsection"

On page 2, between lines 7 and 8, insert:

(e) The court of appeals has appellate jurisdiction in all actions and proceedings commenced before, and all final administrative orders or decisions of, the Alaska Public Utilities Commission, the Alaska Transportation Commission, the Alaska Pipeline Commission and the Alaska Commercial Fisheries Entry Commission. However, the court may, in its discretion, remand a commission matter to the superior court for a trial de novo in whole or in part.

On page 2, line 8, delete "(e)" and insert "(f)"

On page 13, between lines 23 and 24, insert:

* Sec. 26. AS 44.62.560 is amended to read:

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court, or by the court of appeals, of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

ALASKA PUBLIC UTILITIES COMMISSION
1016 MACKAY BUILDING
338 DENALI STREET
ANCHORAGE, ALASKA 99501
PHONE 276-6222

(b) The complete record of the proceedings, or parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in superior court, or the court of appeals, within 30 days after the appellant pays the estimated cost of preparing the complete or designted record or files a corporate bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, or the court of appeals, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court, or the court of appeals, may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court, or the court of appeals, may compel the agency to initiate action.

*Sec. 27. AS 44.62.570(a) is amended to read:

(a) An appeal shall be heard by the superior court, or the court of appeals, sitting without a jury.

ALASKA PUBLIC UTILITIES COMMISSION
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*Sec. 28. AS 44.62.570(h) is amended to read:

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court or court of appeals judgment or agency order.

Renumber remaining bill sections accordingly

ALASKA PUBLIC UTILITIES COMMISSION
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PHONE 276-0422

Original Bill

agency

↓

superior court

↓

Court of Appeals

⇣

Supreme Court

CS

agency → superior court (de novo trial) ↑

↓

Court of Appeals

⇣

Supreme Court

other Alternative - EXISTING LAW

agency

↓

Superior Court

↓

April 24, 1968

Memorandum to: Members of the Court

From: Holman, J.

Subject: Intermediate Court of Appeals

The following is a response to a request by the Judicial Administration Committee of the Oregon State Bar that the Supreme Court state its views on the manner in which the Court believes its burden of work should be relieved.

The Court has concluded that the caseload requires an increase in the manpower which is devoted to the hearing of appeals. There are two ways of acquiring additional manpower: one is to add judges to the Supreme Court and the other is to establish an intermediate court of appeals.

The Supreme Court is opposed to any increase in the present membership of the court. A court of more than seven judges is unwieldy. A substantial part of every judge's work is consideration of the opinions of the other judges. This, of course, increases as the number of judges increases. Nine judges (seven regular justices and two pro tems) presently are unable to keep the current backlog from growing.

If all cases were heard in departments of three members in an effort to keep current, a Supreme Court of nine persons would be three supreme courts and its judgments might be inconsistent as well as inadequate. Even then the manpower would be insufficient. There is a limit to how many opinions a judge can write regardless of the size of the department in which he sits.

A full-scale court of appeals will eventually be

a necessity. When the court of appeals is fully established there will be no need for nine judges on the Supreme Court. If the Supreme Court were now to be increased to nine members it would be extremely difficult in the future to reduce the membership of the court to seven. For the foregoing reasons the Court advocates the establishment of an intermediate court of appeals.

Two interrelated policy questions must be decided before establishing any intermediate court of appeals; the first is the size of such a court and the second is its jurisdiction.

The present members of the Supreme Court believe that not less than twelve judges are needed to handle all of the appellate business of the state. On the basis of an average of the 1966 and 1967 dockets, if all 12 were on the Supreme Court each would be required to write 30 majority opinions in order to keep the current docket from falling behind. We believe this necessary judicial manpower would best be employed in a Supreme Court of seven regular judges and an intermediate court of five regular judges. The regular use of pro tem judges on the Supreme Court could then be discontinued. We believe the five judges of the intermediate court should sit in two departments of three each, with the Chief Judge sitting in both departments.

With reference to jurisdiction, definite rules must be made either by the legislature or by the Supreme Court. The members of the Supreme Court believe that jurisdiction should be based upon specific classes of cases. The classifications used must be clear and distinct to avoid jurisdictional disputes. The Supreme Court should have authority

to determine all jurisdictional disputes in a summary manner without formal briefs, oral argument or written opinions.

The Court suggests that exclusive appellate jurisdiction (subject to discretionary appeal to the Supreme Court) be vested in the intermediate court in the following classes of cases:

1. Criminal, post-conviction, and habeas corpus.
2. Probate, including guardianships.
3. Domestic relations, adoptions, and juvenile matters.
4. Appeals from the decisions of state agencies. (With reference to tax appeals, an exception might be reasonable and desirable, as there will be in most cases a written opinion in the Tax Court from which a direct appeal to the Supreme Court would be practical and economical to taxpayers.)

A statistical study shows that for the last seven years the classes of cases listed above (including tax cases) composed 45.7 per cent of the Supreme Court's business. When it is considered that the seven members of the Supreme Court will have to devote part of their time to considering applications for the right to appeal and appeals from the intermediate court, it is believed that a proper distribution of the appellate caseload between the two courts would be in the range of 45 per cent to the intermediate court, and 55 per cent to the Supreme Court. These figures could be kept under review and adjusted by the Court or by the legislature as the legislature may provide.

There is no object in having an intermediate court

of appeals if litigants have an absolute right of appeal from the intermediate court to the Supreme Court. An absolute right of appeal, as a practical matter, would mean two appeals instead of one. Instead of dispatch such a system would breed delay. American concepts of justice do not require more than one appeal. Therefore, it is essential that an appeal from the intermediate court to the Supreme Court be allowed only at the discretion of the Supreme Court. The procedure for applications for leave to appeal and for appeals when allowed from the intermediate court should be as inexpensive and speedy as will be commensurate with a proper presentation of the problems involved.

Special-interest legislation granting appeals to the Supreme Court as a matter of right should be avoided, as such statutory exceptions tend to proliferate and eventually neutralize the gains anticipated at the beginning of a two-level system.

April 2, 1979

The Honorable Terry Gardiner
Speaker of the House of Representatives
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 104 am

Dear Speaker Gardiner:

This correspondence probably should have stayed in my "out" basket for a few days, but I have decided to send it now because I have some apprehension that the court of appeals bill may pass this session and I wanted to be sure that I got my comments in for whatever they may be worth.

I should say that Senator Ziegler asked for my comments while the bill was still in the Senate. Unfortunately, I did not review the bill as closely as I should have. There are several provisions in that bill that are just plain bad business.

Section 22.07.020 (b) in the bill provides:

> "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 superior court for a trial de novo in whole or in part."

Why in the hell shouldn't the district courts mistakes be remanded to it for correction? The superior court has to correct its own mistakes and I think the district court should too. There are already too damn many cases filed in the superior court that should be filed in district court. There is absolutely no justification for that kind of appellate jurisdiction. Normal accepted practice is for the appellate court to affirm or reverse and remand for whatever relief is necessary, including a new trial. I can conceive of no reason for those cases to be handled by the superior court on remand from the court of appeals.

On another subject, it seems to me that, given the high cost of government, the legislature ought to take a hard look at appellate jurisdiction generally. For instance, Sec. 22.15.240 provides that either party may appeal a judgement of the district court to the court of appeals "where the amount in controversy is not less than $50.00". An appeal as of right certainly need not be available where the sum in controversy is less than $1,000.00.

Section 22.05.010 provides that the Supreme Court may review a final decision of the court of appeals "on its own motion or on application of a party under AS 22.07.030." Again, I can see no reason for the Supreme Court to be reviewing cases "on its own motion." If all the parties are satisfied, the court system ought to just "butt-out."

Section 22.05.015(b) provides that the Supreme Court may take jurisdiction of a case pending before the court of appeals if either one of two conditions exist. One of the main justifications for this bill is that the Supreme Court is over-worked. It seems to me that if there is a substantial lack of confidence that the court of appeals can do the job, we ought to look for a new solution. This one, as presently constituted, is just going to add to the merry-go-round. Any appeal from the court of appeals to the Supreme Court ought to be strictly discretionary. Section(c) ought to be eliminated altogether. It is entirely possible for the appellate process to get so screwed up over which court has jurisdiction over which case, that not even the judges will know what is going on.

Section 9(b) provides that a defendant may appeal his sentence in any case where the imprisonment exceeds forty-five days (45) (down from 180). Section 24(a) gives the same right of appeal in cases from superior court (45 days, down from one year). Again, one of the main justifications for this legislature was that the Supreme Court could not keep up with the existing caseload. The answer to that appears to have been to add another level to the court system and increase the workload. With all due respect, Mr. Speaker, that is bullshit.

You will do the public in this State a great service if you can find a committee where this bill can reside comfortably until it dies a natural death or is substantially re-written.

Very truly yours,

Thomas E. Schulz

TES/kod

Alaska Court System

State of Alaska

303 K STREET
ANCHORAGE, ALASKA 99501

RICHARD P. BARRIER
DEPUTY ADMINISTRATIVE DIRECTOR

OFFICE OF ADMINISTRATIVE DIRECTOR

(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

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	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 & 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 1978 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

CASE PENDING: DECEMBER 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	Total Appeals	Petitions for Review	Originals	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

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.

RDB

ALASKA SUPREME COURT December 31, 1978	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING 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 Merits	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.

member file
SB 104 am

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE 283-7167

April 17, 1979

Representative Terry Gardner
Speaker of the House of Representatives

Representative Charles Parr
Chairman - House Judiciary Committee

Representative Hugh Malone

Representative Patrick McConnell

Senator Clem Tillion
President - State Senate
Pouch B
Juneau, Alaska

Dear Mr. Parr:

Enclosed please find a copy of a resolution which was passed by the Kenai Peninsula Bar Association at its April 13, 1979 meeting, supporting the creation of an intermediate criminal appellate court. We felt that it was important for the legislature to be aware that this bar association is very much in favor of the creation of an intermediate court of criminal appeals, in light of the strong opposition to such a court voiced by the Tanana Bar Association.

Very truly yours,

Ken Cusack

KENNETH J. CUSACK
President
Kenai Peninsula Bar Association

KJC/aj

Encl.

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7564

RESOLUTION

Upon motion duly made, seconded, and passed by the Kenai Peninsula Bar Association, it was resolved:

The Kenai Peninsula Bar Association supports the establishment of an Alaska Intermediate Court of Appeals for criminal cases, provided that review from said appellate court to the Alaska Supreme Court shall be by writ of certiorari and not by automatic right of appeal.

RESOLVED this 13th day of April, 1979.

KENNETH J. CUSACK, President
Kenai Peninsula Bar Association

STATE
of ALASKA

MEMORANDUM

Minutes file
SB 104

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

DATE: April 20, 1979

FILE NO:

TELEPHONE NO:

SUBJECT: Senate Bill 104 am (Establishing Court of Appeals)

FROM: Stuart C. Hall, Commissioner
Alaska Public Utilities Commission

Cheri C. Jacobus, Chairman
Alaska Pipeline Commission

Pursuant to your conversation with Commissioner Hall on Friday, April 6, in Juneau, we submit our comments on SB 104. This is not a position paper of the Department of Commerce and Economic Development nor of the agencies on which we serve; it represents the individual and collective concerns of the writers.

SB 104, establishing an intermediate appellate court, represents one of the options that the Judicial Council has had under consideration for some time to alleviate the workload of the Supreme Court, particularly in the area of the criminal appeals. The other options were: expansion of the membership of the Supreme Court to seven justices and creation of an appellate division of the Superior Court (as in New York State). Instead, the Judicial Council and the state court system opted for the intermediate appellate court. A significant number of other states provide for such a court. We have no position as to whether such a new court is wise or unwise.

Proponents of the legislation refer to this proposed new court as a "Court of Criminal Appeals" and indicate that this court was intended to provide appellate relief in the criminal law area only. The drafters of the legislation, however, have included in the new court's jurisdiction "appeals to the superior court from a decision of an administrative agency".

This concerns us because it creates a third level of appellate review of decisions of the regulatory commissions. We believe this is entirely unnecessary. If a third level of appellate review is added, we believe the APUC will require a third staff attorney to juggle the various cases under review, and this will contribute to "regulatory lag". The new court's jurisdiction will similarly impact the ATC, APC and ACFEC. The Supreme Court is not presently burdened by appeals from the APUC's decisions or those of any of the other principal regulatory agencies (ATC, APC, etc.). We believe only two levels of appellate review are required to ensure compliance with applicable statutes, constitutionally prescribed due process, etc. At the federal level, appeals from the decisions of the FCC, FTC, ICC, FERC and like agencies are taken directly to the Circuit Courts of Appeal. They do not start in the trial court of general jurisdiction, the federal district court. As the Jager case makes clear, to this point in time in Alaska, the Superior Court has acted as the intermediate appellate court. Jager v. State, 537 P.2d 1100, 1106 (Alaska, 1975). If an intermediate court of appeal is created, there is no need for the superior court to perform that function. Consequently, we believe the Superior Court should be bypassed in favor of review by the new Court of Appeals. Ideally, SB 104 am should be further amended to so provide, as should the Administrative Procedure Act (APA). We attach proposed amendments to SB 104 am accomplishing that purpose.

The Judiciary Committee should consider that different types of administrative appeals are heard by the courts under the APA, such as:

(1) appeals from the regulatory commissions;
(2) appeals from denials of various benefits, e.g., unemployment insurance, workmen's compensation, or those administered by the Department of Health & Social Services;
(3) appeals from adoption of regulations, or declaratory judgments concerning the regulations of the various administrative bodies, including the APUC, Department of Fish & Game, Environmental Conservation, etc.

Further SB 104 does not define "administrative agency".

We are advised that the drafters of this legislation did not intend that appeals from our decisions would have three appellate reviews. The effect of this bill, however, would be three appellate reviews. Another provision in the bill does allow the Supreme Court, by rule, to bypass the Court of Appeals for appeals from administrative agencies' decisions and further provides that those decisions would be heard by the Supreme Court after a Superior Court review. We do not regard this as the "clean" approach. We believe SB 104 should be amended to provide for direct appeals from the regulatory commissions' decisions to the Court of Appeals. The drafters concede that the approach in the bill as drafted is not a good one.

cc: Charles Webber, Commissioner
Dept. of Commerce & Economic Development

Keith Specking
Legislative Assistant to the Governor

Proposed amendments to SB 104am (Per Cheri C. Jacobus and Stuart C. Hall)

On page 1, line 25, after "agency", insert:

", other than those agencies set out in (e) of this subsection"

On page 2, between lines 7 and 8, insert:

(e) The court of appeals has appellate jurisdiction in all actions and proceedings commenced before, and all final administrative orders or decisions of, the Alaska Public Utilities Commission, the Alaska Transportation Commission, the Alaska Pipeline Commission and the Alaska Commercial Fisheries Entry Commission. However, the court may, in its discretion, remand a commission matter to the superior court for a trial de note in whole or in part.

On page 2, line 8, delete "(e)" and insert "(f)"

On page 13, between lines 23 and 24, insert:

* Sec. 26. AS 44.62.560 is amended to read:

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court, or by the court of appeals, of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

ALASKA PUBLIC UTILITIES COMMISSION
1100 MACKAY BUILDING
338 DENALI STREET
ANCHORAGE, ALASKA 99501
PHONE 276-0222

(b) The complete record of the proceedings, or parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in superior court, or the court of appeals, within 30 days after the appellant pays the estimated cost of preparing the complete or designted record or files a corporate bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, or the court of appeals, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court, or the court of appeals, may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court, or the court of appeals, may compel the agency to initiate action.

*Sec. 27. AS 44.62.570(a) is amended to read:

(a) An appeal shall be heard by the superior court, or the court of appeals, sitting without a jury.

ALASKA PUBLIC UTILITIES COMMISSION
1100 MACKAY BUILDING
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ANCHORAGE, ALASKA 99501
PHONE 276-6222

*Sec. 28. AS 44.62.570(h) is amended to read:

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court or of appeals judgment or agency order.

Renumber remaining bill sections accordingly

ALASKA PUBLIC UTILITIES COMMISSION
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Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.[1] Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

---

1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,[2] but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

---

[2] The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is $325,000. The annual operating expense is projected at $555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

Alaska State Legislature

HOME ADDRESS
P.O. BOX 65
GALENA, ALASKA 99741

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 465-3753

SENATOR
John C. Sackett
CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
LABOR & MANAGEMENT COMMITTEE

Senate

April 26, 1979

The Hon. Charlie Parr
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104

Dear Charlie:

This is in response to your letter of April 25 in which you have listed several questions that have arisen concerning Senate Bill 104. Based on the input I have received from a variety of sources, I believe all of the really critical questions have been more than adequately answered. I have reviewed all of your questions carefully, and will provide my comments to each of them.

(1) There seems to be no serious doubt that the Supreme Court is faced with a critically heavy workload that requires immediate legislative response. I am personally convinced that a Court of Appeals is the best solution. This solution is the one not only recommended by the American Bar Association, but is also the one successfully implemented in other states to meet similar workload problems.

(2) I do not believe that Alaska is ready for a Court of Appeals with full appellate jurisdiction. While the appellate caseload is greater than one court can handle, it is not yet large enough to justify two full appellate courts even if the state could afford it. I also believe that the jurisdiction of the Court of Appeals should be limited to criminal cases. Criminal cases, much more than civil cases, are likely to result in a final determination at the Court of Appeals level, thus providing a real workload reduction in the Supreme Court. I am confident that the Court of Appeals will be every bit as fair and just as the Supreme Court in handling these cases.

(3) If the jurisdiction of the Court of Appeals is limited to criminal cases, I think the Supreme Court will exercise review very sparingly. Examples that come to mind are cases where the Court of Appeals may have overlooked or misinterpreted an applicable Supreme Court decision or Legislative enactment. Parties, of course, should be able to apply to the Supreme Court for review of a Court of Appeals decision. The Court of Appeals should also be able to refer a pending case to the Supreme Court if the case involves unsettled major constitutional or legal questions.

(4) I see no problem with having District Court appeals, particularly in criminal cases, go directly to the Court of Appeals. With respect to administrative agency appeals, I am not convinced that the Superior Court should be bypassed. This is a question the legislature probably should address at some point, but I think any changes in the existing structure should be addressed in separate legislation, and for the time being these cases should continue to go first to the Superior Court and then directly to the Supreme Court.

(5) The question of whether the right of appeal should be abolished or expanded in certain cases is not one that should be addressed in this bill. My own view is that I would hate to see the existing rights of Alaska citizens curtailed.

(6) I appreciate that there are concerns about sentence appeals, but again I believe this is a totally separate issue that should be taken up in separate legislation. Even if the number of sentence appeals were substantially reduced, the need for a Court of Appeals would still exist.

(7) Senate Bill 104 preserves the current law restricting a justice or judge from being appointed to the Supreme or Superior Court if rejected at a retention election, and the bill simply adds the Court of Appeals to the other two courts. I certainly would have no objection, nor do I think the Court System would object, to an amendment adding the District Court.

(8) The question of whether a justice or judge should be allowed to be a delegate to a constitutional convention does not appear to be related in any way to the establishment of the Court of Appeals. This is a separate question and does not require immediate attention.

In summary, I believe that the establishment of the Court of Appeals is an immediate need and the timetables involved require action this session. Though the Court of Appeals will be new for Alaska, the concept is one that has been thoroughly tested elsewhere in the nation and proven to be effective.

In closing, Charlie, I am very aware of the several other priority bills that are still awaiting action in your committee, and in no way do I desire to interfere with the passage of these. But, as Senate Bill 104 has been a priority of mine throughout the session, I ask for your sincere consideration on this legislation so that perhaps it may result in fruition. I thank you for your time and cooperation with my request.

Very sincerely,

John

John C. Sackett

CHARLIE PARR

ALASKA LEGISLATURE

S. R. Box 50599
Fairbanks, Alaska 99701
456-5029

Pouch V
Juneau, Alaska 99811
465-3797

April 25, 1979

Honorable John C. Sackett, Chair
Finance Committee
Alaska State Senate
State Capitol
Juneau, Alaska 99811

Dear John:

I didn't get your letter about SB 104 (Court of Appeals) until I returned to my office late last night.

This bill has had four hearings, for a total of about six hours. Here are some of the questions which have surfaced:

1. Is this the best solution to the Court's problems?

2. Should the Court of Appeals have civil rather than criminal jurisdiction, or both?

3. Under what circumstances, and using what mechanism, should the Supreme Court review cases which have already been decided by the Court of Appeals?

4. Should appeals from district courts and administrative agencies go directly to the Court of Appeals (or to the Supreme Court or to Superior Court)?

5. Should there be a limitation on cases which can be appealed?

6. Is there a need to restrict sentence appeals, in light of past Supreme Court rulings?

7. Should a judge rejected by the voters be eligible for appointment to a different court?

8. Should a judge be allowed to be a delegate to a constitutional convention?

This is the most significant change to the court system proposed since statehood. The legislature is constitutionally mandated to establish courts and define their jurisdiction, and should take this responsibility seriously. It does not seem to me appropriate that the court system should be pushing us to take hasty action.

I have been looking for a way to set up the Court of Appeals now, without resolving all the major questions first. The idea would be to permit the Judicial Council to solicit applications for judgeships, review and make recommendations to the Governor so that he could appoint, with a delayed date for the court to begin operations. This would also give time for the administrative director of the court system to arrange for space, furniture, personnel, etc. Unfortunately I have not found a satisfactory way to do this.

As you may be aware, there are still several important senate bills to go through Judiciary Committee. It is possible to schedule another hearing on SB 104, but this would interfere with action on those bills.

I would be happy to discuss this with you personally.

Sincerely,

Charles H. Parr
Chair, Judiciary Committee

Alaska State Legislature

HOME ADDRESS
P.O. BOX 65
GALENA, ALASKA 99741

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 465-3753

Senate

SENATOR
John C. Sackett
CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
LABOR & MANAGEMENT COMMITTEE

April 24, 1979

Honorable Charlie Parr, Chairman
Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Charlie,

I would appreciate your consideration in scheduling Senate Bill 104, (Establishing the Court of Appeals), for hearing in your committee within the very near future.

This legislation is of priority interest to me, and your assistance would be most helpful. If you should have question regarding the bill, please contact me. Please notify my office if a hearing can be scheduled within the immediate future. Again, I thank you for your consideration and assistance.

Very sincerely,

John

John C. Sackett

To: Charlie
From: Peggy MWB
Date: April 19, 1979
Re: Small Claims Court Statistics-Request.
Sources for this Memo: Rick Berrier, Court System Liason Person & Alaska Statutes. Also Susan Burke, Court System.

1. Percent District Court Filings.

Note: District Court - normal civil procedure - jurisdictional amount = $10,000 or less.

Small Claims Court, which is a function of the District Court, has a jurisdictional amount of $2000. This figure was raised from $1000 by the Legislature in 1978. AS 22.15.040.

Small claims matters are heard by magistrates and district court judges.

Jurisdiction of District Court not include actions of an equitable nature. Jurisdiction includes: violations, misdemeanors, writs of habeas corpus.

2. Days between filiing and disposition.

Why does it take 24 more days to dispose a small claims matter in Anchorage than other civil matters:

A. Staff - there are: 8 magistrates in Anchorage*
4 " " Fairbanks
1 magistrate in Juneau
(these figures were provided by Berrier and Susan Burke and were their estimates-need to confirm)

*5 of the magistrates in Anchorage do night court - bail setting, and rotate back into day work on a schedule permitting them to adjust to the difference in work hours.

B. Case load - note the statistics on filings per month: Anchorage has 5 times the case load of either Juneau or Fairbanks.

3. Percent disposition for the Plaintiff.

At this point I can't surmise why these varying results are occurring.
A. Judges could be a factor.
B. Presence of attorney could be a factor.

4. Why do Small Claims take longer to dispose when these claims do not go to trial.

The statistics provided do not indicate that these actions have been joined. For example, if the statistics are based on the filing of a complaint, those cases where the defendant is never served and the case is ultimately dismissed because of that fact, would skew the results possibly accounting for the longer disposition time for those claims not going to trial. Other potential factors:
A. The parties could settle the case, but fail to inform the court.
B. The plaintiff could be dragging his heels, ie, the defendant does not answer the law suit, but the plaintiff takes a great deal of time to obtain his default judgement.
C. Cases which are not pursued by the plaintiff-or moved to be dismissed by the defendant-are ultimately dismissed by the Court. This is done pursuant to Civil Rule 41 (e). There it is required that the Court review its entire docket and dismiss those cases in which nothing has been done for a year. This action by the court is called "the call of the Calendar" and notice is provided to attorneys or parties,pro se. In accordance with the court rule, the court must do this at least semi-annually. If some judges are doing this more frequently than the rule requires, it could effect the statistics.

5. Conclusions. I realize that this matter is a part of our interim project, but I wanted to respond to your request to me on this matter. I shall keep a copy of this for our interim project.

Obviously my remarks herein are cursory, but I hope they are at least responsive to your initial work request.

cc. given to Rocky for interim coordination.

Peggy - pls enlighten me when you have time Charlie

Memorandum

Alaska Court System

RECEIVED
JAN 31 1979
Office of Administrative Director
Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE: January 29, 1979

FROM: Merle P. Martin MPM
Manager of Technical Operations

SUBJECT: Small Claims Data

Following is the data you requested:

1. Percent District Court filings that are small claims.

Location	1977	1978
Anchorage	51%	57%
Fairbanks	46%	51%
Juneau	78%	83%
TOTAL	53%	59%

#110 000 - District Court

Small claims are becoming a larger portion of District Court civil matters. However, a recent study of ours shows that, for those cases filed in Anchorage under normal civil (rather than small claims) procedure, 28 percent were less than $1,000 and 23 percent were between $1,000 and $2,000. It is too early to tell what effect the increase in the small claims limit to $2,000 will have on that 23 percent figure.

2. Filing per month.

masters magistrates

	Location	1977	1978	% Increase
8	Anchorage	224	325	45%
4	Fairbanks	42	60	43%
1	Juneau	46	63	37%
	TOTAL	312	448	44%

5 do night court - DAI / selling

The 1978 figures are only through the first nine months of the year. So the impact of the $2,000 limit is not included. Yet, even without the increases in small claims filings expected from the higher limit, in filings per month increased over 40 percent from 1977 to 1978.

Civil Rule 41 call of cal. want of prosecution

execution + exemptions with judgment

3. Days between filing and disposition.

Location	1977	1978	% Increase decrease
Anchorage	217	195	10%
Fairbanks	270	210	22%
Juneau	134	103	23%
TOTAL	213	184	24%

There has been a decrease in small claims disposition times. Small claims take 24 more days to dispose other than civil matters in Anchorage. However, small claims are disposed of faster in Fairbanks (29 days) and Juneau (208 days).

4. Trial Rate.

Location	1977	1978
Anchorage	14%	6%
Fairbanks	8%	3%
Juneau	8%	11%
TOTAL	12%	8%

The trial rate has decreased in Anchorage and Fairbanks and has increased in Juneau.

5. Percent disposition for the plaintiff.

Location	1977	1978
Anchorage	43%	50%
Fairbanks	32%	39%
Juneau	48%	57%
TOTAL	42%	49%

The Percent of dispositions in favor of the plaintiff increased in all three locations from 1977 to 1978. Interestingly, the percent of cases filed under regular civil procedure (rather than small claims) and for which the disposition is in favor of the plaintiff are higher in Anchorage and Fairbanks than the like percentage for small claims. Yet plaintiff disposition rate is higher for small claims than for other civil cases in Juneau. diff in judges?

cc: Leanne Culp

SMALL CLAIMS DATA -- ADDENDUM February 2, 1979

Small Claims disposition times for those cases going to trial are as follows:

	Average	Median
Anchorage	127	92
Fairbanks	127	120
Juneau	64	54

This is to be compared to Small Claims disposition times for those cases <u>not</u> going to trial as follows:

	Average	Median
Anchorage	233	105
Fairbanks	281	159
Juneau	140	39

settlement - not notify court
no answer, fail to default
for some time.

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 <u>other than delegate to a constitutional convention of this state or the United States</u> 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).

LA21 1366 12.54 JA01 0017 12.54 03/12/79

TO: FAIRBANKS DELEGATION & REP. MOSS

FROM: HUGH H. CONNELLY
TANANA VALLEY BAR ASSOCIATION
604 BARNETTE
FAIRBANKS, ALASKA 99701

RE: SB 104

MESSAGE: THE TANANA VALLEY BAR ASSOCIATION, WITH ONLY TWO DISSENTING VOTES OPPOSED PASSAGE OF SB 104 DURING THE CURRENT SESSION. WE REQUEST THAT IT BE CONSIDERED NEXT SSSION. WE WILL FOLLOW WITH A LETTER WHICH WILL HAVE NUMEROUS AMENDMENTS WHICH WE BELIEVE MERIT CONSIDERATION.

FBKS L10/AW/EOM

fr Bill file

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 Supreme 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

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* 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 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

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.

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

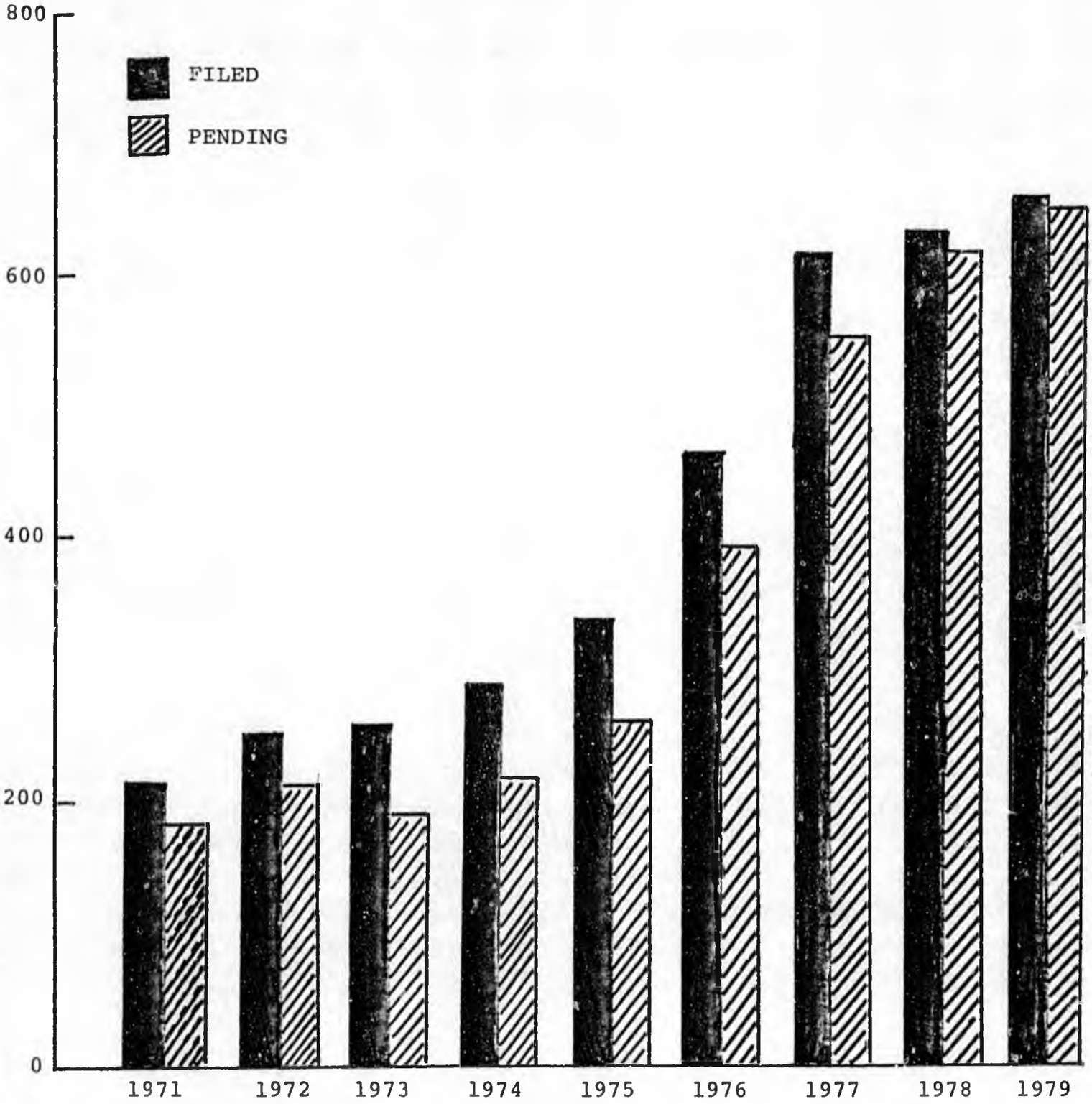
DISPOSITIONS BY TYPE OF DISPOSITION

(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



To: Rep. Ramona Barnes
From: staff
Date: March 3, 1980
Re: HCSSB 104 (Jud.) establishing an intermediate court of appeals

The creation by the Legislature of an intermediate appellate court has been proposed as a solution to problems currently confronting the Alaska Supreme Court. Civil cases have been neglected as the overburdened court copes with a multitude of the higher priority criminal cases. Those who favor establishing an intermediate appellate court cite the expanding volume of appellate litigation (compounded by the current "ban" on plea bargaining) and delays in the administration of justice. It has been projected that such an intermediate court will reduce the time between the submission of case briefs and final disposition.

Chief Justice Rabinowitz, in his State of the Judiciary address, spoke in support of establishing an intermediate appellate court, calling it "vital to viable solution to the problems of Alaska's burgeoning appellate caseload". The Alaska Supreme Court is a proponent of establishing such a court; in addition to statistical information provided by court system administrators, amendments to the enabling legislation currently before the Legislature have been proposed by the Chief Justice. More than twenty-seven states have created intermediate appellate courts in an attempt to improve their judicial systems.

There can be no doubt that something must be done to relieve the pressure on the supreme court, to expedite the handling of appellate litigation, and to eradicate delays in the administration of justice.

The question before us is whether or not the legislation proposed, to date, solves these problems. If HCSSB 104 does not make our judicial system more efficient, we need to look elsewhere for a solution. We will need to integrate our approach to the judicial system if we expect it to function effectively as a whole.

You have been supplied with statistics by the court system concerning past, present, and projected supreme court caseloads. Two things seem evident on the basis of these figures. First, the members of the supreme court will be working at least as hard as they are now, even if an intermediate appellate court were to be created. Although the proposed jurisdiction of the intermediate appellate court would relieve the supreme court of many time consuming tasks, the anticipated increase in the supreme court caseload will more than compensate for any relief provided by the intermediate court. Enacting HCSSB 104 will not increase the efficiency of the supreme court significantly, it will merely offset the increase in appellate litigation and attendant backlog. Secondly, an intermediate court of appeals would not rectify the injustice to our citizens resulting from the delay in the courts; while enactment of HCSSB 104 would reduce the appeal time, it would not reduce the intolerable delay of two years or more at the trial courts. Approaching the problem of this frustrating delay in a fragmented fashion will result in continued inefficiency in the administrati of justice.

There are, in addition, specific portions of the existing enabling legislation which bear further examination and improvement.

1.) Section 1, AS 22.07.020 (d) specifies that appeals of district court criminal cases are appealable as a matter of right only to the superior court. Traditional standards of justice, maintains Chief Justice Rabinowitz, provide that more than one judge be involved in a full appellate review. Thus, district court criminal cases should be appealable from the superior court to the court of appeals (for full appellate hearing) as a matter of right.

2.) Section 15, AS 22.15.240 (a), as amended by HCCSB 104, removes the monetary restriction on appeals to the superior court of district court judgements in a civil action. The existing statute requires that the amount in controversy be at least $50.00. An increase in the amount has been suggested by some. The committee substitute removes the monetary requirement altogether. This will very likely increase the number of appeals.

3.) Section 15, AS 22.15.240 (b), (see also Section 8, AS 22.10.020 (a)) provides for a sentence appeal limit of 90 days, which is an increase over the 45 days provided by SB 104, and half the number of days provided by existing law. It is anticipated that the supreme court caseload will increase as a direct result of reducing the limit on sentence appeal.

One of the most complex questions raised by this proposed legislation concerns limiting appeals of right to the supreme court. One of the main purposes of creating an intermediate appellate court is ostensibly to enable the supreme court to cope more easily with its caseload. Retention of appeals of right to the supreme court in all cases would defeat that purpose. If appeals of right to the supreme court are abolished, and the intermediate appellate court becomes the court of final appellate jurisdiction,

this would be a direct contravention of the Constitution of the State of Alaska, Article IV, section 2. The Supreme Court, however, in State v. Browder, 486 P. 2d 925 (Alaska 1971) interpreted the exercise of the power to grant certiorari to be equivalent to the exercise of final appellate jurisdiction, thus eliminating, for the time being, any constitutional problem with a grant of "final" appellate jurisdiction to an intermediate appellate court. The purpose of Article IV, section 2, of Alaska's Constitution is to guarantee the right of appeal to the supreme court, the court of final appellate jurisdiction. That constitutional right would not be explicitly guaranteed under HCSSB 104, in that the supreme court exercises its discretion to hear any case, and may choose not to exercise its jurisdiction. If review by the supreme court need be available only at the discretion or with the permission of that court (as is the case at the Federal level and in many states), by certiorari or similar procedure, then perhaps the Alaska Constitution should be amended to clearly reflect this.

In conclusion, it seems that HCSSB 104, if enacted, will not significantly alter the substantial problems in justice operations of Alaska. It will not relieve the overburdened supreme court; it will not facilitate the citizens' access to the courts (due to the delay at the district court level), and it will not change those fundamental factors which prevent a reasonable, speedy, and economical administration of justice. If justice delayed is justice denied, then we had best commit ourselves to improving the quality of justice in our state. This cannot

be achieved merely by creating another level of courts. It can only be done by means of a systematic, integrated approach to our judicial operations which will isolate, and prescribe remedies for, the ills of our court system. We must get at the source of the problems which have caused our supreme court to become so overburdened with appellate litigation that they can no longer insure that each case which comes before them is given the careful analysis and scholarly appellate scrutiny it deserves. We may have to engage in an innovative, major revision of our judicial system in order to keep abreast of the times. Although that is no small task, the end result will be superior to that of a piecemeal attempt to correct the symptoms of the problems confronting us.

For inclusion in SB 104

* Sec. ___. AS 22.25.011 is amended by adding a new subsection to read:

(b) A justice or judge may not be required to make contributions under (a) of this section if at the time of his appointment he is holding a judicial office to which benefits under this chapter apply and to which he was appointed before July 1, 1978.

To Charlie
From Peggy

Charlie – Hugh Malone wants me to add above to (H) CS for SB 104. If not added older superior Ct. judges would take a cut in pay to be an appeals Court judge.

Should I add?

Susan Burke would like to see my draft before hearing. It is ready and I would like to get her thoughts AS I put together so quickly.

Should I show it to her?

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.

Alaska State Legislature

House of Representatives

Committee on Judiciary

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 29, 1980

M E M O R A N D U M

TO: All Members of the House

FROM: Charles H. Parr, Chairman CP

SUBJECT: HCSSB 104

You have all received a letter from Chief Justice Rabinowitz dated February 27 proposing two amendments to HCSSB 104. This memorandum is to inform you of the Judiciary Committee's reasons for the current form of the bill.

The first amendment proposed by the Chief Justice would require that a District Court Judge have only two years residency and two years practice of law before appointment. It was the view of the Committee that the requirement of five years residency and three years practice of law was not excessive when one considers the importance of a judicial post and the $57,000 salary received by a District Court Judge.

The second amendment would provide an automatic right to two appeals upon conviction for a misdemeanor in District Court. This did not seem to be justifiable since presently there is only one right of appeal from a felony conviction in the Superior Court. There is little logic permitting two appeals of a 30-day sentence and only one of a seven-year sentence.

The Judiciary Committee gave long and serious consideration to CSSB 104 last session, included it in public hearings in Ketchikan, Anchorage, Fairbanks, Nome and Bethel, and did more work on the bill in this session. It is the Committee's belief that if one accepts the need for an intermediate court of appeals -- then this is a good bill.

CHP:vc

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 6, 1979

FROM: Susan Burke
Deputy Administrative Director

SUBJECT: Court of Appeals
(Senate Bill 104)

At your request I have compiled the primary reference documents that I used in drafting the court of appeals bill. These are attached and include:

(1) statutes from several states providing for intermediate appellate courts;

(2) statistical and other materials from the Clerk of the Supreme Court; and

(3) a copy of the report prepared by the Idaho committee recommending a court of appeals for Idaho.

You have also asked for a brief review of the reasons for choosing various approaches in the draft bill, particularly in regard to the division of jurisdiction.

There were three primary considerations in determining the proposed jurisdiction for the court of appeals:

(1) Cases within the jurisdiction of the court of appeals should be <u>clearly</u> defined by class or type in order to avoid time-consuming disputes over jurisdictional questions.

(2) Jurisdiction between the two courts should be divided in a way that provides an equitable and reasonable workload for each court.

(3) The class of cases chosen for court of appeals jurisdiction should include cases that are most likely to involve merely a review of whether the trial court correctly applies established law to the facts. If too many of the cases within the jurisdiction of the court of appeals involve areas of unsettled law, too many court of appeals decisions will require additional review by the supreme court. This result in needless delay to litigants and an extreme waste of judicial resources.

Criminal cases appeared to best meet these three requirements. The division between civil and criminal cases is a very clean one, and there is no doubt about whether a case falls in one category or the other. If certain types of civil cases were chosen for the court of appeals jurisdiction, there could be room for manipulation of jurisdiction by parties. For example, if court of appeals jurisdiction were to consist only of motor vehicle tort cases, a plaintiff wishing to avoid court of appeals jurisdiction would only need to add to his complaint a products liability claim against the auto manufacturer, and the appeal would have to go to the supreme court.

It is impossible for parties to combine civil and criminal causes of action in this way, and thus a split of jurisdiction along these lines is preferable.

Based on the historical ratio between civil and criminal appellate filings in the Alaska Supreme Court, it appeared that the criminal/civil division of jurisdiction would provide a high likelihood that each court will be able to handle its caseload. Excluding sentence appeals and petitions for review, full criminal "merit" appeals have maintained a fairly constant ratio to civil merit appeals over the last several years:

	CRIMINAL	CIVIL
1975	34%	66%
1976	36%	64%
1977	38%	62%
1978	36%	64%

If sentence appeals are included in "criminal" cases, the percentages are as follows:

	CRIMINAL & SENTENCE	CIVIL
1975	39%	61%
1976	41%	59%
1977	47%	53%
1978	44%	56%

Sentence appeals, however, do not require as much time to decide as a full merit appeal. We have estimated that a sentence appeal takes an average of 25% less court time than a merit appeal. (The trial court records are substantially less voluminous, and the amount of legal research required is much more limited). Taking this into account would reduce the above percentages for

criminal and sentence appeals by one to two per cent. Finally, the breakdown of criminal and civil petitions for review is available only for 1978. During 1978, 104 civil petitions for review were filed and 52 criminal petitions. When these are added to the 1978 figures above, and adjustments made for sentence appeals, the percentages for civil and criminal (including bail, habeas corpus, past-conviction relief, etc.) the breaddown for total 1978 filings is as follows:

	Filings	Percent
Criminal	246*	41%
Civil	360	59%

* 52 Sentence Appeals were reduced by 25% to 42.

It is expected that a three judge court of appeals should be able to decide more cases than a supreme court of the same size, for several reasons: First, the court of appeals will not be exercising a law-making function as does the supreme court. Second, the court of appeals will not have the additional constitutional responsibilities that our supreme court has; namely, administration of the state court system and promulgation of rules of procedure. Finally, some cases within the proposed court of appeals jurisdiction will be certified to the supreme court prior to consideration by the court of appeals. Without these considerations, a caseload ratio equal to the judge/justice ratio would be appropriate. This ratio of three to five is almost exactly equal to the 41% to 59% ratio of civil and criminal case filings for 1978.

(That is, with a total of eight justices and appellate judges, the supreme court will have 60% of the total judicial personnel). Although there is no accurate way to predict how many more cases a court of appeals judge can decide that a supreme court justice, we believed that a higher than three to five ratio would best result in a truly balanced caseload. Further, we determined that it was preferable to err on the high side rather than low side, mainly because the court of appeals will be a court of limited jurisdiction. Since the supreme court in effect is a "general jurisdiction" appellate court, it would be legally proper for it to take any excess cases that the court of appeals may not be able to decide expeditiously. (Legislation from several other states does provide for transfer of cases from the court of appeals to the supreme court to relieve workload imbalances that may occur from time to time).

For all of these reasons, it was determined that the court of appeals could very likely also handle the district court appeals that now go to the superior court and might be able to handle administrative agency appeals as well. Because of the uncertainty with respect to the ability of the court of appeals to handle the administrative agency cases, the transferability provision was included in the bill. This would permit the supreme court to transfer these cases to the court of appeals if and when it appeared the court of appeals could manage them.

Finally, a criminal appeal is much more likely than a civil appeal to involve settled principles of law, with the only issue being whether the lower court misapplied the law to the facts of the case. Similarly, within the general class of civil cases, administrative agency appeals very frequently involve the single question of whether there was sufficient evidence to warrant a factual finding and a reasonable basis in established law for the agency's decision.

In preparing the draft, none of the statutes from other states that I reviewed appeared to me to be particularly good drafting models, and were not compatible with Alaska's legislative drafting style. Some were too specific and included purely procedural matters that in Alaska should be in court rule; others seemed not specific enough in some areas and left too much unsaid, or they were poorly organized and poorly drafted. I did include several provisions from other states' statutes, but it would require an even more extensive memorandum than this to detail why some provisions were used and others rejected. I have attached copies of the statutes from which I did take some provisions. These provisions have been marked on the copies and relate mainly to the transfer of pending court of appeals cases to the supreme court and discretionary review of final decisions of the court of appeals.

For the most part, once the supreme court determined what jurisdiction to recommend for the court of appeals, most of the work for me was purely a matter of technical drafting with additional final editing by the Legislative Affairs Agency prior to introduction.

Please let me know if you would like additional explanations.

SB/pmr

P.S.: I have also attached the following materials:

(1) Monthly supreme court statistical reports for January, February and March, 1979;

(2) A discussion of 1978 cases in the affirmed in part/reversed in part category, which provides some additional insight into the reversal rates;

(3) Two copies of the 1977 Supreme Court workload study; and

(4) Two copies on a section to be included in the 1978 Annual Report, updating the 1977 study.

(5) A marked up copy of SB 104 am in which I have hand-written a number of possible language changes that would tighten up the jurisdiction sections of the bill and remove the flexible transfer provisions.

Parr's folder

Rocky - Held for Tuesday

Supreme Court
State of Alaska

March 20, 1979

CHIEF JUSTICE
JAY A. RABINOWITZ

JUSTICES
ROGER G. CONNOR
ROBERT BOOCHEVER
EDMOND W. BURKE
WARREN W. MATTHEWS JR

P. O. BOX 850
FAIRBANKS, ALASKA
99707
907-452-1559
907-456-5201

The Honorable Charles H. Parr
Chairman, House Judiciary Committee
Mail Stop Number 3100
Pouch V
Juneau, Alaska 99811

Dear Representative Parr:

I received a copy of the letter of March 9, 1979, addressed to you by the four District Court Judges - Miller, Connelly, Clayton and Cline. I shall not attempt to address each paragraph of the letter separately as it would take an undue amount of your time.

Generally, the letter contends that Acting District Court Judges and Acting Magistrates are performing judicial services in the State. It is interesting to note that the Supreme Court has not received any complaints on this matter from litigants. Obviously, in a State as large as ours, it is impossible at this time and within the financial constr ints dictated by necessity to furnish judges who are lawyers in all areas and at all times. Magistrates and Acting Magistrates, however, do not hear contested cases other than small claims, unless the parties consent. They do handle a host of lesser functions.

We have attempted to streamline the judicial system by assigning single Superior Court Judges at major locations. In those instances, to utilize judicial time adequately, the Judges have travelled to various other communities for the purpose of providing judicial services. Obviously, when the

Judge is away from his home community such as Sitka, Bethel, Kodiak, Kenai and Nome, it is necessary that someone be able to handle the judicial functions in his or her absence. This is accomplished by the use of Magistrates. In many circumstances, these Magistrates are utilized primarily to perform other valueable services to the Court System. They additionally perform services as Magistrates to assist in this manner.

Without the flexibility whereby the Superior Court may appoint Acting District Court Judges, and the Presiding Superior Court Judges may appoint Magistrates, the system could not function efficiently. To substitute legally trained District Court Judges in every instance would involve an enormous expense and one, in my opinion, which is not justified at this time. The primary rationales for the use of Acting District Court Judges and Acting Magistrates is to enable our trial judges to meet their constantly expanding caseloads and allow the Alaska Court System the flexibility to meet its obligations to bring judicial services to Alaska's citizens.

I am indeed sorry that your valuable time has been taken up by this matter and regret that the District Court Judges did not see fit to advise me of their suggestions before writing to you. If you wish to have a more detailed response, I will be pleased to furnish it to you.

Sincerely yours,

Jay A. Rabinowitz
Chief Justice
Supreme Court of Alaska

JAR:dw
cc: Members of House Judiciary Committee
Members of Senate Judiciary Committee
Alaska Judicial Council
Local Representatives and Senators
Hon. Patrick M. Rodey, Senator
Hon. Mary Alice Miller
Hon. Hugh H. Connelly
Hon. Monroe N. Clayton
Hon. Stephen R. Cline
Justice, Supreme Court

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

Alaska Statutes

Title 22. Judiciary.

Chapter
05. The Supreme Court (§§ 22.05.010 — 22.05.160)
10. The Superior Court (§§ 22.10.010 — 22.10.190)
15. District Courts (§§ 22.15.010 — 22.15.350)
20. Officers and Employees (§§ 22.20.010 — 22.20.140)
25. Retirement and Death Benefits (§§ 22.25.010 — 22.25.090)
28. Contributory Judicial Retirement System (§§ 22.28.010 — 22.28.130)
30. Judicial Qualifications (§§ 22.30.010 — 22.30.080)

Chapter 05. The Supreme Court.

Section
10. Jurisdiction
20. Composition and general powers
30. Session of court
40. Effect of adjournment
50. Process
60. Seals of court
70. Qualifications of justices
80. Vacancies
90. Oath of office
100. Approval or rejection
110. [Repealed]
120. Impeachment
130. Restrictions
140. Compensation
150. Administrative director
160. [Repealed]

Sec. 22.05.010. Jurisdiction. (a) The supreme court has final appellate jurisdiction in all actions and proceedings. The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction. Each justice may issue a writ of habeas corpus, upon petition by or on behalf of any person held in actual custody and may make the writ returnable before the justice himself or before the supreme court, or before any judge of the superior court of the state. An appeal to the supreme court is a matter of right, except that the state shall have no right of appeal in criminal cases, except to test the sufficiency of the indictment or information and under (b) of this section.

(b) The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds, the supreme court may sit in divisions. (§ 1 ch 50 SLA 1959; am § 1 ch 117 SLA 1969)

Revisor's note. — Chapter 50 SLA 1959 implemented the constitution by providing for the establishment of the supreme and superior court system under the constitution. It was designed to accomplish the transfer of judicial functions within the three-year transition period contemplated by the Statehood Act, P.L. 85-508, July 7, 1958, with provision being made for a more rapid transfer if the President sooner ended

trict Court so that it could enter fresh decree from which timely appeal could be taken to Court of Appeals. Pennsylvania Public Utility Commission v. Pennsylvania R. Co., Pa.1965, 86 S.Ct. 423, 382 U.S. 281, 15 L.Ed.2d 324.

Since the district court evinced its realization that its ordered reapportionment could not be sustained as basis for conducting 1966 election of Alabama legislators, and avowedly intends to take some further action should reapportioned Alabama Legislature fail to enact a constitutionally valid permanent apportionment scheme in the interim, the Supreme Court affirmed the judgment, and remanded the cases for further proceedings. Reynolds v. Sims, Ala.1964, 84 S.Ct. 1362, 377 U.S. 533, 12 L.Ed.2d 506, rehearing denied 85 S.Ct. 12, 13, 379 U.S. 870, 871, 13 L.Ed.2d 76, 77.

Where District Court erred in holding that Interstate Commerce Commission's order, establishing joint rates for through routes and apportioning such joint rates so as to assist financially weak carrier, was prohibited by section 15(4) of Title 49, preventing Commission from establishing through routes, and joint rates applicable thereto, for purpose of diverting traffic to lines of financially weak carrier, United States Supreme Court would remand case for further proceedings without considering contention that Commission's order was not supported by essential findings or substantial evidence justifying continued operation of carrier sought to be assisted. U. S. v. Great Northern Ry. Co., Minn.1952, 72 S.Ct. 965, 343 U.S. 562, 96 L.Ed. 1142, rehearing denied 73 S.Ct. 4, 344 U.S. 848, 97 L.Ed. 650.

Where District Court denied injunction abolishing segregation in South Carolina school and issued injunction to equalize educational facilities and ordered defendant school officials to report within six months the action taken to equalize facilities, and report was filed pending appeal by plaintiff Negro school children, but was not considered by District Court, Supreme Court would not consider questions raised on appeal but would vacate judgment and remand case to District Court to take whatever action might be deemed appropriate in the light of the report. Briggs v. Elliott, S.C.1952, 72 S. Ct. 327, 342 U.S. 350, 96 L.Ed. 1692.

Where suit by Georgia corporation to enjoin Revenue Commissioner from alleged illegal assessment of taxes was dismissed by United States District Court without consideration of corporation's contention that Commissioner was bound

by prior decree entered by District Court and affirmed by Supreme Court, upon determination that District Court did in fact have jurisdiction of cause, case would be remanded to District Court. Georgia R. R. & Banking Co. v. Redwine, Ga.1952, 72 S.Ct. 321, 342 U.S. 299, 96 L. Ed. 335.

Where appeal to Supreme Court from District Court for District of Columbia was unauthorized, cause was remanded in order that a new judgment might be entered from which an appeal could be perfected to Court of Appeals for District of Columbia. U. S. v. Belt, App.D.C.1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1559.

Where three-judge court heard case but such court and the Circuit Court of Appeals erroneously decided that the District Judge alone had jurisdiction, and that the judgment was appealable to the Circuit Court of Appeals, and the Supreme Court decided that case was proper one for three-judge court and vacated judgment below, but a direction to the Circuit Court of Appeals to dismiss appeal would terminate the litigation because the time within which a direct appeal might have been brought to the Supreme Court had elapsed, the Supreme Court in order to preserve right to appeal, remanded cause to the District Court for entry of a fresh judgment from which a timely appeal might be taken. Query v. U. S., S.C.1942, 62 S.Ct. 1122, 316 U.S. 486, 86 L.Ed. 1616.

Where statutory three-judge court dismissed complaint in suit to enjoin enforcement of federal administrative regulation, and plaintiff took direct appeal to United States Supreme Court, but former section 380a of this title [now this section and sections 2101, 2282 and 2284 of this title], was inapplicable, Supreme Court would vacate the decree below and remand the cause for further proceedings to be taken independently of said section. William Jameson & Co. v. Morgenthau, App.D.C.1939, 59 S.Ct. 504, 307 U.S. 171, 83 L.Ed. 1189.

Where the three judges sitting in the District Court refused an injunction against the enforcement of an order of a state Corporation Commission, on the ground they had no authority to grant it, the Supreme Court, on reversing that decision, will remand the cause to the District Court for trial, since generally it is not desirable that the Supreme Court pass on such matters until they have been dealt with below. Oklahoma Natural Gas Co. v. Russell, Okl.1923, 43 S.Ct. 353, 261 U. S. 290, 67 L.Ed. 659.

107. Costs

Costs were awarded against appellants who erroneously brought case in District Court of three judges, and, upon adverse decree, appealed to Supreme Court, which, though without jurisdiction, vacated decree and remanded cause in order to save to appellants their proper remedies. Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., Okl.1934, 54 S.Ct. 732, 292 U.S. 386, 78 L.Ed. 1318.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for

decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., §§ 340 and 347 (Mar. 3, 1911, c. 231, §§ 239, 240, 36 Stat. 1157 [derived from Mar. 3, 1891, c. 517, § 6, 26 Stat. 828]; Feb. 13, 1925, c. 229, § 1, 43 Stat. 938; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of Title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28 U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of Title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement. 80th Congress House Report No. 308.

Cross References

Appeal from courts of appeals in bankruptcy cases, see section 47 of Title 11, Bankruptcy.

Detention of suspect security risks, review by Supreme Court upon certiorari or certification as provided in this section, see section 821(d) of Title 50, War and National Defense.

Economic poisons, registration of; review by Supreme Court upon certiorari or certification, see section 135b(d) of Title 7, Agriculture.

Quorum of Supreme Court justices, see section 2100 of this title.

Review generally, see section 2101 et seq. of this title.

Review of appeals of orders of Secretary of Health, Education, and Welfare respecting approval of construction projects for State mental retardation facilities and community mental health centers, see section 2004 of Title 42, The Public Health and Welfare.

Review of appeals of orders relating to use of pesticide chemicals on raw agricultural commodities, see section 346(a) (i) of Title 21, Food and Drugs.

Time for appeal or certiorari, and stay, see section 2101 of this title.

Vesting and liquidation of Bulgarian, Hungarian, and Rumanian property, final orders or decrees of district courts of the United States reviewable as provided in this section, see section 1631e of Title 22, Foreign Relations and Intercourse.

Writs, see section 1651 of this title.

Rules of the Supreme Court

Procedure generally on appeal, writ of certiorari, or certification of questions, see Rules of the Supreme Court.

Supersedeas on appeal and stay pending review on certiorari, see rules 18 and 27.

Federal Rules of Civil Procedure

Power of appellate court to stay proceedings not limited by Rule 62, see Rule 62(g).

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SB 104 am

Hugh Connelly – TVBA
36-2 vote

Oppose passage this session.
Need more input –
major change, impact on no of people
Ak Bar Assn convention June
Bar comm study

Specifics:
p 1, line 24-25 Supreme Court instead of appeals
" 11-12 first judge below
" 26- Appeals to superior court, remand to district court
p 2, Supreme Court should not determine what its jurisdiction is – leg does
2, line 13 –
3, line 17 – "in any court" of the state
4, line 17-18 – except ion for constitutional convention
4, line 24-28 – split in committee, as to 6 mos or 1 yr, apply to entire court
5, line 11 – strike "on its own motion, or"
5, " 27 may be one-sided
8, " 23-28 strike "sum less than $50"
8, 23-28 ~~to~~ appeal straight to supreme court
9, line 4 – sentence appeal – 45 days
13 " 9-11
45 days or more which is not susp,
180 " " " whether or " "
Comm on Judicial Qual include member from court of appeals

Millard Ingraham -

: delay -

issue "per curiam" opinions help use panels

4/21/79

Appeals bill heads for battle on House floor

Associated Press

Juneau — Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

The controversy centers on the question of whether some criminal defendents should give up their current right to two appeals.

The legislation, which passed the Senate last session, calls for creation of a court of appeals to handle all criminal appeals. With establishment of the new court, the Supreme Court would handle only civil cases.

Three justices would sit on the [illegible] which would cost the state an estimated $619,000 a year to operate, according to Art Snowden, administrative director of the court system.

MONTGOMERY

"In essence aren't we really establishing two Supreme Courts, one to deal with civil cases and one to deal with criminal cases?" asked Rep. Joe Montgomery, R-Anchorage, during a Finance Committee meeting on the bill Thursday.

The legislation would allow criminal cases to be appealed only as far as the proposed court of appeals, making it the top court for criminal cases.

However, Rep. Charlie Parr, D-Fairbanks and chairman of the Judiciary Committee [illegible] which spent long hours rewriting the Senate bill, said in a few specific cases where the appeals court certifies a constitutional issue is involved the case could go to the Supreme Court.

PARR

The area where several committee members voiced disagreement concerns misdemeanors.

Under the bill, if a person is convicted for a misdemeanor, such as drunk driving, he could appeal only to the Superior Court. He would not not have an automatic right to appeal to the new court, whereas currently he the right to appeal twice — first to the Superior Court and then to the Supreme Court.

That means a person convicted of a misdemeanor could appeal only from a single-judge court to another single-judge court.

Several committee members said they think that is wrong, but they agreed to fight the issue on the House floor.

Snowden said the Supreme Court also is opposed to the one-appeal provision. "We feel people should have the right to appeal to a tribunal," Snowden said.

Regardless of the outcome of that issue, the bill appears headed for a free conference committee because of other changes the House made in the Senate version.

Snowden told the committee the bill is badly needed because the Supreme Court's workload has increased substantially over the past few years and a large backlog of cases has resulted.

"I frankly fear for the quality of the Supreme Court decisions," Snowden said. He said that during the past year he continually has had to cut off paychecks of justices on the high court beca e they have exceeded the time limit for opinions.

State law requires that a draft opinion be in circulation within six months. If the opinion is not, the salary of the justice assigned to write the opinion is withheld.

Snowden said the court system has two major objections to the bill: allowing only one appeal for misdemeanor offenders and requiring five years of residency for District Court judges.

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Associated Press Writer

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WILLIAM M. ERWIN

April 4, 1979

Representative Fred E. Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.

2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.

3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeals from administrative agencies.

4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.

6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS

L. Ames Luce
President

LAL/cb

SB

104

#3

PARR

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L. James Luce
President

LAL/cb

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7564

RESOLUTION

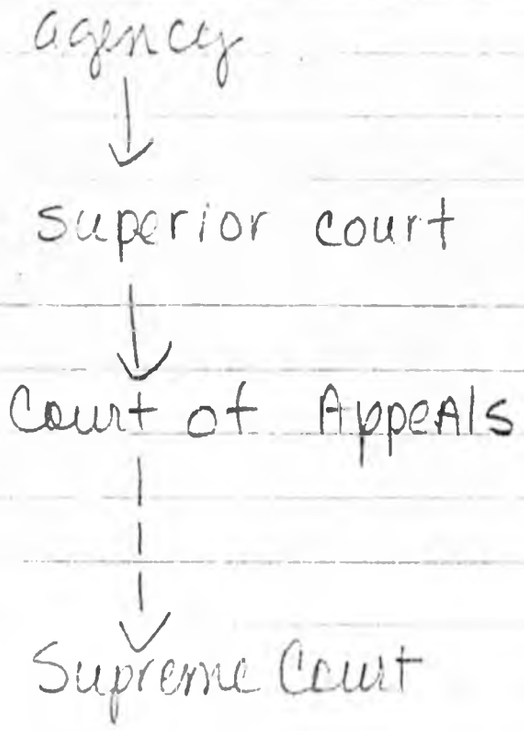
Upon motion duly made, seconded, and passed by the Kenai Peninsula Bar Association, it was resolved:

The Kenai Peninsula Bar Association supports the establishment of an Alaska Intermediate Court of Appeals for criminal cases, provided that review from said appellate court to the Alaska Supreme Court shall be by writ of certiorari and not by automatic right of appeal.

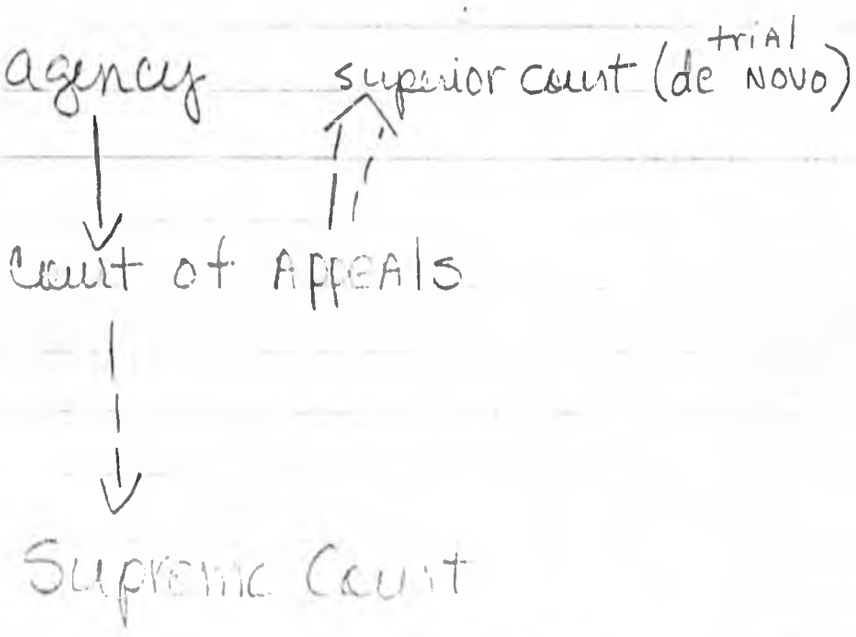
RESOLVED this 13th day of April, 1979.

KENNETH J. CUSACK, President
Kenai Peninsula Bar Association

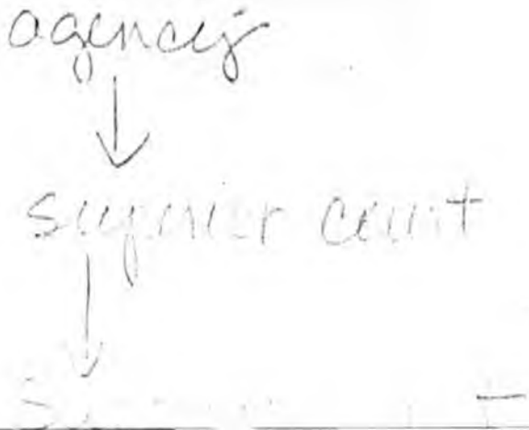
Original Bill



CS



other Alternative - Existing Law



Original sponsors: Ziegler, Bradley, Meland, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to courts and to judges; establishing the court of appeals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges. The court of appeals is a court of record.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) children's court matters under AS 47.10.010(a)(1) including waiver of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

(b) The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the

state constitution.

(c) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, 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 it is too lenient.

(d) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal ~~of a criminal prosecution commenced~~ from the district court involving a criminal proceeding, extradition, post-conviction relief or bail in the district court; (2) review the final decision of the superior court on appeal of a sentence imposed by the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the superior court.

(e) The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(f) 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.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court. Review is in the discretion of the supreme court as set out in AS 22.-05.010(c). In this section, "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for five years immediately preceding his appointment, have been engaged for not less than eight years immediately pre-

ceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law is the same as defined for the justices of the supreme court in AS 22.05.070.

Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of appeals, upon entering office, shall take and subscribe to the oath or affirmation of office required of all officers under the constitution.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide information to the public about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 60 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet as required by AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the supreme court, the court of appeals, the superior court, or the district court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant

90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for another elective public office other than delegate to a constitutional convention of this state or the United States forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

Supreme Court

(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 court for opinion or decision has been incompleted or undecided by the court for a period of more than six months.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

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 court 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 or to the superior court under AS 22.10.020.

(c) A decision of the superior court on an appeal from an administrative agency decision may be appealed to the supreme court as a matter of right.

(d) The supreme court may in its discretion review a final decision of the court of appeals on application of a party under AS 22.07.030. The supreme court may in its discretion review a final decision of the superior court on an appeal of a civil case commenced in the district court. In this subsection "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the court of appeals.

(e) The supreme court may issue injunctions, writs and all other

process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may transfer to the court of appeals for decision a case pending before the supreme court if the case is within the jurisdiction of the court of appeals.

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Consitution of the United States or under the constitution of the state or involves an issue of substantial public interest that should be determined by the supreme court.

(c) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.070 is amended to read:

Sec. 22.05.070. QUALIFICATIONS OF JUSTICES. A justice of the supreme court shall be a citizen of the United States and of the state, a resident of the state for five [THREE] years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active

practice of law includes

(1) sitting as a judge in a state or territorial court;

(2) being actually engaged in advising and representing clients in matters of law;

(3) rendering legal services to an agency, branch, or department of a civil government within the United States or a state or territory of the United States, in an elective, appointive or employed capacity;

(4) serving as a professor, associate professor, or assistant professor in a law school accredited by the American Bar Association.

* Sec. 6. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior court, or district courts [COURTS] of the state for a period of four years thereafter.

* Sec. 7. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents.

The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition. habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right, but no appeal from a subordinate court may be taken by the defendant in a criminal case after a plea of guilty, except on the ground that the sentence was excessive, as futher provided by this section. The state has no right to appeal in criminal cases [NO APPEAL MAY BE TAKEN BY THE STATE], except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient. An appeal to the superior court may be taken on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD]. When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion. The hearings on appeal from a final order or judgment of a subordinate court [OR ADMINISTRATIVE AGENCY] shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 8. AS 22.10.090 is amended to read:

Sec. 22.10.090. QUALIFICATIONS OF JUDGES. A judge of the superior court shall be a citizen of the United States and of the state, a resident of the state for five [THREE] years immediately preceding his appointment, have been engaged for not less than five years immediately

preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. The active practice of law shall be as defined for justices of the supreme court in AS 22.05.070.

* Sec. 9. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 60 [30] days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

* Sec. 10. AS 22.15.160(a) is amended to read:

(a) A district judge shall be a citizen of the United States and of the state, at [illegible] 21 years of age, a resident of the state for at least five years [ONE YEAR] immediately preceding his appointment, have 1) been engaged in the active practice of law for not less than three years immediately preceding his appointment and at the time of his appointment licensed to practice law in the State of Alaska, or 2) have served for seven years as a magistrate. The supreme court may prescribe additional qualifications.

* Sec. 11. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge

is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 60 [30] days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 12. AS 22.15.240 is amended to read:

Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment of the district court in a civil action to the 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 FOR WANT OF AN ANSWER].

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the superior court. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 90 [180] days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground it is too lenient.

When a sentence is appealed by the state on the ground it is too lenient, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 13. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 14. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 15. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 16. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 17. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 18. AS 15.15.030(10) is repealed and re enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 19. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals is subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he is thereafter subject to approval or

rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

* Sec. 20. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 21. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 22. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution,

corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 23. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 24. AS 39.23.130(2) is amended to read:

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district court [THE SUPERIOR AND DISTRICT COURTS].

* Sec. 25. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 26. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 27. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of [EXCEEDING] one year or more may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 28. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 29. AS 12.55.120 is amended by adding a new subsection to read:

(d) A sentence of imprisonment lawfully imposed by the district court for a term or for aggregate terms exceeding 90 days may be appealed to the superior court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense. A sentence of imprisonment lawfully imposed by the district court may be appealed to the superior court by the state on the ground that the sentence is too lenient; however, when a sentence is

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appealed by the state, the court may not increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 30. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 31. A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978.

* Sec. 32. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 33. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard by or submitted to the supreme court on the briefs on or before that date shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals.

* Sec. 34. It is the intent of the legislature that the court of appeals begin operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for the initial vacancies for judge of the court of appeals.

* Sec. 35. The amendments enacted in secs. 5, 8 and 10 of this Act apply only to justices and judges appointed on or after the effective date of this Act.

* Sec. 36. This Act terminates July 1, 1982.

* Sec. 37. This Act takes effect ~~July 1, 1980.~~ immediately.

TO: Charlie Parr, Chairman
FROM: Peggy Berck, Staff
Date: Jan. 18, 1980
Re: Amendments to SB 104 as proposed by J. Connelly, Leg. Comm. TV Bar Assn.

1. TV Bar Assn. wants a legislative court of appeals to be established, until the people approve a constitutional court.

2. If the court is established by constitution, then one member of the court of appeals should replace one superior court judge on the Judicial Qualifications Comm. (note: could one of the court of appeals judges be added to the Judicial Qualifications Comm. by legislature?)

3. Matters from the court of appeals should be remanded to court of original jurisdiction.

4. Appeals from district court in civil matters should go to the supreme court.

5. Recc. of the Judicial Council should be made public at least 60 days (it is now 30 days-see AS 15.57.050) prior to the election. In order to achieve this amendment another section would have to be added to the bill since AS 15.57.050 is currently not addressed in the bill. Futhermore, in order to allow the same time period the Lt. Governor currently has between time of receipt of information and publication page 13, line 1 of the bill should be amended to read 90 days instead of 60 days. Purpose of amendment: to get information to the public for a longer period of time prior to when a judge has to file for retention election. If such is done the judge is given a greater opportunity to bow out gracefully.

6. J Connelly commented that he thought it was odd that provision for sentence appeal is specified in the code of criminal procedure (see page 14, line 16, the entire sec. 27 of the bill), and no corresponding provision exists in the code of criminal procedure for the appeal of sentences imposed by the district court. J. Connelly implied that sentence appeals from either the district court or the superior court should be spellled out in the code of criminal procedure, Title 12 of the Alaska statutes. Currently, upon my brief review of the statutes, appeals from the district court are only mentioned in Title 22 and do not specifically set out a provision for sentence appeals.

7. Retirement benefits-see page 15, sec. begining with line 9. J. Connelly sugested that consideration be given to making a further exception for retired judges, so that they don't have to contribute to retirement system, i. they had been under the old plan and didn't have to contribute.

Original sponsors: Ziegler, Bradley, Meland, et al

Offered: 5/1/79
Referred: Finance

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to courts; establishing the court of appeals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges. The court of appeals is a court of record.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) waiver of children's court jurisdiction over a minor under AS 47.10; 010(a)(1) set of delinquency

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

(b) 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 ~~superior~~ district court for a trial de novo in whole or in part.

(c) The court of appeals may issue injunctions, writs and all

capacity;

(4) serving as a professor, associate professor, or assistant professor in a law school accredited by the American Bar Association.

* Sec. 6. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state for a period of four years thereafter.

* Sec. 7. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from an [A SUBORDINATE COURT, OR] administrative agency

mendation shall be made publi. at least ~~30~~ 60 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, [OR] superior courts, or district courts of the state.

* Sec. 10. AS 22.15.160(a) is amended to read:

(a) A district 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 five years [ONE YEAR] immediately preceding his appointment, and at the time of his appointment licensed to practice law in the State of Alaska for at least three years. ~~The supreme court may prescribe additional qualifications.~~

* Sec. 11. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least ~~30~~ 60 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 12. AS 22.15.240 is amended to read:

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~~ supreme court [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 FOR WANT OF AN ANSWER].

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 180 days or more was excessive [; HOWEVER, THE SUPREME COURT BY RULE MAY FURTHER PROVIDE FOR REVIEW OF A JUDGMENT GIVEN ON A PLEA OF GUILTY]. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information or to appeal a sentence on the ground. It is too lenient. However, when a sentence is appealed by the state and the defendant has not appealed the sentence the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence AND its reasons in a written opinion.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 13. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 14. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS.

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OFFICERS. No later than ~~60~~ days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 21. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 22. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

Add NEW Sec. to AMEND AS 15.57.050 to read 60, instead of 30 days.

* Sec. 23. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.-

330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 24. AS 39.23.130(2) is amended to read:

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district court [THE SUPERIOR AND DISTRICT COURTS].

* Sec. 25. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 26. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 27. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of [EXCEEDING] one year or more may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

new section district court sentence APPEALS.

* Sec. 28. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may

express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 29. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 30. A judge of the court of appeals is not required to contribute to the retirement system under AS 22.25.011 if, at the time of his appointment to the court of appeals, he holds a judicial office to which the retirement benefits of AS 22.25 apply and to which he was appointed before July 1, 1978.

* Sec. 31. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 32. The superior court and the court of appeals have concurrent jurisdiction of those pending district court appellate matters set out in AS 22.07.020(b) that are filed in the superior court before the date on which the operations of the court of appeals commence. The supreme court may transfer a matter within the jurisdiction of the court of appeals from the superior court to the court of appeals, including an appellate matter filed before the effective date of this Act. An appellate matter not transferred shall be decided by the superior court. Before operations of the court of appeals commence, a decision of the superior court on an appellate matter within the jurisdiction of the court of appeals under AS 22.07.020 may be appealed to the supreme court and thereafter to the court of appeals.

* Sec. 33. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard by or sub-

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

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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.

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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.

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 f ng 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).

Alaska State Legislature

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4948

BOX 142
EAGLE RIVER, ALASKA
99577

Representative Randy Phillips
HOUSE DISTRICT 8

March 28, 1979

The Honorable Charles Parr, Chairman
House Judiciary Committee
Pouch V, Mail Stop 3100
Anchorage, AK 99811

RE: YOUR MEMO TO ME OF MARCH 29, 1979 CONCERNING INTERIM PARTICIPATION

Thank you for your memo dated March 29, 1979.

In answer to your questions:

1. Yes, I do wish to participate.

2. I work during the summer months and it is hard for me to get away to attend meetings during that time. For me, the best month is probably November; however, if adequate notice is given, I could make arrangements to attend meetings.

3. Specific matters to be investigated: Selection of jury and judges as a whole; slowness of the process; administration of court system in Anchorage.

4. Names of groups of individuals to be notified: Lee Jordan, Editor, Chugiak-Eagle River Star, PO Box 1007, Eagle River, AK 99577; Robbie Robinson, Chugiak Community Council, Box 309, Chugiak, AK 99567; Bob Johnson, Eagle River Community Council, PO Box 456, Eagle River, AK 99577; Stephen Dunning, Eagle River Valley Community Council, Box 1644, Anchorage, AK 99510; Tom Henry, Birchwood Community Council, SRA Box 760, Chugiak, AK 99567; Rex Campbell, North Mt. View Community Council, 819 N. Klevin, Anchorage, AK 99504; Fred Selkregg, Northeast Anchorage Community Council, 5811 Radcliffe, Anchorage, AK 99504; Gene Buck, Russian Jack Park Community Council, 5222 East 24th Avenue, Anchorage, AK 99504; Kathleen Bush, 6631 East Eighth, Anchorage, AK 99504; The Brown Family, 442 South Flower, Anchorage, AK 99504; Clifford and Jane Bissell, Box 656, Eagle River, AK 99577; Marion E. Daley, PO Box 108, Chugiak, AK 99567; Mike Briggs, Esq., Ely, Guess & Rudd, 510 L Street, Anchorage, AK 99501.

5. Other information: I would like to have hearings at following areas in House District 8 -- Eagle River, Mt. View, Muldoon, Nunaka Valley.

If you need further information, please do not hesitate to contact me.

Best Regards,

Randy Phillips
State Representative

RP:js

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.[1] Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

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1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,[2] but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

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[2] The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

963 HJ SB 104 (FILES NO. 3 and 4)

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is $325,000. The annual operating expense is projected at $555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

April 2, 1979

The Honorable Terry Gardiner
Speaker of the House of Representatives
Alaska Legislature
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 104 am

Dear Speaker Gardiner:

This correspondence probably should have stayed in my "out" basket for a few days, but I have decided to send it now because I have some apprehension that the court of appeals bill may pass this session and I wanted to be sure that I got my comments in for whatever they may be worth.

I should say that Senator Ziegler asked for my comments while the bill was still in the Senate. Unfortunately, I did not review the bill as closely as I should have. There are several provisions in that bill that are just plain bad business.

Section 22.07.020 (b) in the bill provides:

> "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 superior court for a trial de novo in whole or in part."

Why in the hell shouldn't the district courts mistakes be remanded to it for correction? The superior court has to correct its own mistakes and I think the district court should too. There are already too damn many cases filed in the superior court that should be filed in district court. There is absolutely no justification for that kind of appellate jurisdiction. Normal accepted practice is for the appellate court to affirm or reverse and remand for whatever relief is necessary, including a new trial. I can conceive of no reason for those cases to be handled by the superior court on remand from the court of appeals.

On another subject, it seems to me that, given the high cost of government, the legislature ought to take a hard look at appellate jurisdiction generally. For instance, Sec. 22.15.240 provides that either party may appeal a judgement of the district court to the court of appeals "where the amount in controversy is not less than $50.00". An appeal as of right certainly need not be available where the sum in controversy is less than $1,000.00.

Section 22.05.010 provides that the Supreme Court may review a final decision of the court of appeals "on its own motion or on application of a party under AS 22.07.030." Again, I can see no reason for the Supreme Court to be reviewing cases "on its own motion." If all the parties are satisfied, the court system ought to just "butt-out."

Section 22.05.015(b) provides that the Supreme Court may take jurisdiction of a case pending before the court of appeals if either one of two conditions exist. One of the main justifications for this bill is that the Supreme Court is over-worked. It seems to me that if there is a substantial lack of confidence that the court of appeals can do the job, we ought to look for a new solution. This one, as presently constituted, is just going to add to the merry-go-round. Any appeal from the court of appeals to the Supreme Court ought to be strictly discretionary. Section(c) ought to be eliminated altogether. It is entirely possible for the appellate process to get so screwed up over which court has jurisdiction over which case, that not even the judges will know what is going on.

Section 9(b) provides that a defendant may appeal his sentence in any case where the imprisonment exceeds forty-five days (45) (down from 180). Section 24(a) gives the same right of appeal in cases from superior court (45 days, down from one year). Again, one of the main justifications for this legislature was that the Supreme Court could not keep up with the existing caseload. The answer to that appears to have been to add another level to the court system and increase the workload. With all due respect, Mr. Speaker, that is bullshit.

You will do the public in this State a great service if you can find a committee where this bill can reside comfortably until it dies a natural death or is substantially re-written.

Very truly yours,

Thomas E. Schulz

TES/kod

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

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

MEMORANDUM 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

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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

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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

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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

Appeals court bill faces floor fight

By JEAN KIZER
Associated Press Writer

JUNEAU—Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

The controversy centers on the question of whether some criminal defendents should give up their current right to two appeals.

The legislation, which passed the Senate last session, calls for creation of a court of appeals to handle all criminal appeals. With establishment of the new court, the Supreme Court would handle only civil cases.

Three justices would sit on the appeals court, which would cost the state an estimated $619,000 a year to operate, according to Art Snowden, administrative director of the court system.

"In essence aren't we really establishing two Supreme Courts, one to deal with civil cases and one to deal with criminal cases," asked Rep. Joe Montgomery, R-Anchorage, during a Finance Committee meeting on the bill Thursday.

The legislation would allow criminal cases to be appealed only as far as the proposed court of appeals, making it the top court for criminal cases.

But Rep. Charlie Parr, D-Fairbanks and chairman of the Judiciary Committee which spent long hours rewriting the Senate bill, said that in a few specific cases where the appeals court certifies a constitutional issue is involved the case could go to the Supreme Court.

The area where several committee members voiced disagreement concerns misdemeanors.

Al Remington and Lois Remington
dba
CLEARWATER LODGE

Appeals bill heads for battle on House floor

Associated Press

Juneau — Senate-passed legislation to create a state court of appeals cleared the House Finance Committee Thursday, but the bill appears headed for a battle on the floor over a key issue.

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MONTGOMERY

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PARR

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The area where several committee members voiced disagreement concerns misdemeanors.

Under the bill, if a person is convicted for a misdemeanor, such as drunk driving, he could appeal only to the Superior Court. He would not not have an automatic right to appeal to the new court, whereas currently he the right to appeal twice — first to the Superior Court and then to the Supreme Court.

That means a person convicted of a misdemeanor could appeal only from a single-judge court to another single-judge court.

Several committee members said they think that is wrong, but they agreed to fight the issue on the House floor.

Snowden said the Supreme Court also is opposed to the one-appeal provision. "We feel people should have the right to appeal to a tribunal," Snowden said.

Regardless of the outcome of that issue, the bill appears headed for a free conference committee because of other changes the House made in the Senate version.

Snowden told the committee the bill is badly needed because the Supreme Court's workload has increased substantially over the past few years and a large backlog of cases has resulted.

"I frankly fear for the quality of the Supreme Court decisions," Snowden said. He said that during the past year he continually has had to cut off paychecks of justices on the high court because they have exceeded the time limit for opinions.

State law requires that a draft opinion be in circulation within six months. If the opinion is not, the salary of the justice assigned to write the opinion is withheld.

Snowden said the court system has two major objections to the bill: allowing only one appeal for misdemeanor offenders and requiring five years of residency for District Court judges.

SB

104

#4 - INTERMEDIATE COURT OF APPEALS

1 billion
Statewide recreation/tourism
320,000,000 Corp.
180,000,000 Bonds
[450,000,000] op. budget

2.9 billion $

May 29

June 1, Keyes June 1

June 23, 1980

110,000,000

may 27, 1980 adj Chenlis
may 30, Anderson
June 1, Phillips
may 17, Buchholz

SB 104

~~Letters~~ : Correspondence

1) from Ralph Holman
Oregon Supreme Court Justice
January 25, 1979

2) from Billy Berrier
Director, Division of Legal Services
March 30, 1979

3) from Susan Burke
~~Staff~~ Deputy Administrative Director
April 2, 1979

4) from Arthur Snowden
Administrative Director
~~Feb~~ February 2, 1979

5) from Senator John Sackett
April 24, 1979

6) from Alaska Bar Association Poll

7) from Alaska Academy of Trial Lawyers
April 4, 1979

8) from Alaska Public Utilities
April 20, 1979 Commission

V

9) Kenai Bar Assoc.
Ken Cusack, Pres.
April 17, 1979

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Malone Work Draft
Parr Work Draft

3) Opion — A.S.C. ~~Opion~~ Opinion
Wharton V. State

4) U.S. — Courts of Appeals;
Cases reviewed

5) Special Report — S.C. Workload:
Analysis of Proposed Solutions
w/

6) Fiscal Note

indep data:

X Supreme Court Caseload Statistics

X cases

X bills

X $ note

To: (H) Judiciary Committee Chair and Members.
From: Peggy Berck, Staff Counsel
Date: April 26, 1979

1-30-79

Introduced: 2/2/79
Referred: Judiciary and Finance

Judiciary Committee
BY ~~ZIEGLER, BRADLEY, MELAND, RODEY, STINSON AND STURGULEWSKI~~

IN THE SENATE

House CS for SENATE BILL NO. 104 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the court of appeals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges. The court of appeals is a court of record.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) waiver of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) revocation of probation or parole; AND

(7) bail ~~and~~ .

~~(8) appeal to the superior court from a decision of an administrative agency.~~

(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 superior court for a trial [illegible] in whole or in part.

(c) The court of appeals has appellate jurisdiction of all actions and proceedings commenced before, and all final orders or decisions of administrative agencies. However, the court of appeals may in its discretion, remand an administrative appeal matter to the superior court for a trial de novo in whole or in part.

(d) ~~(c)~~ The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(E) ~~(d)~~ The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court or the district court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(f) ~~(e)~~ An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, except that

~~(1) where is no right of appeal to the court of appeals in a case for which direct review by the supreme court has been provided by rule; and~~

~~(2)~~ 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 it is too lenient under (e) of this section.

(g) ~~(f)~~ Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court. (Review is in the discretion of the supreme court as set out in AS 22.05.010.) In this section, "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for ~~three~~ five years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law shall be the same as defined for the justices of the supreme court in AS 22.05.070. Change Supreme Court to & Superior All judges

(h) ~~(g)~~ A final decision of the court of appeals is binding on the superior courts and on the district courts unless the decision is superceded by a decision of the supreme court.

Sec. 22.07.030. OATH OF OFFICE. Each judge of the court of appeals, upon entering office shall take and subscribe to an oath or affirmation of office required of all officers under the constitution. ~~and such further oath or affirmation as may be prescribed by law~~.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the supreme court, the court of appeals, ~~or~~ the superior court, or the district court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 30 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an elec-

tion; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 political party, or hold any other office or position of pr fit under the United States, the state or its political subdivisions. A judge of the court of appeals filing for other than delegate to a constitutional convention of the state or the United States another elective public office forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(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.

(4)

in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

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 court or the superior court, or from an administrative agency decision.

(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.

(c) The supreme court may in its discretion review a final decision of the court of appeals ~~on its own motion or~~ on application of a party under AS 22.07.030. In this section "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

(d) The supreme court may issue injunctions, writs and all other process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may transfer to the court of appeals for decision a case pending before the supreme court if the case is within the jurisdiction of the court of appeals.

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Constitution of the United States or under the constitution of the state or involves an issue of substantial public interest that should be determined by the supreme court.

~~justices.~~

~~(c) The supreme court may provide by rule that review of an appeal to the superior court from a decision of the~~ ~~be by the supreme~~

~~-5-~~ ~~SB 104 am~~

~~court rather than by the court of appeals under AS 22.07.020(b).~~

(c) ~~(d)~~ A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the sole ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state for a period of four years thereafter.

or district courts

* Sec. 6. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including

SB 11-am

but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. [~~The superior court has jurisdiction in all matters appealed to it from an [A SUBORDINATE COURT OR] administrative agency when appeal is provided by law. Appeals are matters of right~~], BUT NO APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICTMENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD]. ~~Hearings on appeal from a final order or judgment of~~ an [A SUBORDINATE COURT OR] ~~administrative agency shall be on the record unless the~~ superior court, in its discretion, grants a trial de novo, ~~in whole or~~ in part.]

Sec. 7. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention

election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals ~~or~~ superior courts of the state.

* Sec. 8. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals superior courts or district courts of the state.

Sec. 9. AS 22.15.240 is amended to read:

Sec. 22.15.240. APPEAL. (a) Either party may appeal a judgment of the district court in a civil action to the court of appeals [SUPREME COURT] when the sum in controversy is not less than $50,000 for the recovery of personal property or the value of not less than $50,000 [$100] in either case, except when the sum is primarily

(8)

district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of ~~45~~ 180 days or more was excessive; ~~however, the supreme court by rule may further provide for review of a judgment given on a plea of guilty.~~ The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information.

(c) An appeal from the district court shall be taken within 30 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].

(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.

* Sec. 10. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 11. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sittings of the courts, and shall keep a proper book before the clerk concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 12. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 13. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 14. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for four years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

Sec. 17. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement of [illegible] information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 19. AS 24.55.330(2) is amended to read:

(2) "agency" incluces a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 20. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.230 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or [illegible]

[illegible] AS 39.20.330(2) is [illegible]

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district [illegible] DISTRICT [illegible]

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 23. AS 39.50.200(2) is amended to read

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 24. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of ~~one year or more (exceeding ONE YEAR)~~ 1 YEAR OR MORE may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 25. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient, however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 26. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.25 for judges of the court of appeals.

* Sec. 31. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 32. The superior court has concurrent appellate jurisdiction with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter involving an action or proceeding commenced in the district court which is pending in the superior court on the date on which operations of the court of appeals commence, including a matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals.

*Sec. 33. Cases pending in the supreme court on the date on which the operations of the court of appeals begin which have been heard or submitted to the supreme court on the briefs, on or before that date shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals.

* Sec. 34. It is the intent of the legislature that the court of appeals commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall act and submit nominations to the governor for all initial vacancies for judge of the court of appeals.

* Sec. 35. Section 14 of this Act takes effect January 1, 1960. The [illegible] takes effect July 1, 1959.

INSERTS TO PAGE 13 of the PROPOSED HOUSE CS FOR SB 104

Sec. 26. AS 44.62.560 is amended to read:

Sec. 44.62.560. Judicial review. (a) Judicial review ~~by the superior court, or~~ by the court of appeals, of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in ~~superior court, or~~ the court of appeals, within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(15)

INSERTS con't.

(d) Upon order of the ~~superior court, or the~~ court of appeals/ appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

e) The superior court, or the court of appeals, may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court, or the court of appeals, may compel the agency to initiate action.

"Sec. 27. AS 44.62.570(a) is amended to read:

a) An appeal shall be heard by the superior court, or the court of appeals, sitting without a jury.

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*Sec. 28. AS 44.61.570(h) is amended to read:

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court or court of appeals judgment or agency order.

~~[Renumber remaining bill sections accordingly.]~~

* Sec. 29. AS 22.25.011 is amended by adding a new subsection to read:

(b) A justice or judge may not be required to make contributions under (a) of this section if at the time of his appointment he is holding a judicial office to which benefits under this chapter apply and to which he was appointed before July 1, 1978.

*Sec. 30 Sunset [redacted]

June 30, 1981

(17)

Work Order #6161
Pegues

Original sponsors: Ziegler, Bradley,
Meland, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to courts; establishing the court of appeals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) extradition;

(4) habeas corpus;

(5) probation or parole; and

(6) bail.

(b) The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(c) The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court or the district court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(d) An appeal to the court of appeals is a matter of right in all

actions and proceedings within its jurisdiction, 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 it is too lenient under (c) of this section.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010(c). In this section, "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for three years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law shall be the same as defined for the justices of the supreme court in AS 22.05.070.

Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of appeals, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and such further oath or affirmation as may be prescribed by law.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide the information and any recommenda-

tion to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in any court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for another elective public office forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(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.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings.

(b) Appeal to the supreme court is a matter of right except from actions and proceedings within the appellate jurisdiction of the court of appeals under AS 22.07.020.

(c) The supreme court may review a final decision of the court of appeals on application of a party under AS 22.07.030 if the supreme court determines that the decision of the court of appeals

(1) is in conflict with a decision of the supreme court of this state or of the United States;

(2) is in conflict with a decision of the court of appeals;

(3) involves a significant question of law under the Constitution of the United States or of the state; or

(4) involves a legal issue of substantial public importance that should be determined by the supreme court.

(d) The supreme court may issue injunctions, writs and all other process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies that

(1) the case involves a significant question of law under the Constitution of the United States or of the state or involves a legal issue of substantial public importance that should be determined by the supreme court; or

(2) the caseload of the court of appeals is such that transfer to the supreme court is necessary for the expeditious administration of justice.

(b) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the sole ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court

of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.045. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state for a period of four years thereafter.

* Sec. 6. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from a subordinate court, or administrative agency when appeal is provided by law. Appeals are a matter of right [, BUT NO APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A

CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICTMENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD]. The hearings on appeal from a final order or judgment of a subordinate court or administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 7. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state.

* Sec. 8. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evalua-

tion of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 9. AS 22.15.240(b) is amended to read:

(b) The defendant may appeal a judgment of conviction given in the district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 180 days or more was excessive; however, the supreme court by rule may further provide for review of a judgment given on a plea of guilty. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information.

* Sec. 10. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 11. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme

court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 12. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 13. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 14. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 15. AS 15.15 030(10) is repealed and re-enacted to read:

tained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 16. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

* Sec. 17. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the

judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 18. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 19. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 20. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.330 may be construed to diminish the salaries fixed by law for these

officers by reason of absence from duty on account of illness or otherwise;

* Sec. 21. AS 39.23.130(2) is amended to read:

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district court [THE SUPERIOR AND DISTRICT COURTS].

* Sec. 22. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 23. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 24. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 25. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COUPT] by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a

written opinion.

* Sec. 26. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 27. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 28. The superior court has concurrent appellate jurisdiction as provided under AS 22.07.020 with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter within the jurisdiction of the court of appeals relating to an action or proceeding commenced in the district court which is pending in the superior court on the date on which operations of the court of appeals commence, including an appellate matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals.

* Sec. 29. The supreme court may transfer to the court of appeals any matter within the jurisdiction of the court of appeals which is pending in the supreme court on the date on which operations of the court of appeals commence, including matters filed in the supreme court before the effective date of this Act.

* Sec. 30. It is the intent of the legislature that the court of appeals

commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for all initial vacancies for judge of the court of appeals.

* Sec. 31. Section 14 of this Act takes effect January 1, 1980. The remainder of this Act takes effect July 1, 1979.

(Parr's)

(Marked Work draft Pegues

Original sponsors: Ziegler, Bradley
Meland, et al

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 104

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the court of appeals amending the law relating to the supreme court; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges.

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

(b) The court of appeals has appellate jurisdiction of all superior court decisions resulting from appeals to the superior court

(1) from the district court; and

(2) from administrative agencies.

(c) The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(d) An appeal to the court of appeals is a matter of right in all actions and proceedings in its jurisdiction.

(e) A final decision of the court of appeals is binding on the superior court and the district courts unless ~~that~~ the decision is superseded by a decision of the supreme court.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in

accordance with AS 22.05.010 and rules adopted by the supreme court. Review is in the discretion of the supreme court as set out in AS 22.05.010(c). In this section, "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for three years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law is the same as defined for the justices of the supreme court in AS 22.05.070.

Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of appeals, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the [illegible] court, the court of appeals, or the superior court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an election; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office. However, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for

another elective public office forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(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.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

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, proceeding or appeal commenced in 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.

(c) The supreme court may in its discretion review a final decision of the court of appeals ~~on its own motion or~~ on application of a party under AS 22.07.030. In this section "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

(d) The supreme court may issue injunctions, writs and all other

process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may transfer to the court of appeals for decision a case pending before the supreme court if the case is within the jurisdiction of the court of appeals.

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the court of appeals certifies to the supreme court that the case involves a significant question of law under the Constitution of the United States or under the constitution of the state or involves an issue of substantial public interest that should be determined by the supreme court.

(c) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the sole ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vign The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and may

recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state for a period of four years thereafter.

* Sec. 6. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state.

* Sec. 7. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recom-

mendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 8. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 9. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 10. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 11. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of

the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 12. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 13. AS 15.15.030(10) is repealed and re-enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 14. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF

APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15.35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

* Sec. 15. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, court of appeals judge, superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 16. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 17. AS 24.55.320(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, board, [OR] committee, council or [UNIT] of the executive, legislative or judicial

branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 18. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 19. AS 39.23.130(2) is amended to read:

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district court [THE SUPERIOR AND DISTRICT COURTS].

* Sec. 20. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 21. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice of the supreme court or as a judge to the court of appeals, superior

court, district court, or magistrate court.

* Sec. 22. A judge of the court of appeals is entitled to annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 23. Notwithstanding the effective date of this Act, operations of the court of appeals shall begin on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 24. Cases pending in the supreme court on the date on which operations of the court of appeals begin which have been heard or submitted to the supreme court on the briefs on or before that date shall be retained by the supreme court for decision. The supreme court may transfer to the court of appeals all other pending cases within the jurisdiction of the court of appeals.

* Sec. 25. It is the intent of the legislature that the court of appeals begin operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary action to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for the initial vacancies for judge of the court of appeals.

* Sec. 26. Section 12 of this Act takes effect January 1, 1980. The remainder of this Act takes effect July 1, 1979.

THE SUPREME COURT OF THE STATE OF ALASKA

VICTOR L. WHARTON, Appellant, v. STATE OF ALASKA, Appellee.	File No. 3380 OPINION [No. 1797 - February 16, 1979]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, J. Justin Ripley, Judge.

Appearances: Vincent Vitale, Anchorage, for Appellant. John A. Scukanec, Assistant District Attorney, Joseph D. Balfe, District Attorney, Anchorage, and Avrum M. Gross, Attorney General, Juneau, for Appellee.

Before. Boochever, Chief Justice, Rabinowitz, Connor, Burke and Matthews, Justices.

BOOCHEVER, Chief Justice.
BURKE, Justice, Dissenting.

In this sentence appeal, appellant Wharton challenges the superior court's imposition of sentence as being

excessive.[1] Wharton entered a plea of guilty to one count of possession of cocaine, a violation of AS 17.10.010,[2] and was sentenced to one year imprisonment with no time suspended. We hold that Wharton's sentence is excessive.

The events leading to the appellant's arrest are not in dispute. On October 8, 1976, at Bushy Bob's in Alyeska's Glennallen pipeline camp, two Alaska State Trooper investigators met an individual named Wynn[3] who stated he would sell them cocaine at $150.00 per gram. The next evening the investigators arrived at the camp to meet Wynn. After finding him, the investigators were introduced to Wharton. The investigators stated that they were still interested in buying some cocaine. When Wynn left the room to get the cocaine, Wharton continued conversing with the investigators about the cocaine to be purchased and produced

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1 Wharton was arrested and sentenced with Winthrop Elliott. Elliott pled guilty to one count of sale of heroin and was sentenced to three years imprisonment, with no portion suspended. Elliott's sentence appeal is the subject of Case No. 3379.

2 AS 17.10.010 provides:

> Acts prohibited. It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, give, barter, supply or distribute in any manner, or compound any narcotic drug except as authorized in this chapter.

3 Wynn was Winthrop Elliott. See Note 1, supra.

a small quantity. Wynn returned to the room with two packets of cocaine and the officers paid for it with three marked one hundred dollar bills. Two backup officers then entered the room and placed Wynn and Wharton under arrest.

Before we consider whether Wharton's sentence is excessive, we address an issue not raised by the parties on appeal: whether this court has jurisdiction to review a sentence of one year or less.

In Bear v. State, 439 P.2d 432 (Alaska 1968), Alaska's then three-justice supreme court held, over a dissent by Justice Rabinowitz, that we had no jurisdiction to review criminal sentences absent statutory authorization. Justice Rabinowitz concluded that in the past, the court had reviewed sentences, and that the constitutional grant to this court of "final appellate jurisdiction," Alaska Constitution art. IV, § 2, included the power to review criminal sentences. Id. at 437-41. The basic point of the dissent was that "[s]entencing is a discretionary judicial function and the judiciary itself should have the power to correct abuses of discretion." Id. at 440 [footnote omitted].

After the Bear decision, the Alaska legislature in 1969 recognized jurisdiction of the court to entertain sentence appeals. AS 22.05.010(b) states:

> The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds the supreme court may sit in divisions.

It is to be noted that the sentence appeal jurisdiction was not limited in any way by this provision.

At the same time, the legislature conferred on defendants a limited right to appeal sentences of imprisonment exceeding one year.[4] In 1976, we promulgated Appellate Rule 21(a) which provides:

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4 AS 12.55.120(a) specifies:

> Appeal of sentence. (a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

Both AS 22.05.010(b) and AS 12.55.120(a) were part of the same act, being §§ 1 and 4 of Ch. 117, SLA 1969.

> At the time of imposition of any sentence of imprisonment of 45 days or more, the judge shall inform the defendant . . . [t]hat the sentence may be appealed to the supreme court on the ground that it is excessive. [emphasis added]

Wharton received a sentence of one year imprisonment. If AS 12.55.120 were the only source of our authority for sentence review, Wharton would be unable to appeal because his sentence does not exceed one year. Appellate Rule 21, however, clearly permits Wharton's appeal. In promulgating Rule 21, this court accepted Justice Rabinowitz's position in Bear that review of criminal sentences is inherent in our power as the court of "final appellate jurisdiction," Alaska Constitution, art. IV, § 2.[5]

Nevertheless, our action is not in conflict with the statute. By AS 22.05.010(b), the legislature statutorily recognized the jurisdiction of this court to hear appeals of sentences without qualification. It conferred on convicted defendants a limited right of appeal of sentences. In the exercise of this court's inherent and statutory jurisdiction

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5 Further support for our power to review sentences is derived from art. I, § 12 of the Alaska Constitution: "Penal administration shall be based on the priniciple of reformation and upon the need for protecting the public." Sentence review insures that sentencing courts pay due regard to the goals of reformation and protection of the public.

to entertain appeals, we have expanded that right by means of Appellate Rule 21.

We now turn to whether Wharton's sentence of one year imprisonment was excessive.

see dissent

At the time of the offense, Wharton was eighteen years old. He had no prior criminal record. His employment history was good. He had been in Alaska only a few months prior to this offense, working at his first full-time job since graduating from high school. Contact with authorities in Louisiana, where Wharton had previously lived, revealed Wharton's high school record. He was an average student who was not a "trouble maker" and had no serious problems. Moreover, the Louisiana probation and parole department stated that the department would be willing to supervise him if he were placed on probation.

With respect to Wharton's use of cocaine, the record indicates that it was very limited. Wharton told the author of the pre-sentence report, T. K. Furbush, that he had used cocaine on three or four occasions. Elliott--Wynn, in the transaction that led to the arrest--told Furbush that, to his knowledge, Wharton had never sold any drugs. The state did not dispute the fact that Wharton was a relative newcomer to the drug world. At the time of his arrest, Wharton had in his possession less than two-thirds of a gram of cocaine.

BURKE, Justice, dissenting.

Article IV, section 1 of the Constitution of Alaska states that "[t]he jurisdiction of courts shall be prescribed by law." As used in that section the phrase "by law" means "by the legislature." Alaska Const. art. XII, § 11. See Proceedings of the Alaska Constitutional Convention 582, 721-29, 732, 2820-30, 2843-51, 2854-55. Exercising the power given to it by article IV, section 1, the legislature, in 1969, enacted legislation authorizing appellate review of criminal sentences under certain circumstances. Ch. 117, SLA 1969.

Such legislation came after our decision in Bear v. State, 439 P.2d 432 (Alaska 1968), wherein we held that this court "does not have jurisdiction to review and remand or to review and revise a criminal sentence for abuse of discretion." Id. at 435. Section 1 of the 1969 act amended AS 22.05.010 by adding a new subsection:

> (b) The supreme court has jurisdiction to hear appeals of sentences of imprisonment lawfully imposed by the superior courts on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and by the constitution of this state. For the purpose of considering appeals of sentences on these grounds, the supreme court may sit in divisions.

Section 2 amended AS 22.10.020(a) to allow, among other things, "[a]n appeal to the superior court . . . on the

ground that a [district court] sentence of imprisonment of 180 days or more was excessive . . . ." Pertaining to appeals from the superior court, section 4 of the act amended AS 12.55 by adding a new section, AS 12.55.120. Subsection (a) of AS 12.55.120 provides in part: "A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms exceeding one year may be appealed to the supreme court by the defendant upon the ground that the sentence is excessive."

To me, the language of the 1969 act clearly indicates that the legislature intended that appellate review of criminal sentences for excessiveness be available, but only where the sanction imposed exceeds certain limits, and that this court's jurisdiction to review sentences of the superior court be limited to cases involving imprisonment "for a term or for aggregate terms exceeding one year." Since Wharton's sentence is not for a term exceeding one year, I conclude that this court lacks jurisdiction to review it for excessiveness.

Whatever the situation might have been at the time of the decision in Bear, matters changed when the legislature thereafter saw fit to exercise its power under article IV, section 1. Before that time, there might have been much to recommend the view expressed by Justice Rabinowitz in his scholarly dissent in Bear, namely: that this court has

jurisdiction to review criminal sentences under the general grant of "final appellate jurisdiction" contained in article IV, section 2. However, even if we assume that Justice Rabinowitz was correct, neither his dissent in Bear nor the majority opinion in this case explains to my satisfaction how it is now possible to ignore the limitation which the legislature placed on our jurisdiction when it adopted AS 12.55.120(a). If both sections 1 and 2 of article IV are to be given effect, it seems to me that section 1 must be read as empowering the legislature to place such a limitation on the general grant of appellate jurisdiction that the majority says is contained in section 2.

trict Court so that it could enter fresh decree from which timely appeal could be taken to Court of Appeals. Pennsylvania Public Utility Commission v. Pennsylvania R. Co., Pa.1965, 86 S.Ct. 423, 382 U.S. 281, 15 L.Ed.2d 324.

Since the district court evinced its realization that its ordered reapportionment could not be sustained as basis for conducting 1966 election of Alabama legislators, and avowedly intends to take some further action should reapportioned Alabama Legislature fail to enact a constitutionally valid permanent apportionment scheme in the interim, the Supreme Court affirmed the judgment and remanded the cases for further proceedings. Reynolds v. Sims, Ala.1964, 84 S.Ct. 1362, 377 U.S. 533, 12 L.Ed.2d 506, rehearing denied 85 S.Ct. 12, 13, 379 U.S. 870, 871, 13 L.Ed.2d 76, 77.

Where District Court erred in holding that Interstate Commerce Commission's order, establishing joint rates for through routes and apportioning such joint rates so as to assist financially weak carrier, was prohibited by section 15(4) of Title 49, preventing Commission from establishing through routes, and joint rates applicable thereto, for purpose of diverting traffic to lines of financially weak carriers, United States Supreme Court would remand case for further proceedings without considering contention that Commission's order was not supported by essential findings or substantial evidence justifying continued operation of carrier sought to be assisted. U. S. v. Great Northern Ry. Co., Minn.1952, 72 S.Ct. 985, 343 U.S. 562, 96 L.Ed. 1132, rehearing denied 73 S.Ct. 4, 344 U.S. 845, 97 L.Ed. 659.

Where District Court denied injunction abolishing segregation in South Carolina school and issued injunction to equalize educational facilities and ordered defendant school officials to report within six months the action taken to equalize facilities, and report was filed pending appeal by plaintiff Negro school children, but was not considered by District Court, Supreme Court would not consider questions raised on appeal but would vacate judgment and remand case to District Court to take whatever action might be deemed appropriate in the light of the report. Briggs v. Elliott, S.C.1952, 72 S.Ct. 327, 342 U.S. 350, 96 L.Ed. 1092.

Where suit by Georgia corporation to enjoin Revenue Commissioner from alleged illegal assessment of taxes was dismissed by United States District Court without consideration of corporation's contention that Commissioner was bound by prior decree entered by District Court and affirmed by Supreme Court, upon determination that District Court did in fact have jurisdiction of cause, case would be remanded to District Court. Georgia R. R. & Banking Co. v. Redwine, Ga.1952, 72 S.Ct. 321, 342 U.S. 299, 96 L. Ed. 335.

Where appeal to Supreme Court from District Court for District of Columbia was unauthorized, cause was remanded in order that a new judgment might be entered from which an appeal could be perfected to Court of Appeals for District of Columbia. U. S. v. Belt, App.D.C.1943, 63 S.Ct. 1278, 319 U.S. 521, 87 L.Ed. 1539.

Where three-judge court heard case but such court and the Circuit Court of Appeals erroneously decided that the District Judge alone had jurisdiction, and that the judgment was appealable to the Circuit Court of Appeals, and the Supreme Court decided that case was proper one for three-judge court and vacated judgment below, but a direction to the Circuit Court of Appeals to dismiss appeal would terminate the litigation because the time within which a direct appeal might have been brought to the Supreme Court had elapsed, the Supreme Court in order to preserve right to appeal, remanded cause to the District Court for entry of a fresh judgment from which a timely appeal might be taken. Query v. U. S., S.C.1942, 62 S.Ct. 1122, 316 U.S. 486, 86 L.Ed. 1616.

Where statutory three-judge court dismissed complaint in suit to enjoin enforcement of federal administrative regulation, and plaintiff took direct appeal to United States Supreme Court, but former section 380a of this title [now this section and sections 2101, 2282 and 2284 of this title], was inapplicable, Supreme Court would vacate the decree below and remand the cause for further proceedings to be taken independently of said section. William Jameson & Co. v. Morgenthau, App.D.C.1939, 59 S.Ct. 804, 307 U.S. 171, 83 L.Ed. 1189.

Where the three judges sitting in the District Court refused an injunction against the enforcement of an order of a state Corporation Commission, on the ground they had no authority to grant it, the Supreme Court, on reversing that decision, will remand the cause to the District Court for trial, since generally it is not desirable that the Supreme Court pass on such matters until they have been dealt with below. Oklahoma Natural Gas Co. v. Russell, Okl.1923, 43 S.Ct. 353, 261 U. S. 290, 67 L.Ed. 659.

107. Costs

Costs were awarded against appellants who erroneously brought case in District Court of three judges, and, upon adverse decree, appealed to Supreme Court, which, though without jurisdiction, vacated decree and remanded cause in order to save to appellants their proper remedies. Oklahoma Gas & Electric Co. v. Oklahoma Packing Co., Okl.1934, 54 S.Ct. 782, 292 U.S. 386, 78 L.Ed. 1318.

§ 1254. Courts of appeals; certiorari; appeal; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By appeal by a party relying on a State statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant, and the review on appeal shall be restricted to the Federal questions presented;

(3) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for

decision of the entire matter in controversy. June 25, 1948, c. 646, 62 Stat. 928.

Historical and Revision Notes

Reviser's Note. Based on Title 28 U.S.C., 1940 ed., §§ 346 and 347 (Mar. 3, 1911, c. 231, §§ 239, 240, 36 Stat. 1157 [derived from Mar. 3, 1891, c. 517, § 6, 26 Stat. 828]; Feb. 13, 1925, c. 229, § 1, 43 Stat. 936; Jan. 31, 1928, c. 14, § 1, 45 Stat. 54; June 7, 1934, c. 426, 48 Stat. 926).

Section consolidates sections 346 and 347 of Title 28, U.S.C., 1940 ed.

Words "or in the United States Court of Appeals for the District of Columbia" and "or of the United States Court of Appeals for the District of Columbia" in sections 346 and 347 of title 28 U.S.C., 1940 ed., were omitted. (See section 41 of this title.)

The prefatory words of this section preceding paragraph (1) were substituted for subsection (c) of said section 347.

The revised section omits the words of section 347 of Title 28, U.S.C., 1940 ed., "and with like effect as if the case had been brought there with unrestricted appeal", and the words of section 346 of such title "in the same manner as if it had been brought there by appeal". The effect of subsections (1) and (3) of the revised section is to preserve existing law and retain the power of unrestricted review of cases certified or brought up on certiorari. Only in subsection (2) is review restricted.

Changes were made in phraseology and arrangement. 80th Congress House Report No. 308.

Cross References

Appeal from courts of appeals in bankruptcy cases, see section 47 of Title 11, Bankruptcy.

Detention of suspect security risks, review by Supreme Court upon certiorari or certification as provided in this section, see section 821(d) of Title 50, War and National Defense.

Economic poisons, registration of; review by Supreme Court upon certiorari or certification, see section 135b(d) of Title 7, Agriculture.

Quorum of Supreme Court justices, see section 2109 of this title.

Review generally, see section 2101 et seq. of this title.

Review of appeals of orders of Secretary of Health, Education, and Welfare respecting approval of construction projects for State mental retardation facilities and community mental health centers, see section 2694 of Title 42, The Public Health and Welfare.

Review of appeals of orders relating to use of pesticide chemicals on raw agricultural commodities, see section 346(a) (l) of Title 21, Food and Drugs.

Time for appeal or certiorari, and stay, see section 2101 of this title.

Vesting and liquidation of Bulgarian, Hungarian, and Rumanian property, final orders or decrees of district courts of the United States reviewable as provided in this section, see section 1631e of Title 22, Foreign Relations and Intercourse.

Writs, see section 1651 of this title.

Rules of the Supreme Court

Procedure generally on appeal, writ of certiorari, or certification of questions, see Rules of the Supreme Court.

Supersedeas on appeal and stay pending review on certiorari, see rules 18 and 27.

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SPECIAL REPORT

SUPREME COURT WORKLOAD: ANALYSIS OF PROPOSED SOLUTIONS

INTRODUCTION

During 1976 the Alaska Supreme Court experienced a dramatic increase in appellate filings. Prior to that time there had been a steady but relatively slow rate of increase. By mid-1977 the caseload had grown even further, and the Supreme Court became seriously concerned about its ability to cope with the increases. The Administrative Office was asked to explore possible solutions to the workload problem, and a preliminary report was prepared in September of 1977, discussing possible solutions and providing some statistical comparison between the workload of the Alaska Supreme Court and other supreme courts from relatively similar states. The preliminary report concluded that among the possible solutions, the establishment of an intermediate appellate court offered the best likelihood of providing significant long term assistance to the Supreme Court in coping with its increasing workload.

Because the rate of increase in appellate filings appeared to be stabilizing by the fall of 1977, the Court decided to wait one year before making a final determination whether to seek legislation to establish an intermediate appellate court. At the end of 1978, the Court concluded that even with only a slight increase in filings, it was unlikely that the Court would be able to keep

pace adequately. Legislation was then drafted for introduction in the 1979 Legislative session to establish an intermediate appellate court.

This special report contains much of the discussion prepared for the 1977 preliminary report and includes updated statistical information relevant to the need for an intermediate appellate court for Alaska.

I. SUPREME COURT WORKLOAD: 1970 - 1978

The membership of the Alaska Supreme Court was increased in 1968 from three to five justices. Since approximately 1970, each justice has regularly employed two personal law clerks. Apart from the establishment of a central research staff, slight increases in clerical staff, and the recent employment of legal interns who earn law school course credit while spending an academic quarter working for the Supreme Court, the number of regular employees whose functions are directly related to the decision making process has not increased since 1970. The following table shows the increases in case filings in the Supreme Court from 1970 through 1978.

TABLE I

	Total Case Filings		Total Case Filings
1970	217	1975	337
1971	215	1976	466
1972	249	1977	613
1973	255	1978	630
1974	290		

Total case filings have more than doubled since 1974. The increase since 1970 is 190 percent, or almost triple.

The court's response to this increase has been varied. First, the court adopted several changes in its operating procedures to help facilitate the appellate process. Many unopposed routine motions that previously were decided by individual justices are now handled entirely by the Clerk of the Supreme Court. These routine motions include motions for extensions of time for filing briefs, for overlength briefs, to supplement or amend designations of record, and so forth.[1] The Court also established a central screening staff under the Clerk of the Court to review non-routine motions and petitions for discretionary review, and to screen appeals to identify cases that are amenable to summary disposition. There are currently two attorneys employed as central staff. The court has also begun, partly as a result of the central staff screening, to increase its use of summary orders and of per curiam and memorandum opinions. During 1978, the court disposed of a total of 54 cases on the merits by these methods.

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[1]See Appellate Rule 14(a). During 1978 the clerk and his deputies disposed of 796 unopposed routine motions under this rule.

The major response on the court's part to its increased workload, however, has been simply to work much harder than before. During 1975 the court disposed of 299 cases. In 1978 the court disposed of 560 cases, nearly double the dispositions during 1975. The following table shows the number of dispositions from 1975 through 1978.

TABLE II

	Total Dispositions*
1975	299
1976	335
1977	450
1978	560

*Includes voluntary dismissals.

Another indicator of the court's increased workload is the number of opinions published. During 1975 the court published a total of 122 opinions, or an average of 24 opinions per justice. During 1978 the court published 237 opinions, or an average of 47 per justice.[2] Table III shows the number of opinions published by the court from 1975 through 1978.

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[2]Retired Justice John Dimond authored 14 opinions during 1978 while on pro tem status. If these are deducted from the total, the five justices authored an average of 45 opinions each.

TABLE III

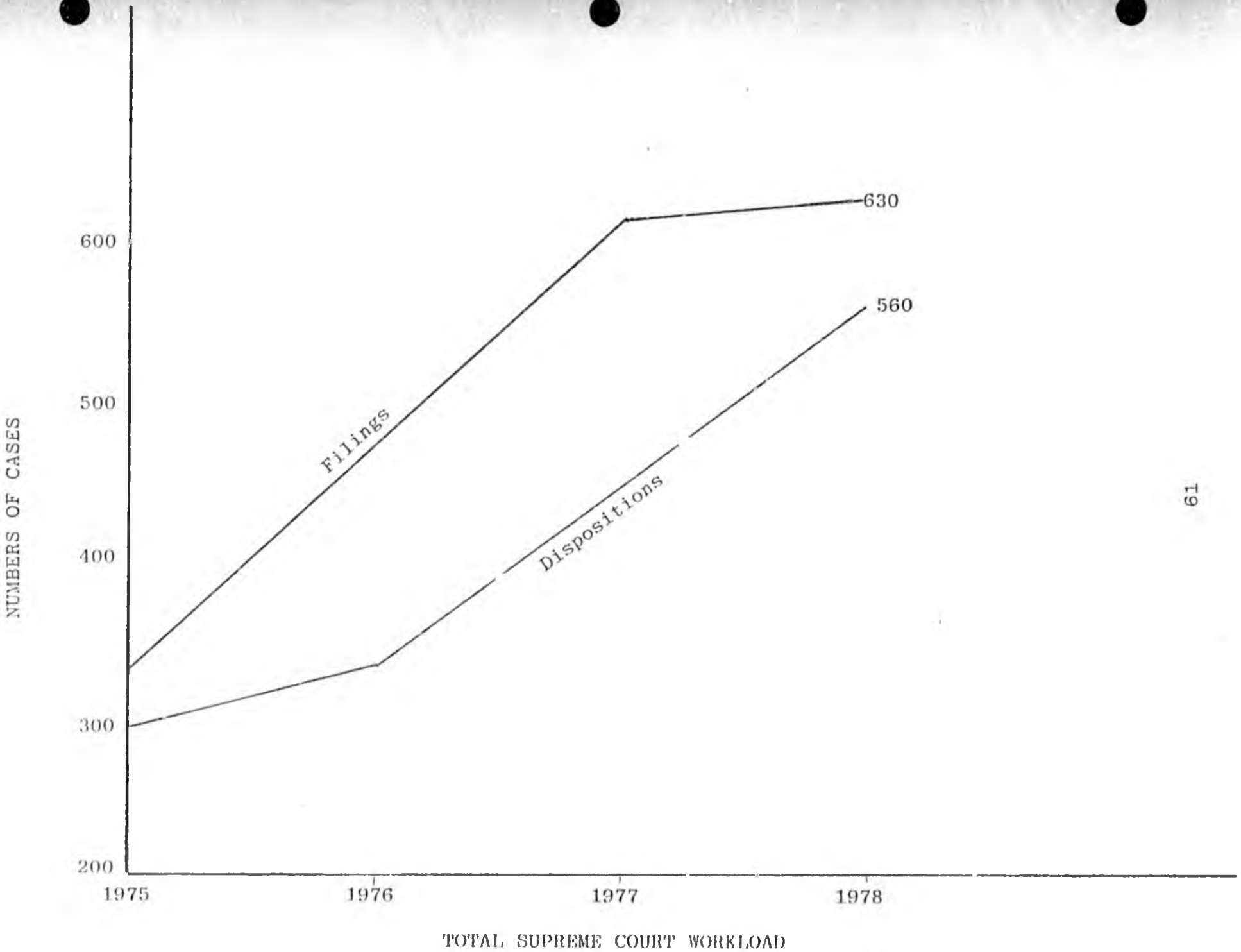
	Opinions Published	Average Per Justice
1975	122	24
1976	142	23
1977	189	38
1978	237	47

Not surprisingly, the number of cases pending at the end of each year has also increased substantially. Table IV shows the number of cases pending at the end of each year commencing with December 31, 1975.

TABLE IV

	Cases Pending on December 31
1975	258
1976	391
1977	554
1978	624

The chart on the next page shows the court's disposition rate as compared with the rate of increase in filings. While the disposition rate has generally kept up with the filing rate, the number of dispositions are still fewer than filings each year and the court continues to fall behind. There are also strong indications that the court has reached its saturation point in terms of the number of cases it can handle in a year without seriously sacrificing the quality of the work product.



TOTAL SUPREME COURT WORKLOAD

First, disposition times are increasing, and are beyond the point that should be acceptable to the citizens of Alaska. The average disposition times for civil, criminal, and sentence appeals for 1977 and 1978 are as follows:

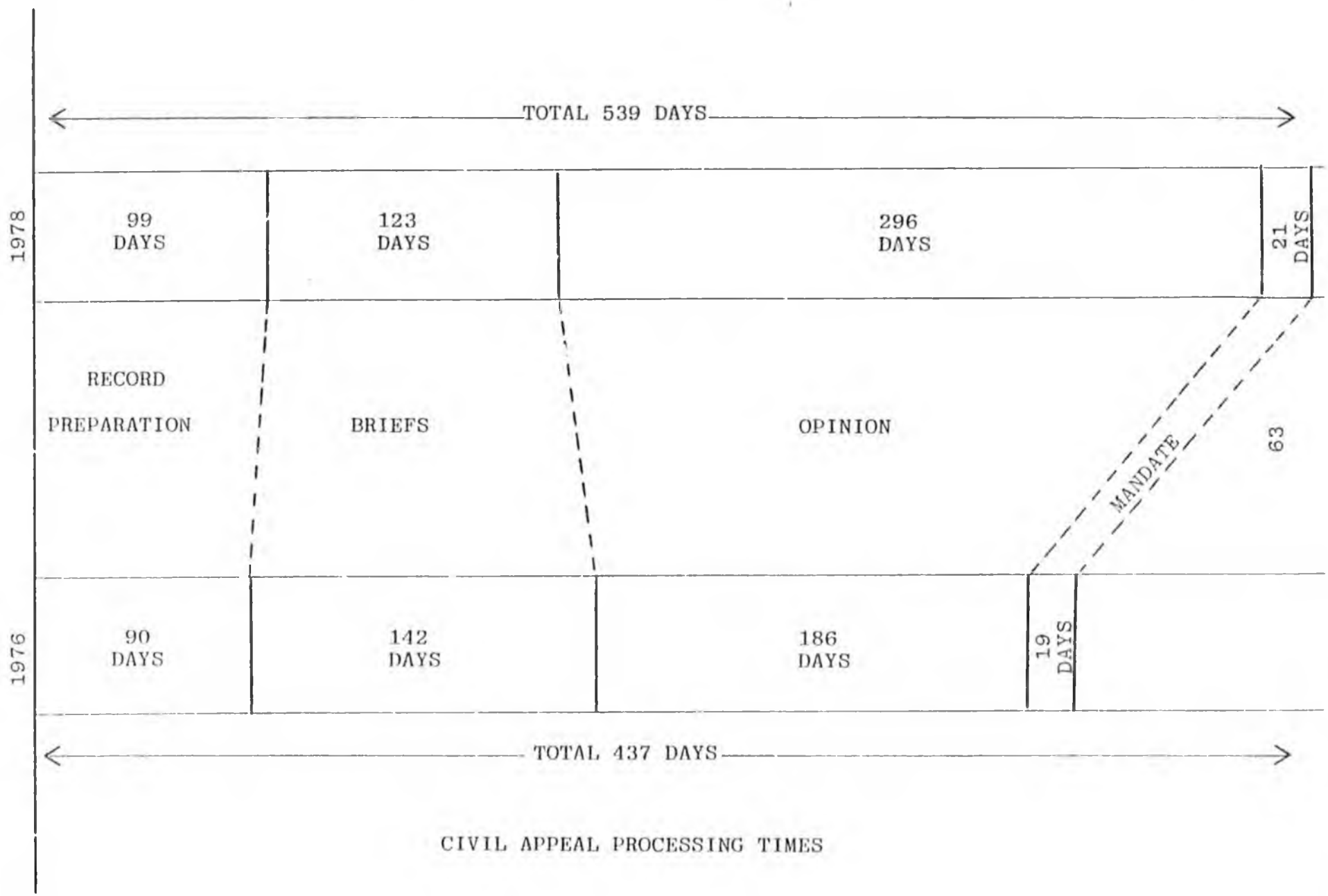
TABLE V

	1976	1977	1978
Civil Appeals	437 days	485 days	533 days
Criminal Appeals	(not avail-	593 days	612 days
Sentence Appeals	able)	304 days	358 days

Under the Court's internal operating procedures, a case should take no longer than 280 days total, from notice of appeal to mandate.[3] Included within that total is a maximum recommended time of 120 days from submission of a case on briefs or following oral argument until publication of an opinion. The chart on the following page shows that the average time that a civil appeal is under submission has increased sharply over the past several years. During 1976, the Court took an average of 196 days following submission of a civil case until publication of an opinion. During 1978 this stage of the appellate process was averaging 296 days for civil appeals, or an increase of nearly 60 percent.

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[3]This total includes 40 days for record preparation, 30 days for appellant's brief, 30 days for appellee's brief, 20 days for a reply brief, 30 days for placing the case on the argument calendar, 90 days for preparation of a first draft opinion, and 30 days for the other justices to vote upon and make suggested revisions to the opinion for final publication, and 10 days for the issuance of the mandate.



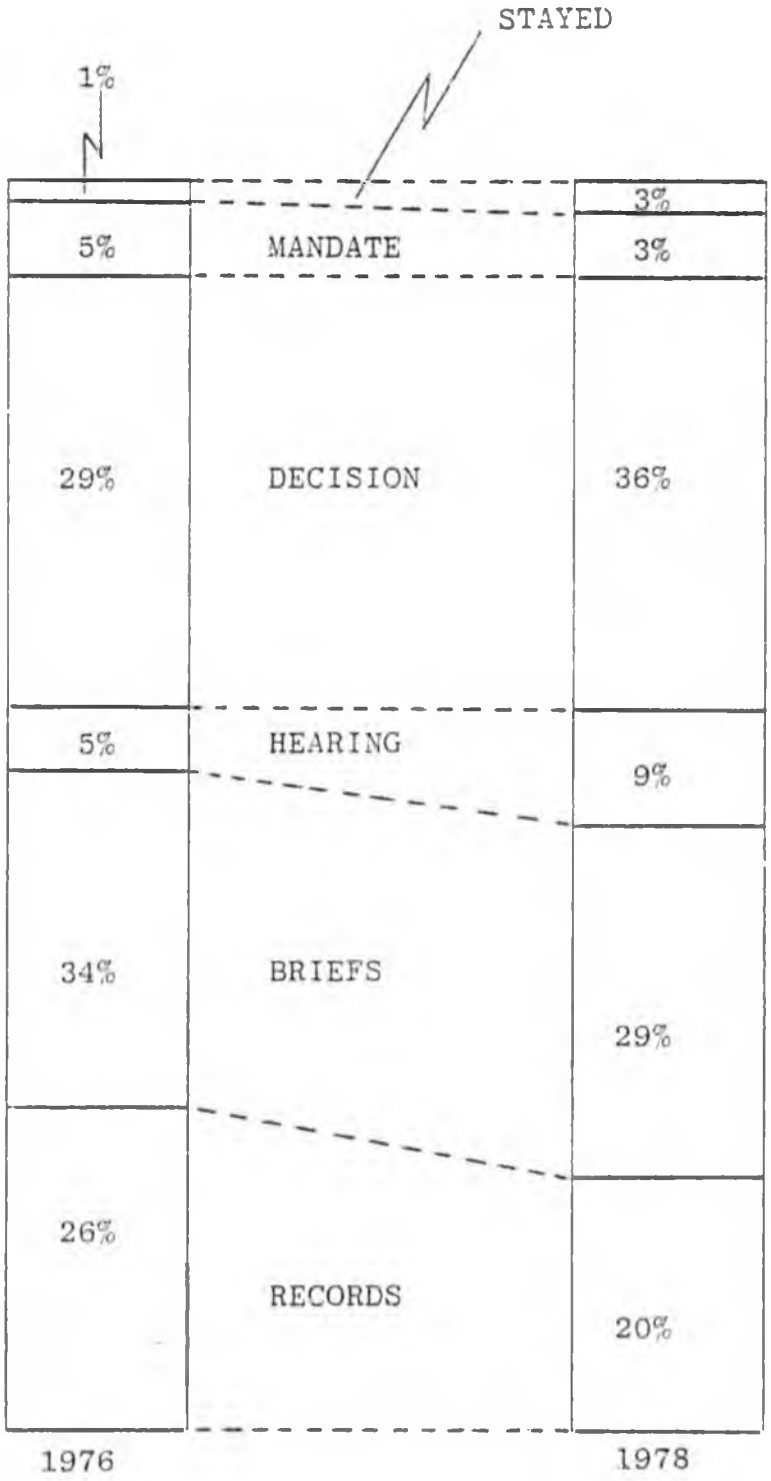
CIVIL APPEAL PROCESSING TIMES

Perhaps the most alarming figure is the increasing number of cases under submission and awaiting a first draft opinion. On December 31, 1978, there were 129 cases in this category. One month later there were 152 cases awaiting a first draft opinion. Translating this number into the workload facing the justices, it means that if the internal operating guidelines were followed, which recommend the circulation of a first draft within 90 days after submission of the case, each justice would have to write 30 draft opinions over the next 90 days, or 10 opinions per month. Also, by law a justice may not receive a paycheck if he has not circulated a first draft opinion in a case within six months after submission of the case to the court for decision. Thus, in order for the justices to receive uninterrupted compensation, each justice will certainly be required to write 30 opinions within the next six months, or an average of five opinions each per month. (Nor does it seem an equitable alternative for a justice to be denied compensation because the workload, over which he has no control, has grown beyond his capacity to handle within the six month limit.)

If this pace were maintained throughout the year, each justice would be required to write 60 opinions per year. This number seems clearly beyond the capacity of a justice of a court of last resort, particularly when the relative complexity of many of the appeals that arise in Alaska is taken into account and when one considers that drafting opinions is only a small part of the work facing the Court. In addition to preparing drafts in cases

assigned to him, a justice must review and vote upon the draft opinions prepared by the other justices, decide complex motions and petitions for review, consider revisions to the rules of procedure, and participate in administrative policy decisions affecting the entire court system.

The chart on the following page shows that a much higher percentage of the Court's pending docket at the end of 1978 were awaiting decision than at the end of 1976. Only 29 percent of the cases pending before the court at the end of 1976 were awaiting decision compared to 36 percent at the end of 1978. This is one more indication that the court has in fact reached its dispositional capacity.



PERCENT OF CASES

PENDING OF STAGE

A recent study by the Administrative Office shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative population growth estimates available (that is, assuming there is no gas pipeline construction or other major impacts on population growth), the appellate filings in the supreme court are forecast as follows:

TABLE VI

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1,043
1987	1,013	1,106
1988	1,098	1,174

II. POSSIBLE SOLUTIONS TO WORKLOAD PROBLEM

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions.

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the caseload problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced -- one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice of five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

> A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions that are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges[4]. . . . . [EMPHASIS ADDED]

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[4]American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.[5] No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.[6]

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."[7] The additional justices would certainly make it possible for the court to increase its output of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would

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[5] A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justices. On December 1, 1968, the total number of justices shall be increased to five. The supreme court is vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the constitution, the laws of the state, and the common law. It may prescribe by rule the fees to be charged by all courts for judicial services.

[6] Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

[7] ABA Standards on Court Organization at 35.

still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

> [W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.[8]

Increasing the size of the supreme court, moreover, has not been a widely used method of dealing with appellate caseload problems.

2. Establish panels of the supreme court. Another possible solution to the caseload problem is to divide the supreme court into panels of three. The advantage of sitting in panels is that, while three judges are hearing arguments or deliberating on or writing opinions relating to certain cases, the other two justices would be free to tend to other work of the court. The use of panels would necessitate some change in the internal procedures of the supreme court, but this solution does have the advantage of not requiring procedural changes for the attorneys or litigants.

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[8]Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing" Remedy, 13 Idaho L. Rev. 1, 4 (1976).

There is no constitutional, statutory or administrative requirement that the supreme court sit en banc,[9] and Appellate Rule 16 does provide that three justices shall constitute a quorum.[10]

It therefore appears that the change to panels could be made by internal administrative action, without the necessity of constitutional amendment or legislative action.

The commentators, however, are uniformly opposed to the use of panels by a state's highest appellate court. The American Bar Association Standards on Court Organization, for example, contend that the use of panels dilutes the appellate function, "particularly that of developing the law."[11] The American Bar Association Standards Relating to Appellate Courts state a more emphatic position against the use of panels. The Standard itself reads as follows:

> 3.01 Internal Organization of Appellate Courts.
>
> (a) Supreme Court. In hearing and determining the merits of cases before it, the supreme court should sit en banc. Except for

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[9] A.S. 22.05.010(b) does include the following provision: "For the purpose of considering appeals of sentences on [the grounds that the sentence is excessive or too lenient], the supreme court may sit in divisions." [Emphasis added.]

[10] Appellate Rule 16(a) provides: "A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court."

[11] ABA Standards on Court Organization at 35.

> those who may be disqualified for cause or unavoidably absent, all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating or delegate its deliberative and decisional functions to officers such as commissioners.[12]

The Commentary explains the rationale behind this position.

> The internal organization of an appellate court should be designed to permit the court to fulfill its functions in the court system. The primary responsibility of a supreme court is that of developing and maintaining the consistency of the law to be applied in subordinate courts in the system... In deliberating upon and deciding the legal questions that come before it, the supreme court's entire membership should participate so that its collective professional and intellectual resources are brought to bear in the development of the law. To the extent that such a court subdivides itself into panels or divisions, it creates possibilities of conflict or inconsistency in its decisions, which can be resolved only through en banc hearings.
>
> In some states having no intermediate appellate court, the supreme court sits in divisions in order to cope with a caseload which would be too large to handle if the court were to sit en banc in every case. This arrangement has often been used as a means of transition to the establishment of an intermediate appellate court. The result of such an arrangement is that the court functions simultaneously as a court of intermediate review when it sits in divisions and as a court of subsequent review when it sits en banc. If the court's docket in such a

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[12] American Bar Association Standards Relating to Appellate Courts, Standard 3.01, at 7-8 [hereinafter cited as ABA Standards on Appellate Courts]

> system is carefully administered, so that important or difficult cases are identified before being heard and assigned directly for en banc hearing, a single supreme court can handle the system's appellate responsibilities in an effective way. Experience indicates, however, that such an arrangement may persist long after the point has been reached when an intermediate appellate court should have been established.
>
> Moreover, internal inconsistency in the court's decisional product may be ignored or tolerated to an excessive degree in the hope of avoiding the cost of establishing an intermediate court.[13]

The blue-ribbon committee which recently studied appellate caseload problems in Idaho[14] considered the possibility of using panels of the supreme court, but the committee finally rejected that alternative:

> [T]here seemed to be more arguments against the use of panels than arguments in favor: both of the "outside experts" who testified before the committee, Chief Judge Schwab and Chief Justice Cameron, urged that any Supreme Court has a law-stating function, and that this function is weakened by the operation of panels within a supreme court. Other committee members felt that decisions by panels should be final only if they are unanimous --meaning that a panel which developed disagreement would then have to return an appeal to the entire appellate body or to another panel causing further delay. Other committee members felt that panels placed too much emphasis on the luck of the draw, and that panels are not appropriate for decisions of a

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[13] Id. at 8-9

[14] An Investigation into the Problems Created by the Growing Appellate Caseload in Idaho, September 16, 1977, hereafter cited as "Idaho Report".

> court of last resort, although they would be useful for an intermediate appellate court. Committee members seemed to take the view that the function of a court of last resort is to take a broad and balanced view of the law and the needs of society, and that dividing any court of last resort into smaller units of decision would interfere with this basic role. The committee finally determined that the use of panels, either in connection with increasing the size of the Supreme Court or within the present structure, is not desirable.[15]

With the assistance of the Clerk of the Supreme Court, we have attempted to determine how panels might actually operate and to quantify to some extent the reduction in workload that a panel system could be expected to produce.

By use of a standard mathematical formula, it was determined that in order to have the five justices sit in all possible combinations of three justices each, a total of ten panels would be required. The composition of each panel would be as follows:

Panel 1:	A/B/C
Panel 2:	B/C/D
Panel 3:	C/D/E
Panel 4:	D/E/A
Panel 5:	E/A/B
Panel 6:	A/C/D
Panel 7:	C/E/A
Panel 8:	E/B/D
Panel 9:	D/B/A
Panel 10:	E/C/B

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[15] Idaho Report, supra, note 14, at 29-30.

It must be remembered that even if panels are used, each justice will still have the responsibility for drafting the same number of opinions each year as he would if panels were not used. The two areas in which the use of panels would reduce the workload of individual justices are in preparation for oral argument and review of draft opinions from other justices. Since each justice will not be participating in four of the ten panels, the time he spends presently on preparation for oral argument and on reviewing drafts would be reduced by a maximum of 40 percent. Assuming for purposes of illustration that a justice devotes 40 percent of his total time to these two tasks, then the panel system would theoretically reduce his overall workload by 16 percent.[16]

In practice, however, the 40 percent reduction figure is unrealistically high when applied to total workload because a certain percentage of the total appeals will be heard by the Court en banc. For example, if the Court had an annual caseload of 200 appeals, and 50 of the 200 were heard en banc, then the workload reduction in the preparation and review functions would be diminished from the maximum 40 percent to 30 percent.[17] Again assuming that a justice devotes 40 percent of his total time to these two tasks, the overall savings in

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[16]This figure is arrived at by multiplying the 40% reduction by the percent of total time spent on preparation for argument and review of opinions.

[17]If only 150 of the total 200 cases are heard by panels, then each justice would not be required to participate in 40% of the 150 panel cases, or 60 cases. These 60 cases represent 30% of the total 200.

workload for that justice would be 12 percent, or 4.8 hours per 40 hour week. And as the ratio of en banc cases to panel cases increases, the workload reductions are further diminished.

Even if the philosophical objections were set aside, the use of panels is generally agreed to be a temporary solution to the workload problem at best. The following chart illustrates that if the caseload continues to increase, then the actual workload of each justice under a panel system will approach and finally increase beyond the present actual workload within a relatively short period of time.

Year One

It is assumed that 200 cases will be filed, ready for argument, and decided during the year. It is also assumed that 25% of the total, or 50 cases, will be heard en banc[18]

Each justice must write opinions in 40 cases

Each justice must fully participate in 140 cases*

*50 cases en banc plus 90 cases in panels

Year Two

It is assumed that the caseload increeases by 25%, for a total of 250 cases. 25% of the total, or 63 cases, will be heard en banc.

Each justice must write opinions in 50 cases

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[18]The estimate of 25% en banc cases was somewhat arbitrary, since a more accurate figure could not be determined. It does, however, take into account the 1976 experience of dissenting opinions filed in 17% of the opinions, with the additional 8% intended to reflect those cases involving important questions of law requiring full court participation. It may be that the estimate is too low to adequately take into account the number of these cases.

Each justice must fully participate in 175 cases*

*63 cases en banc plus 112 cases in panels.

Year Three

It is assumed that the caseload will again increase by 25%, for a total of 325 cases. 25% of the total, or 81 cases, will be heard en banc.

Each justice must write opinions in 65 cases

Each justice must fully participate in 227 cases*

*81 cases en banc plus 146 cases in panels.

Thus after two years, the actual number of cases that each justice must fully participate in will exceed the number of total cases from the hypothetical "Year One."

This chart also illustrates the problems attending the adoption of a solution that is geared toward percentage reductions in workload as is the panel system. At some point along the graph of caseload increase, a court will reach its saturation point. A justice has time to write only a certain number of opinions each year and can participate fully in only a certain number of cases each year without seriously sacrificing the quality of the court's work product. When the saturation point is reached, it hardly matters in practical terms that next year's workload will be reduced by 15 or 20 percent by the use of panels if the actual workload will exceed the capacity of the justices. The court will continue to fall behind, whether panels are utilized or not. At the trial court level, when a court reaches this saturation point, the solution is to add another judge so that judicial capacity is increased. It has been suggested that the panel system will provide real relief only if pro tempore appointments of superior

court judges are included on the panels. The inclusions of pro tem justices on panels could be accomplished in at least two different ways.

If an extra judicial position were assumed to exist on the Supreme Court (to be filled each time with a different pro tem justice), then the judicial capacity for use on panels would increase from 5 to 6. By using the same mathematical formula discussed above, 20 panels would be required to have the six positions combined into panels of three without repeating a combination. While this would certainly augment any workload reductions that would otherwise be achieved by panels, it would be administratively too unwieldy with existing clerks's office staff to attempt to manage 20 panels. If additional pro tempore assistance were to be used in concert with the panel system, it would preferable to keep the same ten panels described above, and substitute a pro tem justice for each of the five sitting justices periodically and on a rotating basis.

There are, however, both philosophical and practical limitations on the frequent use of superior court judges on the panels as justices pro tempore. In order to achieve a significant additional workload reduction by use of pro tem assistance, a fairly large number of cases would have to be heard by panels made up of two justices and one pro tem justice. With only two of the five justices sitting on a large number of panel calendars, the Supreme Court's law-making function is even more diluted. The predictability of results declines, and the potential for conflicts among the panels increases greatly, necessitating further hearing by the Court en banc.

There is also a limit to the amount of time that a superior court judge can be expected to divert from his trial court duties. In this vein, it must be remembered as well that the pro tem justice cannot work as efficiently as a full time justice. He may have limited law clerk assistance, and will not have the level of assistance for preparation of pre-argument memoranda and draft opinions that a sitting justice has. Further, he lacks the advantage of being able to devote full time to appellate matters and thereby develop a routine for efficient disposition of these types of cases.

Some further problems should also be noted. It has been suggested that one way of meeting the objection concerning the dilution of the law-making function is to provide that in any case where the panel decision were not unanimous, or if a non-participating justice disagreed with the draft opinion, then the case would be referred to the court for en banc resolution. While this requirement would to some extent reduce the problems concerning the dilution of the law-making function, it would also mean that such a case would probably have to be argued again before the full court and certainly would require another conference. This would result in inconvenience and delay to counsel and litigants, and a duplication of effort for the members of the panel who initially considered the case.

As another means of safeguarding the law-making function, it has been suggested that before argument, a single justice on a panel should be empowered to order any case before the panel moved to the en banc calendar. Again, this would provide some additional safeguards. However, while it is impossible, without some experience to draw upon, to predict how frequently this prerogative might be exercised, it would certainly be

exercised to some extent, and this would result in further diminishing the overall percentage workload reduction that a panel system might achieve.

Finally, in order for a panel system to operate efficiently, there must be a mechanism for identifying those cases that will be amenable to panel treatment. If unanimity on the panels is required, this means in addition that the identification process must include the ability to predict with some accuracy those cases that will be likely to result in a unanimous decision. (Otherwise delay and duplication of effort will be increased.) It is questionable whether the two central staff attorneys would be able, without additional staff, to perform this type of screening function adequately and also provide substantial assistance to the court on motions and petitions. Additionally, the Clerk of the Supreme Court has expressed the concern that the initiation of a ten panel system would require the hiring of an additional calendar clerk to coordinate the assignments and the calendaring of cases for the ten panels and for the en banc calendars.[19]

3. Limit appeals of right to the supreme court. Since the primary goal of these changes in the appellate system is to reduce the workload of the supreme court, one direct method of dealing with the problem would be to

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[19]It would be possible, of course, to reduce the number of panels from ten to five, with each justice sitting on three different panels. The number of panels could not be fewer than five, however, and still maintain an equal distribution of panel assignments. In this event, it is estimated by the Clerk that an additional one-half time calendar clerk would be required. Five panels would achieve the same percentage workload reductions as would ten panels, but such a system would not be fully rotating.

permit fewer appeals. This could be done by abolishing appeals of right to the supreme court in certain types of cases or by totally eliminating appeals of right and authorizing the supreme court to grant writs of certiorari for those cases which it wishes to hear. The primary advantage of such a system is that it would produce an immediate reduction in the caseload of the supreme court and would enable the court itself to exercise control over the size of its caseload.

Although the right to at least one appeal is traditional in the American judicial system, such a right is not conferred by the United States Constitution. The American Bar Association Standards on Court Organization include the following statement: "[I]t should be recognized that a litigant has no unqualified right to an appeal...[20]

A limitation or abolition of appeals of right to the supreme court would require an amendment to A.S. 22.05.010(a), which currently reads in part:

> The supreme court has final appellate jurisdiction in all actions and proceedings. ...An appeal to the supreme court is a matter of right. ....

Article IV, section 1, of the Alaska Constitution grants to the legislature the authority to prescribe the jurisdiction of courts: "The jurisdiction of courts

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[20] ABA Standards on Court Organization at 35.

shall be prescribed by law." This would seem to preclude any constitutional problems with the elimination of appeals of right.

Since no legislative attempt has been made to limit appeals of right to the supreme court, the Alaska Supreme Court obviously has had no opportunity to consider the constitutionality of such a limitation. However, if appeals of right were limited or abolished, the supreme court would retain the power to accept cases by certiorari, and the Alaska Supreme Court has indicated that the exercise of such a power is equivalent to the exercise of "final appellate jurisdiction". In State v. Browder[21] the court stated:

> We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that "The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all writs necessary or proper to the complete exercise of its jurisdiction." In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final appellate jurisdiction other than by appeal.[22]

It is likely then that the limitation or abolition of appeals of right would be construed as a legitimate exercise of the legislature's power to prescribe jurisdiction and not as an unconstitutional grant of final appellate jurisdiction to a lower court.

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21 486 p.2d 925 (Alaska 1971).

22 Id. at 930

The consensus of the commentators appears to be that limiting the right to appeal is not a desirable solution to the caseload problem. For example, Judge Shirley Hufstedler of the Ninth Circuit Court of Appeals, is strongly opposed to this approach:

> There are direct and indirect ways to trim an appellate docket. The direct way is to cut off or limit the right to appeal. The indirect way is to create a series of procedural or financial impediments which discourage appeals. We can dispose of the indirect methods summarily. Entwining the appellate process in even more red tape than there is at present or making appeals even more expensive is a vigorous step backwards. There remains the direct route. The amputation method will undoubtedly cure congestion, but the treatment may be worse than the disease.[23]

The American Bar Association Standards on Appellate Courts take the position that litigants generally should have at least one appeal of right.[24] The Commentary to Standard 3.10, Opportunity for Appellate Review, states in part:

> The right of appeal, while never held to be within the Due Process guaranty of the United States Constitution, is a fundamental element of procedural fairness as generally understood in this country. That right should be accorded an aggrieved party to a trial court proceeding.[25]

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[23] S. Hufstedler, Constitutional Revision, supra, note 8, at 586-87.

[24] ABA Standards on Appellate Courts at 14.

[25] Id. at 15.

Even if there are no legal problems with limiting the right of appeal, such a limitation does raise serious policy questions. Indeed, the Idaho committee rejected this approach solely for policy reasons:

> Ultimately, the suggestions that the right of appeal should be limited was rejected by the committee, but not on legal grounds. Overwhelmingly, committee members felt that in a state such as Idaho with a strong western tradition of independence, persons should have the right to at least one appeal from a trial judge's decision to allow for correction of error. Limiting the right to appeal in any way would not be popular with Idaho citizens and would be opposed. Thus, this alternative was discarded.[26]

The limitation of the right of appeal would create no significant new costs to the court system, and would probably result in a reduction of costs.

A less drastic alternative to direct limitation on the right to appeal would be to devise some disincentives to appealing. One possible disincentive would be to provide for substantially higher awards of attorney fees to the prevailing party on appeal. A serious objection to this approach is that meritorious appeals as well as unmeritorious ones are discouraged, and access to the court is denied on the basis of one's financial ability to take the risk of losing.

Further, before any disincentives should be adopted as a method of reducing caseload, the Court must conclude that a substantial number of the appeals coming before

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[26] Idaho Report, supra, note 14, at 26.

it should not have been brought. And the particular disincentive chosen must be directed at discouraging only those that should not be brought. It might be appropriate, for example, to award substantial attorney fees to a prevailing appellee in a clearly frivolous appeal. Of course, the truly difficult question (and one that goes beyond the scope of this study) is whether Alaskan litigants do in fact appeal "too many" cases, and if so, why they do. For until the cases that should be appealed can be identified, and the reasons for appealing them divined, then disincentives cannot be fashioned that will discourage only these sorts of cases.

4. Expand central research and screening staff. Alaska is one of several states which have established a central staff of attorneys to perform research and screening duties in an attempt to deal with the problem of increasing caseload. As outlined in the American Bar Association Standards on Appellate Courts, the duties of such a staff may include the following:

> (1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;
>
> (2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;
>
> (3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

(4) Supplementing the research of the judges' individual law clerks; and

(5) Acting for the court in supervising preparation of complex records....[27]

In 1971 the National Center for State Courts began the Appellate Justice Project which established experimental central research staffs in Nebraska, Virginia, New Jersey and Illinois.[28] The evidence accumulated during these projects supported the following initial hypotheses of the project:

1. That a central staff of lawyers can increase an appellate court's productivity.

2. That a court with a staff can retain effective control over the decisional process and the final decisions.

3. That a substantial number of appeals are "routine" and can be decided appropriately by short, unsigned opinions.

4. That in such a routine case a central staff memorandum is helpful to the judges and makes it feasible to utilize a short, unsigned opinion.

5. That appellate staff assistance of this sort is acceptable to the practicing bar.[29]

However, for three other initial hypotheses, the evidence either did not support the hypothesis or the evidence was too ambiguous to permit a conclusion:

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[27] ABA Standards on Appellate Courts at 98-99.

[28] D. Meador, Appellate Courts: Staff and Process in the Crisis of Volume (1974). This book is the official report on the Appellate Justice Project and contains detailed discussions on how the staff functioned in each project state.

[29] Id. at 163

1. That adding a central staff would increase productivity more than providing additional law clerks for the judges.

2. That adding a central staff would increase productivity and preserve collegiality more effectively than adding judges to the court.

3. That adding a central staff would allow more judge time to be devoted to difficult cases.[30]

The report on the project emphasizes that the project did not disprove these unsupported hypotheses; it only failed to verify them.[31] The conclusion of the report which is most pertinent to this study is the following:

> Among the positive showings perhaps the most important point is that central staff lawyers do contribute to appellate productivity and expedition. A staff allows a court to handle a heavier caseload than the court could handle without it. Precisely how much a staff can step up the court's capacity depends on a number of variables, including the size of the staff and the court's internal procedures for deciding the staff processed cases.[32]

There are currently two central staff attorneys working under the supervision of the Clerk of the Supreme Court. The duties of the central staff include the following.

1. Perform legal research on matters filed with the supreme court.

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[30] Id. at 163-64.

[31] Id. at 164.

[32] Id.

2. Review all appeals once all briefs are in and propose possible disposition of routine cases.

3. Recommend consolidation of appeals for arguments.

4. Review petitions for review and prepare memoranda recommending appropriate disposition.

5. Review and research complex motions presented to the court.

6. Review and research briefs and records in sentence appeals and prepare memoranda recommending possible disposition.

7. Assist clerk in scheduling expedited appeals before the court.

8. Assist clerk in preparing complicated records on appeal.

9. Develop systems for operation of the central staff.

10. Review circulating draft opinions and prepare index of subject matter for internal use.

11. Assist clerk in research concerning rule revisions and administrative matters.

The establishment of these positions has contributed to the administrative efficiency of the court's operations, and has increased significantly the court's capacity to process cases.[33]

But there is a danger in relying too heavily on law clerks to solve the caseload problem, and that is that

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[33] It is unlikely that the court could have disposed of as many cases as it did during 1976 without the central staff assistance.

the staff may assume judicial responsibilities which properly should be performed by the justices. The Commentary to the ABA Standards on Appellate Courts.

> The problem created by use of a central legal staff is that judicial responsibility may be diffused among the staff to the detriment of the appellate process. Where a court employs a central staff, it must be continually alert to the risk of internal bureaucratization and guard against any tendency to rely on staff for decisions that should be made only by judges personally. Some arrangements involving central staff....seem to involve excessive delegation to staff.[34]

Certainly the use of central staff for researching and making recommendations for disposition in petitions for review, complex motions, sentence appeals, and other routine appeals will free the justices' personal law clerks for work on draft opinions and bench memoranda. There is also an advantage to be gained from a permanent central staff in terms of both experience and the development of an efficient routine. But the court must be exceedingly careful that the dangers noted above are avoided. Additionally, augmenting central staff will not achieve a long term solution to an increasing caseload. Each case must be decided by the justices, and the time available to these five justices is a finite quantity.

It has been suggested that the Court may wish to consider pooling five of the ten existing personal law clerk positions and relocating these five positions in

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[34] ABA Standards on Appellate Courts at 100.

the central staff, leaving each justice with one personal law clerk. While this suggestion may have merit, it cannot be said conclusively that this would permit the Court to handle its caseload more effectively. As noted above, the National Center's Appellate Justice Project failed to demonstrate that the addition of central staff would increase productivity more than additional law clerks. Further, five additional attorneys are probably more than this Court requires for a central staff, although internal procedures could be designed to re-distribute some existing law clerk functions to such an augmented central staff.[35]

It appears in addition that centralizing law clerk positions might permit a more even distribution of workload among the non-judicial legal staff and might well result in increased productivity for the Court overall. It is questionable, however, whether this redistribution of positions and workload would result in a sufficient increase in productivity to warrant the upheaval involved in making the change.

5. Establish intermediate appellate court. The commentators are uniformly in agreement that the most desirable method of dealing with increasing appellate caseloads is the establishment of an intermediate court of appeals. Several recent articles have advocated this

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[35] For example, the augmented central staff might be assigned all bench memoranda, leaving the personal law clerks only with the tasks of assisting in the drafting of opinions and preparing substantive and technical comments. A major disadvantage of this approach is that it is more efficient if the person who prepares the bench memorandum on a case also assists in drafting the opinion.

solution,[36] and the American Bar Association Standards on Court Organization are emphatic in their support of this solution:

> Where a supreme court by reason of workload is unable to perform both its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work.. Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements. [EMPHASIS ADDED.][37]

In addition to being the solution most often advocated by the commentators, the creation of an intermediate appellate court is the solution which has been chosen most frequently to relieve congestion in a single appellate court.[38] Twenty-nine states now have inter-

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36 See e.g., Hopkins, The Role of an Intermediate Appellate Court, 41 Brooklyn L. Rev. 459 (1975); Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Washington L. Rev., 577 (1969); and Appellate Court Reform, 45 Miss. L. J. 121 (1974).

37 ABA Standards on Court Organization at 35.

38 Hopkins, supra, note 48, at 462.

mediate appellate courts, and several states are studying their need for such a court.[39] The following table[40] indicates the status of intermediate appellate courts in the western states:

INTERMEDIATE APPELLATE COURTS IN WESTERN STATES

States With Intermediate Appellate Courts	States Without Intermediate Appellate Courts	States Considering Establishing Intermediate Appellate Courts
Oregon	North Dakota	North Dakota
Washington	South Dakota	
California	Montana	
Arizona	Wyoming	
New Mexico	Idaho	Idaho
Oklahoma	Utah	Utah
Texas	Hawaii	Hawaii
	Alaska	Alaska
	Nebraska	
	Nevada	Nevada

Although the creation of an intermediate appellate court is the most often recommended solution as well as the most frequently adopted solution, the creation of such a court in Alaska would raise some of the same constitutional questions which were discussed above in connection with limiting appeals of right to the supreme court.

The basic question which must be resolved is whether article IV, section 2, of the Alaska Constitution, which specifies that the supreme court has "final appellate jurisdiction", prevents the exercise of final

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39 Idaho Report, supra note 14, at 23.

40 Id. at 24.

appellate jurisdiction by lower courts. Since no intermediate appellate court exists in Alaska, the Alaska Supreme Court obviously has had no opportunity to consider the question of the jurisdiction which may be exercised by such a court under the constitution, so the primary source of authority is in the language of the constitution itself.

Article IV, sec. 1, provides in part:

> 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. [EMPHASIS ADDED.]

The only constitutional language that may be viewed as limiting the Legislature's authority to establish courts is the language of Article IV, sec. 2, which provides in part that the supreme court shall be the "highest court of the State, with final appellate jurisdiction". This language would preclude the establishment of a state court with jurisdiction to review supreme court decisions. There is no other language in the constitution that would appear to preclude the establishment of an intermediate appellate court.

It has been suggested that the constitution's placement of "final appellate jurisdiction" in the supreme court would require the supreme court to exercise that jurisdiction in all cases decided by an intermediate court of appeals. However, in State v. Browder, the court strongly suggested that it may properly exercise its final appellate jurisdiction not only through appeals, but through discretionary review as well. The specific question in that case was whether the statute limiting

the state's right to appeal in criminal cases also precluded the state from invoking the supreme court's discretionary review jurisdiction. The court held that the state was not barred from invoking the court's discretionary review jurisdiction, first because the statutory limitation appeared to govern only appeals and not an application for discretionary review. Second, the court reasoned that if the statute were construed as barring the state from invoking such review, it would be in conflict with the constitution's grant of "final appellate jurisdiction" to the supreme court.

Implicit in this holding is the proposition that the Legislature may limit the right to direct appeal to the supreme court[41] and this limitation will be constitutional so long as the supreme court retains discretionary review authority in all cases, (excluding criminal cases where review may involve double jeopardy). If the right to appeal to the supreme court from decisions of an intermediate court of appeals is retained in all cases, no constitutional question would arise. However, the primary purpose of establishing an intermediate court of appeals would be to reduce the caseload of the supreme court, and retention of appeals of right to the supreme court in all cases would defeat that purpose.

The primary benefits which can be expected to result from the creation of an intermediate court of appeals are a reduction in the court's backlog of cases and a reduction in the elapsed time between the submission of

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[41] The Alaska Constitution does not grant a right to appeal to the supreme court or to any other court. Nor has a right to appeal ever been held to be a requirement under the U.S. Constitution.

briefs and final disposition. In Oregon, for example, the average number of days from submission of briefs to a final decision in the Oregon Supreme Court dropped from 221 days to 130 days following the creation of an intermediate appellate court in 1969.

The reason for this is that establishing an intermediate appeals court permits the Supreme Court to control its caseload via the exercise of discretionary review.

The following table is an excerpt from a report provided by the Arizona Supreme Court, and illustrates how that court has kept pace from 1965 through 1976, while during the same period experiencing an increase in filings of nearly 200%:[42]

	FILINGS	DISPOSITIONS				
YEAR	FILED	WRITTEN	MEMO-RANDUM	TOTAL	TERM.W/O WRITTEN OPINIONS	CASES PENDING DEC. 31
1965	321	176	0	176	262	462
1966	449	192	0	192	313	373
1967	448	158	0	158	401	258
1968	531	164	0	164	347	269
1969	575	205	0	205	360	320
1970	709	224	0	224	493	331
1971	688	186	0	186	482	383
1972	701	191	0	191	528	385
1973	714	230	56	286	478	341
1974	713	210	109	319	437	350
1975	799	222	68	290	659	307
1976	921	185	84	269	774	327

[42]The Arizona Court of Appeals was established in 1965.

An intermediate appellate court appears to be the one solution to existing and future workload problems that will bring long term assistance to the supreme court. In addition, an intermediate appellate court will not interfere with the supreme court's exercise of its law making function, and its establishment will insure that each case heard by the supreme court is given full and careful consideration by the justices and is handled within an acceptable period of time.

III. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

Although the statistical information discussed earlier in this report provides strong evidence by itself of the critical workload problems facing the supreme court, a statistical comparison of the Alaska Supreme Court with supreme courts in other states shows that the Alaska court's workload is among the highest of similarly constituted supreme courts in the country.

This section of the report must begin with a word of caution. Because courts do not always measure precisely the same things, it is very difficult to draw conclusions from the data from other states with absolute confidence. Every effort has been made to compare only those figures which appear to be truly comparable, but at best the comparative figures are a "good approximation" of the facts. Finally, some concern has been expressed about the relationship of the size and number of appellate courts to the population of the state. Information concerning this relation-

ship provides an interesting backdrop to the other statistical comparisons that follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population. The corrected[43] data on Alaska is as follows:

Trial judges per 100,000 population	4.46
Appellate judges per 100,000 population	1.24
Appellate judges per 100 trial judges	27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975)	18
Intermediate appellate court judges	0
Supreme court justices	5
Population (estimated 1975)	403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.[44] Alaska is in a three-way tie for second place for appellate

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[43]The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

[44]The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3), and the District of Columbia (5.9). Because a few jurisdictions, like the District of Columbia, have only one level of trial courts, these comparisons may not be entirely accurate.

judges per 100,000 population[45]. Alaska ranks sixth, along with Hawaii, for appellate judges per 100 trial judges.[46]

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions for which data is available. If the supreme court remained as it is with five justices and a three judge intermediate appellate court were created, the ratio would be even higher -- 1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews

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[45]Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

[46]The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population. The ratio of appeals in Alaska to the population was more than twice the ratio in Idaho for 1976. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Data for 1977 compiled for the National Conference of Appellate Court Clerks[47] shows that Alaska is third highest in the nation for appellate filings per population. During 1977, one appeal was filed in Alaska for every 589 residents. The only jurisdictions with higher ratios were Nevada with one appeal per 536

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[47]W. J. Kramer, "Comparative Outline of Basic Appellate Court Structure and Procedure in the United States," National Center for State Courts (1978). The 1976 and 1977 caseload figures used in this section of the report are taken from this publication.

residents and the District of Columbia, with one appeal per 556 residents. This ratio of filings to population is nearly four times the national average of one filing per 2034 state residents.

Some tentative conclusions may be drawn from these figures First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the following table presents comparative data on the workloads of the supreme court in Alaska and in eight other states for 1976 and 1977.[48] These particular states were selected for comparison because, like Alaska, they have no intermediate appellate court, and each of them has a five justice court except for Maine, which has six justices.

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[48]Data for 1978 for these courts was not available at the time this report was being prepared.

TABLE VII

TOTAL APPELLATE FILINGS

	1976	1977
Alaska	466	613
Hawaii	265	316
Idaho	338	373
Maine	269	326
Nevada	704	1022
New Hampshire	256	319
North Dakota	169	218
Vermont	361	364
Wyoming	138	145

During 1976 and 1977, only Nevada reported having more case filings than Alaska; and during 1977 Alaska had significantly more case filings than Idaho, the court having the third highest filings in that year.

During 1976, five of the other states issued more opinions than did the Alaska court, although only the Nevada and New Hampshire courts issued significantly more than Alaska's. For 1977, however, Alaska had exceeded three of those states in total opinions issued, and the difference between Alaska's total opinions and those of Nevada and New Hampshire was much less than for 1976. The following table illustrates how the Alaska Supreme Court compares during these years for total opinions published and average opinions per justice.

TABLE VIII

	TOTAL OPINIONS		AVERAGE PER JUSTICE	
	1976	1977	1976	1977
Alaska	133	189	26.6	38
Hawaii	89	87	17.8	17
Idaho	136	165	27.2	33
Maine	168	172	28	28.6
Nevada	252	223	50.4	45
New Hampshire	205	249	41	50
North Dakota	122	143	24.4	29
Vermont	141	145	28.2	29
Wyoming	75	102	15	20

It is noteworthy that during 1978 the Alaska Supreme Court published 237 opinions, an average of 47 per justice.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority. Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions during 1976 than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of

cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

In addition to reviewing current comparative data, we also reviewed the workloads of several other supreme courts at the time that intermediate appellate courts were created in their states. For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than the Alaska Supreme Court during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by the Alaska court; and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964, the New Mexico Supreme Court, also with five justices, disposed of 162 cases by written opinion and terminated a total of 435 cases. Finally, an intermediate appellate court was approved in the state of Washington in late 1968, commencing operations in 1969. During 1968, the Washington Supreme Court had 701 cases filed and terminated a total of 612 cases, including 336 by written opinion. Although the number of filings and the number of written opinions appears higher than Alaska's during 1978, it must be remembered that the Washington Supreme Court has nine justices rather than five. Thus, the average number of opinions written by each justice ofthe Washington court during 1968 was 37 compared to 47 for Alaska during 1978. It

therefore appears that the Alaska Supreme Court is in very close to the same circumstances now that these courts were in when intermediate appellate courts were established in their states.

IV. A COURT OF APPEALS FOR ALASKA

By the end of 1978, the Alaska Supreme Court had arrived at some tentative conclusions as to the most desirable size of an intermediate court of appeals and the most reasonable division of jurisdiction between the proposed Court of Appeals and the Supreme Court. A Court of Appeals will obviously require some additional funding from the state. In order to keep the costs to the state at a minimum, it was decided that the Court of Appeals should have the minimum number of justices and supporting staff; that is, three judges, with one law clerk and one secretary each. And because the total appellate caseload will not be large enough in the foreseeable future to warrant granting full jurisdiction in all appellate matters to the Court of Appeals, it was decided that the Court of Appeals should have limited subject matter jurisdiction.

The Supreme Court determined that the Court of Appeals should be given jurisdiction over all criminal cases appealed from the Superior Court, including cases that are ordinarily called "civil," but actually arise within the context of criminal cases. This category included habeas corpus appeals, extradition, probation and parole revocation, and certain limited juvenile cases.

In addition, the Supreme Court proposed that the Court of Appeals should hear all appeals directly from the District Court, both civil and criminal. Under existing statutes, the Superior Court first hears appeals from the District Court, with further appeal as a matter of right to the Supreme Court.

Finally, the Court recommended that the legislation for the Court of Appeals provide a mechanism whereby, at a later date and if the workload balance between the two courts warranted it, the Supreme Court could transfer appeals from administrative agencies from the Supreme Court to the Court of Appeals.

At the close of 1978, legislation was being drafted for introduction in the 1979 session of the Alaska Legislature to establish a Court of Appeals for Alaska.

Memorandum

Alaska Court System

TO: Arthur H. Snowden, II
Administrative Director

DATE : April 6, 1979

FROM: Susan Burke
Deputy Admin. Dir.

SUBJECT: Senate Bill 104 am

I have attached a copy of Senate Bill 104 am, on which I have hand-written some suggested language changes that may be of assistance in meeting some of the concerns expressed about the bill with respect to stricter limitations on court of appeals jurisdiction and on review by the supreme court of cases pending before and decided by the court of appeals.

SB

Adm. F-1
Rev. 2-73

Introduced: 2/2/79
Referred: Judiciary and Finance

BY ZIEGLER, BRADLEY, MELAND, RODEY, STIMSON AND STURGULEWSKI

IN THE SENATE

SENATE BILL NO. 104 am

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing the court of appeals; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 22 is amended by adding a new chapter to read:

CHAPTER 07. THE COURT OF APPEALS.

Sec. 22.07.010. ESTABLISHMENT. There is established the court of appeals, consisting of three judges.

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

(1) criminal prosecution;

(2) post-conviction relief;

(3) determination of children's court jurisdiction over a minor under AS 47.10;

(4) extradition;

(5) habeas corpus;

(6) revocation of probation or parole; and

(7) bail; ~~and~~

~~(8) appeal to the superior court from a decision of an administrative agency~~.

~~(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 superior court for a trial ~~de novo in whole or in part~~.

(c) The court of appeals may issue injunctions, writs and all other process necessary for the complete exercise of its jurisdiction.

(d) The court of appeals has jurisdiction to hear appeals of sentences of imprisonment imposed by the superior court or the district court on the grounds that the sentence is excessive or too lenient and, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(e) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction, except that

~~(1) there is no right of appeal to the court of appeals in a case for which direct review by the supreme court has been provided by rule; and~~

(1) 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 it is too lenient under (d) of this section.

Sec. 22.07.030. REVIEW BY SUPREME COURT. A party may apply to the supreme court for review of a final decision of the court of appeals in accordance with AS 22.05.010 and rules adopted by the supreme court. In this section, "final decision" means a decision or order other than a dismissal by consent of all parties that closes a matter in the court of appeals.

Sec. 22.07.040. QUALIFICATIONS OF JUDGES. A judge of the court of appeals shall be a citizen of the United States and of the state, a resident of the state for three years immediately preceding his appointment, have been engaged for not less than eight years immediately preceding his appointment in the active practice of law, and at the time of appointment be licensed to practice law in the state. For purposes of this section, the active practice of law shall be the same as defined for the justices of the supreme court in AS 22.05.070.

Sec. 22.07.050. OATH OF OFFICE. Each judge of the court of appeals, upon entering office, shall take and subscribe to an oath of office required of all officers under the constitution and such further oath or affirmation as may be prescribed by law.

Sec. 22.07.060. APPROVAL OR REJECTION. Each judge of the court of appeals is subject to approval or rejection as provided in the Alaska Election Code (AS 15). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. The information and any recommendation shall be made public at least 30 days before the election. The judicial council shall also provide the information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects the candidacy of a judge, he may not for a period of four years thereafter be appointed to fill a vacancy in the supreme court, the court of appeals, or the superior court of the state.

Sec. 22.07.070. VACANCIES. (a) The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of judge of the court of appeals within 45 days after receiving nominations from the judicial council, by appointing one of two or more persons nominated by the council for each actual or impending vacancy. An appointment to fill an impending vacancy becomes effective upon the actual occurrence of the vacancy.

(b) The office of a judge of the court of appeals becomes vacant 90 days after the election at which he is rejected by a majority of those voting on the question or for which he fails to file his declaration of candidacy to succeed himself. Upon the occurrence of (1) an actual vacancy; (2) the certification of rejection following an elec-

tion; or (3) the failure of a judge to file a declaration of candidacy to succeed himself, the judicial council shall meet within 45 days and submit to the governor the names of two or more persons qualified for the judicial office; however, the 45-day period may be extended by the judicial council with the concurrence of the supreme court. In the event of an impending vacancy other than by reason of rejection or failure to file a declaration of candidacy, the judicial council may meet at any time within the 90-day period immediately preceding the effective date of the vacancy and submit to the governor the names of two or more persons qualified for the judicial office.

Sec. 22.07.080. RESTRICTIONS. A judge of the court of appeals while holding office may not practice law, or 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 judge of the court of appeals filing for another elective public office forfeits his judicial position.

Sec. 22.07.090. COMPENSATION. (a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23. The compensation of a judge may not be diminished during his term of office, unless by general law applying to all salaried officers of the state.

(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.

Sec. 22.07.100. PROCESS. Process of the court of appeals shall be

See attached

in the name of the State of Alaska, signed by the clerk of the court or his deputy, dated when issued, sealed with the seal of court, and made returnable according to rule prescribed by the supreme court.

* Sec. 2. AS 22.05.010 is repealed and re-enacted to read:

Sec. 22.05.010. JURISDICTION. (a) The supreme court has final appellate jurisdiction in all actions and proceedings.

(b) Appeal to the supreme court is a matter of right ~~only~~ in ~~those~~ except actions and proceedings ~~from which there is no right of appeal to~~ within the jurisdiction of the court of appeals under AS 22.07.020.

(c) The supreme court may ~~in its discretion~~ review a final decision of the court of appeals ~~on its own motion~~ on application of a party under AS 22.07.030 if the supreme court finds that (1) the decision is in conflict with a decision of the supreme court or the court of appeals

(d) The supreme court may issue injunctions, writs and all other process necessary to the complete exercise of its jurisdiction.

* Sec. 3. AS 22.05 is amended by adding a new section to read:

Sec. 22.05.015. TRANSFER OF APPELLATE CASES. (a) The supreme court may transfer to the court of appeals for decision a case pending before the supreme court if the case is within the jurisdiction of the court of appeals.

(b) The supreme court may take jurisdiction of a case pending before the court of appeals if the ~~supreme court determines~~ court of appeals certifies that

(1) the case involves a significant question of law under the Constitution of the United States or of the state or an issue of substantial public interest that should be determined by the supreme court; or

(2) the caseload of the court of appeals is such that it is necessary for the expeditious transfer, ~~will further the efficient~~ administration of justice.

~~(c) The supreme court may provide by rule that review of an appeal to the superior court from an administrative agency be by the supreme~~

* NOTE: 22.05.015.(b)(2) may also be deleted if this type of transfer is not felt to be necessary or desirable.

~~court rather than by the court of appeals under AS 22.07.020(8).~~

(f) A case filed in the supreme court or in the court of appeals may not be dismissed by one court on the sole ground that it is within the jurisdiction of the other court. The case shall be transferred to the proper court.

* Sec. 4. AS 22.05.060 is amended to read:

Sec. 22.05.060. SEALS OF COURT. The seal of the supreme court is a vignette of the official flag of the state with the words "Seal of the Supreme Court of the State of Alaska" surrounding the vignette. The supreme court shall prescribe by rule the seals of court for the court of appeals and for the superior and district courts.

* Sec. 5. AS 22.05.100 is amended to read:

Sec. 22.05.100. APPROVAL OR REJECTION. Each supreme court justice is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each justice before his retention election and shall provide to the public information about that justice and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamphlet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state for a period of four years thereafter.

* Sec. 6. AS 22.10.020(a) is amended to read:

(a) The superior court is the trial court of general jurisdiction, with original jurisdiction in all civil and criminal matters, including

but not limited to probate and guardianship of minors and incompetents. The jurisdiction of the superior court extends over the whole of the state. The superior court and its judges may issue injunctions, writs of review, mandamus, prohibition, habeas corpus and all other writs necessary or proper to the complete exercise of its jurisdiction. A writ of habeas corpus may be made returnable before any judge of the superior court. The superior court has jurisdiction in all matters appealed to it from ~~[A SUBORDINATE COURT (OR)]~~ a subordinate court or administrative agency when appeal is provided by law. Appeals are a matter of right [, BUT NO APPEAL FROM A SUBORDINATE COURT MAY BE TAKEN BY THE DEFENDANT IN A CRIMINAL CASE AFTER A PLEA OF GUILTY, EXCEPT ON THE GROUND THAT THE SENTENCE WAS EXCESSIVE, AS FURTHER PROVIDED BY THIS SECTION. NO APPEAL MAY BE TAKEN BY THE STATE, EXCEPT TO TEST THE SUFFICIENCY OF AN INDICTMENT OR INFORMATION. AN APPEAL TO THE SUPERIOR COURT MAY BE TAKEN ON THE GROUND THAT A SENTENCE OF IMPRISONMENT OF 180 DAYS OR MORE WAS EXCESSIVE AND THE SUPERIOR COURT IN THE EXERCISE OF THIS JURISDICTION HAS THE POWER TO MODIFY THE SENTENCE APPEALED FROM UPWARD OR DOWNWARD]. The hearings on appeal from a final order or judgment of a subordinate court or ~~A SUBORDINATE COURT OR~~ administrative agency shall be on the record unless the superior court, in its discretion, grants a trial de novo, in whole or in part.

* Sec. 7. AS 22.10.150 is amended to read:

Sec. 22.10.150. APPROVAL OR REJECTION. Each superior court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and any recommendation shall be made public at least 30 days before the retention

election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals or superior courts of the state.

* Sec. 8. AS 22.15.195 is amended to read:

Sec. 22.15.195. APPROVAL OR REJECTION. Each district court judge is subject to approval or rejection as provided in the Alaska Election Code (AS 15.05 - 15.60). The judicial council shall conduct an evaluation of each judge before his retention election and shall provide to the public information about the judge and may provide a recommendation regarding his retention or rejection. Such information and the recommendation shall be made public at least 30 days before the election. The judicial council shall also provide such information and any recommendation to the office of the lieutenant governor in time for publication in the election pamplet under AS 15.57.025. If a majority of those voting on the question rejects his candidacy, he shall not for a period of four years thereafter be appointed to fill any vacancy in the supreme court, court of appeals, superior courts or district courts of the state.

* Sec. 9. AS 22.15.240 (b) is amended to read:

~~Sec. 22.15.240. APPEAL. (a) Either party 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 for want of an answer.~~

(b) The defendant may appeal a judgment of conviction given in the

district court in a criminal action to the court of appeals [SUPERIOR COURT]. When the judgment is given on a plea of guilty, no appeal may be taken by the defendant except on the ground that a sentence of imprisonment of 45 [180] days or more was excessive; however, the supreme court by rule may further provide for review of a judgment given on a plea of guilty. The state has no right of appeal in criminal actions for which judgment is given in the district courts, except to test the sufficiency of the information.

~~(c) An appeal from the district court shall be taken within 30~~ 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].

~~(d) The supreme court shall prescribe further rules for the procedure for appeals from district courts.~~

* Sec. 10. AS 22.20.010 is amended to read:

Sec. 22.20.010. JUDICIAL OFFICER DEFINED. The term "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district judge and a magistrate.

* Sec. 11. AS 22.20.110 is amended to read:

Sec. 22.20.110. DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS. When required by the supreme court, the commissioner shall serve and execute all process issued by the court of appeals, the superior court and the district courts, attend to and wait upon grand and petit juries, maintain order, attend the sessions of the courts, and exercise the power and perform the duties concerning all matters within the jurisdiction of the courts as may be assigned to him. The commissioner is the executive officer of the court of appeals, the superior court and district courts.

* Sec. 12. AS 22.25.010(g) is amended to read:

(g) The word "justice" means a supreme court justice, and the word "judge," unless the context clearly indicates otherwise, means a judge of the court of appeals, a superior court judge or district court judge.

* Sec. 13. AS 22.30.080(2) is amended to read:

(2) "judge" means a justice of the supreme court, a judge of the court of appeals, a judge of the superior court, or a judge of the district court who is the subject of an investigation or proceeding under sec. 10, art. IV, Constitution of the State of Alaska and this chapter.

* Sec. 14. AS 11.56.900(2) is amended to read:

(2) "judicial officer" means a supreme court justice, including the chief justice, a judge of the court of appeals, a judge of the superior court, a district court judge, or a magistrate;

* Sec. 15. AS 15.15.030(10) is repealed and re-enacted to read:

(10) A separate nonpartisan judicial ballot shall be designated for each judicial district in which a justice or judge is seeking to succeed himself. The ballot shall be divided into four parts and each part shall bear a heading indicating the court to which the candidate is seeking approval. Within each part the question of whether the justice or judge shall be approved or rejected shall be set out in substantially the following manner: (A) "Shall . . . . . be retained as justice of the supreme court for 10 years?"; (B) "Shall . . . . . be retained as judge of the court of appeals for eight years?"; (C) "Shall . . . . . be retained as judge of the superior court for six years?"; or (D) "Shall . . . . . be retained as judge of the district court for four years?" Provision shall be made for marking each question "Yes" or "No".

* Sec. 16. AS 15.35 is amended by adding new sections to read:

Sec. 15.35.140. APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals shall be subject to approval or rejection at the first general election held more than three years after his appointment. If approved, he shall thereafter be subject to approval or rejection in a like manner every eighth year.

Sec. 15.35.150. FILING DECLARATION BY JUDGE OF THE COURT OF APPEALS. Each judge of the court of appeals seeking to succeed himself in office shall file with the lieutenant governor a declaration of candidacy not less than 90 days before the date of the general election at which approval or rejection is requisite.

Sec. 15 35.160. REQUIREMENT OF FILING FEE FOR COURT OF APPEALS. At the time the declaration is filed, each candidate shall pay a filing fee to the lieutenant governor. The filing fee for a candidate for the court of appeals is $100.

Sec. 15.35.170. PLACING NAME OF JUDGE OF THE COURT OF APPEALS ON BALLOT. The lieutenant governor shall place the name of a judge of the court of appeals who has properly filed a declaration of candidacy on the judicial ballot in each judicial district of the state for the general election at which approval is sought.

* Sec. 17. AS 15.57.025 is amended to read:

Sec. 15.57.025. INFORMATION AND RECOMMENDATIONS ON JUDICIAL OFFICERS. No later than 60 days before the applicable state election, the judicial council shall file with the lieutenant governor a statement including information about each supreme court justice, <u>court of appeals judge,</u> superior court judge, and district court judge who will be subject to a retention election, following the evaluation of each such justice or judge conducted by the judicial council according to law. Each such statement may not exceed 300 words.

* Sec. 18. AS 15.57.040(2) is amended to read:

(2) judicial officer other than supreme court justice or court of appeals judge, $50 each.

* Sec. 19. AS 24.55.330(2) is amended to read:

(2) "agency" includes a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or in the executive, legislative or judicial branches of the state government, and a department, office, institution, corporation, authority, organization, commission, committee, council or board of a municipality or of the state government independent of the executive, legislative and judicial branches; it also includes an officer, employee or member of an "agency" acting or purporting to act in the exercise of his official duties, but does not include the governor, lieutenant governor, a member of the legislature, justice of the supreme court, judge of the court of appeals, a superior court judge, [OR] district court judge, magistrate, member of a city council or borough assembly, elected city or borough mayor, or a member of an elected school board;

* Sec. 20. AS 39.20.310(1) is amended to read:

(1) members of the state legislature, the governor, the lieutenant governor, and justices and judges of the supreme and superior courts and of the court of appeals, but nothing in AS 39.20.220 - 39.20.330 may be construed to diminish the salaries fixed by law for these officers by reason of absence from duty on account of illness or otherwise;

* Sec. 21. AS 39.23.130(2) is amended to read:

(2) "judiciary" means justices of the supreme court and judges of the court of appeals, the superior court and the district court [THE SUPERIOR AND DISTRICT COURTS].

* Sec. 22. AS 39.35.680(21)(C)(vi) is amended to read:

(vi) justices of the supreme court or judges of the court of appeals or of the superior or district courts of Alaska;

* Sec. 23. AS 39.50.200(2) is amended to read:

(2) "judicial officer" means a person appointed as a justice to the supreme court or as a judge to the court of appeals, superior court, district court, or magistrate court.

* Sec. 24. AS 12.55.120(a) is amended to read:

(a) A sentence of imprisonment lawfully imposed by the superior court for a term or for aggregate terms of 45 days or more [EXCEEDING ONE YEAR] may be appealed to the court of appeals [SUPREME COURT] by the defendant on the ground that the sentence is excessive. By appealing a sentence under this section, the defendant waives the right to plead that by a revision of the sentence resulting from the appeal he has been twice placed in jeopardy for the same offense.

* Sec. 25. AS 12.55.120(b) is amended to read:

(b) A sentence of imprisonment lawfully imposed by the superior court may be appealed to the court of appeals [SUPREME COURT] by the state on the ground that the sentence is too lenient; however, when a sentence is appealed by the state and the defendant has not appealed the sentence, the court is not authorized to increase the sentence but may express its approval or disapproval of the sentence and its reasons in a written opinion.

* Sec. 26. A judge of the court of appeals is entitled to receive annual compensation equal to 95 per cent of the annual compensation of a supreme court justice, payable in equal monthly installments, from the date upon which he takes office until superseded by payment of compensation resulting from the first salary recommendations made under AS 39.23 for judges of the court of appeals.

* Sec. 27. Notwithstanding the effective date of this Act, operations of the court of appeals shall commence on a date determined by the supreme court after all judges of the court of appeals have taken office.

* Sec. 28. The superior court has concurrent appellate jurisdiction with the court of appeals in actions and proceedings commenced in the district court and filed in the superior court before the date on which operations of the court of appeals commence. The supreme court may transfer to the court of appeals an appellate matter involving an action or proceeding commenced in the district court which is pending in the superior court on the date on which operations of the court of appeals commence, including a matter filed before the effective date of this Act. An appellate matter not so transferred shall be decided by the superior court. Before commencement of operations in the court of appeals, a decision of the superior court under this section may be appealed to the supreme court and thereafter to the court of appeals. This section applies only to ~~trade~~ actions and proceedings commenced in the district court within the appellate jurisdiction of the court of appeals.

* Sec. 29. The supreme court may transfer to the court of appeals any matter within the jurisdiction of the court of appeals which is pending in the supreme court on the date on which operations of the court of appeals commence, including matters filed in the supreme court before the effective date of this Act.

* Sec. 30. It is the intent of the legislature that the court of appeals commence operations as soon as possible after the effective date of this Act. The administrative director of courts shall immediately take necessary actior to provide suitable facilities for the court of appeals. When advised by the supreme court, the judicial council shall meet and submit nominations to the governor for all initial vacancies for judge of the court of appeals.

* Sec. 31. Section 14 of this Act takes effect January 1, 1980. The remainder of this Act takes effect July 1, 1979.

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke
Deputy Administrative Director

INFO: Mr. Mel Martin
Technical Operations

FROM: Robert D. Bacon
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	Pending 12/31/78		Filed 1978	
CIVIL		297		256
Extradition	3		8	
Habeas other than extradition	2		2	
Criminal Rule 35	3		3	
Civil forfeiture of property used to commit crime	3		3	
Civil suit re conditions in prison	1		0	
Review proceeding re criminal contempt of District Court	1		1	
Other civil	284		239	
CRIMINAL		209		135
SENTENCE		51		56
PETITION FOR REVIEW		61		156
Civil	34		104	
Criminal	27		52	
ORIGINAL		6		27
Civil	4		17	
Criminal	2		10	
TOTAL		624		630
Within jurisdiction of Court of Appeals*		302		270
Within new jurisdiction of Supreme Court*	322		360	

* We do not at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB RDB

M E M O R A N D U M

February 5, 1979

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

FROM: Robert D. Bacon

SUBJECT: January 1979 Statistics

Attached are the regular monthly statistical tables concerning the Supreme Court's docket as of January 31, 1979.

The most significant figure may be the 152 cases which are pending with the assigned justice for preparation of a draft opinion. This is an increase from 129 one month ago, and 114 two months ago. The figure of 129 on December 31 was the highest in the court's history to that time.

During January, 51 cases were filed, and 49 were closed, 19 on the merits and 30 otherwise. The number of pending cases increased during January from 624 to 626; the number of appeals increased from 557 to 561.

The court took action on 18 petitions for review during January. Ten were denied, five were granted and summarily disposed of, two were taken for further briefing and full consideration on the merits, and one was dismissed as moot without the necessity of court action.

None of the large number of opinions prepared for publication following the January conference resulted in a case closing in January, but I expect a large number to do so in February.

RDB RDB

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH JANUARY 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	51
Dispositions on Merits to Jan. 31, 1979	
By Opinion and Mandate	12[a]
By Memorandum Opinion & Judgment	1
By Summary Order	6
Total Dispositions on Merits	19
Other Dispositions to Jan. 31, 1979	
Dismissals	17
Petition or Application Denied	13
Total Other Dispositions	30
Cases Pending Jan. 31, 1979	626
Reasons for Cases Pending	
Awaiting Record	120
Awaiting Briefs	169
Awaiting Hearing or Submission	57[b]
Submitted/Awaiting Draft Opinion	152
Submitted/Draft Opinion Circulating	84
Awaiting Decision on Granting Petition for Review	12
Awaiting Mandate or Decision on Rehearing	13
Stayed or Remanded	19
Total Pending Jan. 31, 1979	626

a 10 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, 19 were pending with the Central Staff.

TABLE II

ALASKA SUPREME COURT

January 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 [illegible], 1979							
FILED OR REINSTATED THIS MONTH	18	12	2	32	14	5	51
TOTAL FILED YEAR-TO-DATE							
Adjustments							
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	4		2	6	1		7
Affirmed in Part/Reversed or Remanded in Part	1			1			1
Reversed					1		1
Reversed and Remanded	3			3			3
Remanded Only							
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed		1		1			1
Reversed							
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2		2
Other							
TOTAL DISPOSITIONS ON MERITS	8	2	2	12	7	0	19
D. Petitions for Review/Originals Denied					10	3	13
E. Dismissals							
By Agreement or by Appellant	8	3		11			11
By Court	5			5	1		6
On Motion							
TAL DENIALS AND DISMISSALS	13	3		16	11	3	30
TOTAL CASE DISPOSITION	21	5	2	28	18	3	49
Reasons for Cases Pending January 31, 1979							
Awaiting Record	62	53	4	119		1	120
Awaiting Briefs	67	70	13	150	13	6	169
With Central Staff	10	3	2	15	4		19
Awaiting Hearing/Submission	27	10		37	1		38
Awaiting Draft Opinion	70	48	17	135	16	1	152
Draft Opinion Circulating	39	24	13	76	8		84
Awaiting Decision on Granting P/R or Orig.					12		12
Awaiting Mandate or Decision on Rehearing	6	5	1	12	1		13
Stayed or Remanded	13	3	1	17	2		19
TOTAL CASES PENDING January 31, 1979	294	216	51	561	57	8	626

M E M O R A N D U M

February 13, 1979

TO: Chief Justice Rabinowitz
Arthur H. Snowden, II
Susan Burke, in Anchorage and Juneau

INFO: Justice Connor
Justice Boochever
Justice Burke
Justice Matthews
Jim Babb
Caroline Hudnall

FROM: Robert D. Bacon

SUBJECT: Reversal Rate: Cases Reversed Only in Part

Attached is a summary of Mr. Gaguine's survey of most of the cases included in the 1978 statistics as "affirmed in part and reversed or remanded in part," "remanded only," "reversed," and "reversed and remanded."

You will note that it significantly reduces our raw reversal rate.

RDB

M E M O R A N D U M February 13, 1979

TO: Robert D. Bacon

FROM: John B. Gaguine

SUBJECT: A Brief Analysis of Cases Reversed in Whole or in Part in 1978

I have made a cursory examination of most of the cases that the court reversed in whole or in part in 1978, and have concluded that the raw reversal rate of 40-50% does not truly reflect the way things are; i.e., the percentage of cases in which the superior court was reversed in toto is considerably less.

Under the category of cases labeled "Affirmed in part, reversed in part," I looked at all the 1978 opinions, 24 of them. I found only two where the decision was essentially reversed: Alsop v. State, 586 P.2d 1236 (eminent domain), and North Slope Borough v. Sohio, 585 P.2d 534 (local taxation). On a few more the portions reversed were as important as the portions affirmed. Teamsters v. King, 572 P.2d 1163 (permissible damages); State v. Tanana Valley Sportsmen, 583 P.2d 854 (validity of emergency game regulations); Vetter v. Wagner, 576 P.2d 979 (workers' compensation award; Board had essentially ignored prior Supreme Court ruling in case). In numerous cases in this category, both civil and criminal, the reversal and remand were only to correct minor errors. Criminal: J.H.B., Jr., v. State, 578 P.2d 146 (affirms on four issues, remands for hearing on whether juvenile jurisdiction would have been waived absent hearsay evidence); Mohn v. State, 584 P.2d 40 (conviction affirmed, remanded for resentencing, because of

trial court's failure to allow defendant to speak before sentencing); Cochran v. State, 586 P.2d 175 (conviction affirmed, remanded to correct sentence suspended one year more than statutorily permitted). In two other cases the trial court was mostly affirmed, but still new trials were required: Stevens v. State, 582 P.2d 621 (violation of criminal discovery rules held harmless as to one rape conviction, but not second); Johnson v. State, 579 P.2d 20 (hearsay admissible, but not to prove defendant's identity). Sentencing cases: Rust v. State, 582 P.2d 134 (remanded for trial court to explore issue of treatment in prison of Rust's dyslexia); Gonzales v. State, 582 P.2d 630 (affirms on constitutional issues, remanded for resentencing because Gonzales was sentenced as second offender when other conviction occurred after drug sale here); Shagloak v. State, 582 P.2d 1034 (long sentence affirmed, remanded because judge incorrectly altered sentence after pronouncing it); Kodiak v. Jackson, 584 P.2d 1130 (remand because minimum sentence in municipal code violates state law); State v. Tucker, 581 P.2d 223 (affirms sentence, remands to vacate instructions on parole, as judge has no parole authority over sentences of less than a year).

Three of the civil cases were reversed only on the issue of attorney's fees: Curran v. Hastreiter, 579 P.2d 524 (remand for fact finding on fees question); Frantz v. First National Bank of Anchorage, 584 P.2d 1125 (remanded for court to spell out reasons for fees decision); Anderson v. State, 584 P.2d 537 (same). Others were only on minor points of damage computation; Curt's Trucking v. Anchorage, 578 P.2d 975; ASHA v. Riley Pleas, Inc., 586 P.2d 1244

(wrong rate of interest applied by trial court); Alaska Airlines v. Sweat, 584 P.2d 544 (complex case on damages affirmed, except on one minor point). Other cases reversed for minor correction: APUC v. Anchorage, 579 P.2d 1071 (interim rate increase to be placed in escrow); Faro v. Faro, 579 P.2d 1377 (custody case; trial court affirmed, except that portion of order requiring unemployed non-custodial mother to pay support).

Under the cases labeled "Remanded Only," 16 in 1978, about half are essentially reversals of the trial court, one in a criminal case, Robinson v. State, 578 P.2d 141 (search and seizure); one in a sentence appeal, Abraham v. State, 585 P.2d 526 (Supreme Court exercised discretion to hear issue trial court had refused to hear as untimely); the rest in civil appeals. Three cases were remanded for resentencing; in two resentencing was ordered (in one, Deal v. State, Opin. No. 1769, Dec. 15, 1978, the state confessed error), and in the third the Supreme Court itself ordered the sentence reduced. The remaining cases were primarily affirmances, with correctional remands, such as technical corrections in the sentence or statement of reasons for an alimony award.

There were few opinions simply labeled "Reversed" without more; five through 583 P.2d. All were total reversals of the trial court. Note here, however, that at least two were petitions for review; if the Supreme Court had agreed with the trial court's ruling, it probably would have refused review altogether.

The largest group of overturned cases was the one labeled "Reversed and Remanded." Through 579 P.2d (about half a year), there were twenty-six. A large number of these

represented partial affirmances. This category also includes seven criminal convictions reversed, and remanded for new trials, because of procedural errors resulting in violations of the defendant's rights but not directly indicative of innocence: Green v. State, 579 P.2d 14 (use of recorded testimony without showing of witness' unavailability; trial court affirmed on three other issues); Johnson v. State, 577 P.2d 1063 (improper use of sealed verdict over defendant's objection); Rivett v. State, 573 P.2d 946 (failure to instruct on lesser included offense; other assignments of error overruled); Kimoktcak v. State, 578 P.2d 594 (defendant's right to jury sequestration denied); Richardson v. State, 579 P.2d 1372 (error to play back testimony to jury in defendant's absence; trial court affirmed on two other issues); Walker v. State, 578 P.2d 1388 (failure of defendant to personally waive right to 12-person jury); O'Dell v. Anchorage, 576 P.2d 104 (record does not reflect knowing waiver of right to counsel). Many of the civil reversals were on narrow issues: two on improper grants of summary judgment because material issues of fact existed; two on attorney's fees; one on attorney disqualification; one contempt for untimely filing of a brief one on dismissal for nonprosecution of action; one on a narrow question of interpretation of the Workmen's Compensation Act. Among the reversals here was State v. Erickson, 574 P.2d 1, upholding the validity of the cocaine laws.

I hope that this short discussion might prove useful. If you wish me to expand upon it, I will willingly do so. The accuracy here is not 100% guaranteed -- I looked at a lot of cases rather quickly.

JBG

M E M O R A N D U M April 4, 1979

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

FROM: Robert D. Bacon

SUBJECT: March 1979 Statistics

Attached are Supreme Court statistical tables as of March 31, 1979.

The most significant statistic for March does not appear on the attached tables. The court issued 11 memorandum opinion and judgments in March. By comparison, in the 14-month period since instituting the MO&J form, the court had issued only 17.

Several of those MO&Js, and most of the large number of opinions cleared for publication by the March 8 law conference in Juneau, do not appear as March case dispositions since on March 31 the 10-day waiting period for a petition for rehearing was still running. As a result, only 45 cases were finally closed in March (only 20 on the merits). The 56 filings and 1 reinstatement (Yale v. Flint, No. 4157) caused the total number of pending cases to increase from 628 to 640. Of those 640, 154 were awaiting preparation of a draft by the assigned justice.

The court denied eight petitions for review in March, granted and summarily disposed of two, and kept four for plenary consideration on the merits, a denial rate of 57% and a summary disposition rate of 71%.

Case No. 4529, Snyder v. State, docketed previously as a sentence appeal, was converted in March to a regular criminal appeal on receipt of papers indicating that the excessiveness of the sentence was not the sole issue to be presented in this court.

RDB RDB

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH MARCH 31, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	155
Dispositions on Merits to Mar. 31, 1979	
By Opinion and Mandate	43[a]
By Memorandum Opinion & Judgment	11
By Summary Order	11
Total Dispositions on Merits	65
Other Dispositions to Mar. 31, 1979	
Dismissals	39
Petition or Application Denied	35
Total Other Dispositions	74
Cases Pending Mar. 31, 1979	640
Reasons for Cases Pending	
Awaiting Record	140
Awaiting Briefs	156
Awaiting Hearing or Submission	46[b]
Submitted/Awaiting Draft Opinion	154
Submitted/Draft Opinion Circulating	84
Awaiting Decision on Granting Petition for Review	11
Awaiting Mandate or Decision on Rehearing	33
Stayed or Remanded	16
Total Pending Mar. 31, 1979	640

a 50 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, 10 were pending with the central staff.

TABLE II
ALASKA SUPREME COURT
March 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 February 28, 1979	35	21	5	61	27	10	98
FILED OR REINSTATED THIS MONTH	29	13	4	46	11	0	57
TOTAL FILED YEAR-TO-DATE	64	34	9	107	38	10	155
Adjustments		+ 1	- 1	0			0
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	8	7	7	22	1		23
Affirmed in Part/Reversed or Remanded in Part	1	5	1	7	1		8
Reversed	1	1		2	2		4
Reversed and Remanded	5	2		7			7
Remanded Only			1	1			1
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed	7	3		10			10
Reversed	1			1			1
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2	1	3
Other					4		4
TOTAL DISPOSITIONS ON MERITS	23	19	9	51	13	1	65
D. Petitions for Review/Originals Denied					29	6	35
E. Dismissals							
By Agreement or by Appellant	16	8		24	3		27
By Court	6	3		9	2		11
On Motion	1			1			1
TOTAL DENIALS AND DISMISSALS	23	11	0	34	34	6	74
TOTAL CASE DISPOSITION	46	30	9	85	47	7	139
Reasons for Cases Pending March 31, 1979							
Awaiting Record	79	54	7	140	0	0	140
Awaiting Briefs	76	59	8	143	10	3	156
With Central Staff	3	2	3	8	2	0	10
Awaiting Hearing/Submission	18	12	2	32	4	0	36
Awaiting Draft Opinion	79	44	15	138	12	4	154
Draft Opinion Circulating	38	26	10	74	10	0	84
Awaiting Decision on Granting P/R or Orig					9	2	11
Awaiting Mandate or Decision on Rehearing	18	9	2	29	4	0	33
Stayed or Remanded	4	8	3	15	1	0	16
TOTAL CASES PENDING March 31, 1979	315	214	50	579	52	9	640

M E M O R A N D U M

March 2, 1979

RECEIVED
MAR 7 1979
Chambers of Justice Matthews
Supreme Court

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

FROM: Robert D. Bacon

SUBJECT: February 1979 Statistics

Attached is Supreme Court statistical information as of February 28, 1979.

For all its efforts in February, the court merely stayed in the same place. The number of matters pending on the docket increased by two, from 626 to 628. A total of 46 cases was filed, plus one reinstatement (Hintz v. State, No. 3541). The court closed 45 cases, 26 on the merits and 19 otherwise.

The number of cases pending with a justice for preparation of a draft opinion remained at 152. The number which were the subject of circulating draft opinions grew from 84 to 90. Both of these numbers are somewhat exaggerated; when cross-appeals are pending, they are counted as two cases in these statistics but can be disposed of with a single draft.

The court made decisions on 14 petitions for review in February. It denied 11 (79%), granted and summarily disposed of two (14%)(Wilson v. Mine Safety Appliances Co., No. 4259, and Ross v. Moody, No. 4419), and kept one for oral argument on the merits (Messerli v. State, No. 4326).

Nineteen opinions were published in February, the same as the average number per month during 1978.

RDB RDB

TABLE I

ALASKA SUPREME COURT

1979 STATISTICAL SUMMARY THROUGH FEBRUARY 28, 1979

Total Cases Pending: December 31, 1978	624
Cases Filed or Reinstated, 1979 to date	98
Dispositions on Merits to Feb. 28, 1979	
By Opinion and Mandate	34[a]
By Memorandum Opinion & Judgment	2
By Summary Order	9
Total Dispositions on Merits	45
Other Dispositions to Feb. 28, 1979	
Dismissals	23
Petition or Application Denied	26
Total Other Dispositions	49
Cases Pending Feb. 28, 1979	628
Reasons for Cases Pending	
Awaiting Record	128
Awaiting Briefs	168
Awaiting Hearing or Submission	45[b]
Submitted/Awaiting Draft Opinion	152
Submitted/Draft opinion Circulating	90
Awaiting Decision on Granting Petition for Review	15
Awaiting Mandate or Decision on Rehearing	11
Stayed or Remanded	19
Total Pending Feb. 28, 1979	628

a 29 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, 17 were pending with the central staff.

TABLE II
ALASKA SUPREME COURT
February 28, 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 January 31, 1979	18	12	2	32	14	5	51
FILED OR REINSTATED THIS MONTH	17	9	3	29	13	5	47
TOTAL FILED YEAR-TO-DATE	35	21	5	61	27	10	98
Adjustments							
DISPOSITIONS							
A. By Opinion and Mandate/Published							
Affirmed	6	5	5	16	1		17
Affirmed in Part/Reversed or Remanded in Part	1	5	1	7			7
Reversed	1	1		2	2		4
Reversed and Remanded	3	2		5			5
Remanded Only			1	1			1
Sentence Too Lenient							
Bar Disciplinary Action							
B. By Memorandum Opinion & Judgment							
Affirmed		2		2			2
Reversed							
C. By Summary Order							
Affirmed		1		1	3		4
Reversed or Reversed & Remanded					2	1	3
Other					2		2
TOTAL DISPOSITIONS ON MERITS	11	16	7	34	10	1	45
D. Petitions for Review/Originals Denied					21	5	26
E. Dismissals							
By Agreement or by Appellant	11	5		16			16
By Court	6			6	1		7
On Motion							
TOTAL DENIALS AND DISMISSALS	17	5	0	22	22	5	49
TOTAL CASE DISPOSITION	28	21	7	56	32	6	94
Reasons for Cases Pending February 28, 1979							
Awaiting Record	67	55	6	128			128
Awaiting Briefs	73	70	11	154	8	6	168
With Central Staff	7	3	3	13	4		17
Awaiting Hearing/Submission	21	5	0	26	1	1	28
Awaiting Draft Opinion	67	48	17	132	17	3	152
Draft Opinion Circulating	49	23	9	81	9		90
Awaiting Decision on Granting P/R or Orig.				0	15		15
Awaiting Mandate or Decision on Rehearing	8	2	1	11			11
Stayed or Remanded	12	3	2	17	2		19
TOTAL CASES PENDING February 28, 1979	304	209	49	562	56	10	628

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

SUPREME COURT WORKLOAD:
Analysis of Proposed Solutions

[redacted]

Prepared By:
Office of Staff Counsel
Office of Administrative Director
September 16, 1977

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INTRODUCTION

The caseload of the Alaska Supreme Court has increased sharply over the past three years. While the Court has also increased its disposition of cases over this period, the increase in dispositions has not kept pace with the increase in filings.

In a memorandum dated May 24, 1977, the Chief Justice requested that the Administrative Director obtain data from other states relating to the workload of the supreme court. This same memorandum mentioned three possible methods of dealing with increased caseloads: (1) handling some cases by panels, (2) increasing the size of the court and (3) establishing an intermediate appellate court.

In response to this request the Administrative Office has undertaken a preliminary study of the supreme court workload. This report will present comparative data on the Alaska Supreme Court and the supreme courts in other comparable states. The report will also review several possible methods of dealing with increased caseloads and will discuss the advantages and disadvantages of the various possibilities.

Unfortunately, the report must begin with three caveats. First, it is very difficult to compare the data from various states as there is no widely-used standard method of defining and stating the pertinent information. Every effort has been made to compare only those figures which are truly comparable,

but, at best, the comparative figures in this report are a "good approximation" of the facts. Secondly, the discussions of the various possible methods of dealing with increasing caseloads are not intended to be exhaustive and conclusive. It would require a much more extended study in order to determine the likely effect in Alaska of adopting any one solution, and even the conclusions of such an extended study would necessarily be less than absolutely reliable. This report then attempts to present the alternatives and some of the more likely effects of each possible solution. Finally, although statistics can be gathered from other states and compared with Alaska, this report cannot answer the fundamental question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle without adopting one or more of the alternatives discussed here. There are no standards by which to measure overwork, and the answer ultimately must be the Court's judgment as to whether it can handle more cases without sacrificing quality.

I. STATISTICAL COMPARISON OF ALASKA WITH OTHER STATES

The memo which initiated this study expressed some concern about the relationship of the size and number of appellate courts to the population of the state and information on this relationship provides an interesting backdrop to the other statistical comparisons which follow.

The Court Administrator in Louisiana recently surveyed 52 jurisdictions (50 states plus Puerto Rico and the District of Columbia) to obtain data on the number of appellate judges in relation to population.[1/] The corrected[2/] data on Alaska is as follows:

See p 52

Trial judges per 100,000 population 4.46

Appellate judges per 100,000 population . . . 1.24

Appellate judges per 100 trial judges 27.77

These ratios are based on the following figures:

Trial court judges (general jurisdiction in 1975) 18

Intermediate appellate court judges 0

Supreme court justices. 5

Population (estimated 1975) 403,000

Of the 46 jurisdictions for which data is available, Alaska ranks tenth from the highest for trial judges per 100,000 population.[3/] Alaska is in a three-way tie for second place for appellate judges per 100,000 population.[4/] Alaska ranks sixth,

---

1/ See Appendix I for charts prepared by Louisiana.

2/ The ratios calculated by Louisiana were based on an incorrect number of trial court judges (37) and on an incorrect population figure (330,000).

3/ The states ranking higher than Alaska are Illinois (5.4), Indiana (4.6), Kansas (5.7), Michigan (5.6), Minnesota (5.5), Nevada (4.7), Oklahoma (5.3), Puerto Rico (6.3) and the District of Columbia (5.9).

4/ Alaska is tied with Delaware and the District of Columbia. Only Wyoming ranks higher (1.4).

along with Hawaii, for appellate judges per 100 trial judges.5/

These figures indicate that Alaska already ranks among those states with the highest number of appellate judges in relation to the population. If Alaska should increase the number of appellate judges, either by increasing the size of the supreme court or by creating a new intermediate appellate court, it, of course, would rank even higher. For example, if the size of the supreme court were increased to seven justices, the number of appellate judges per 100,000 population would be 1.73, rather than the current 1.24. Alaska would then have more appellate judges in relation to its population than any of the other 45 jurisdictions included in the chart in Appendix I. If the supreme court remained as it is with five justices and a three-judge intermediate appellate court were created, the ratio would be even higher--1.98 per 100,000 rather than the current 1.24.

It is obvious that the unusually small population of Alaska skews these ratios to some extent, but it is equally obvious that, by any standards, Alaska already has a high number of appellate judges in relation to the population.

5/ The states ranking higher than Alaska and Hawaii are Delaware (38.8), Maine (50), New Hampshire (38.4), North Carolina (29) and Wyoming (33.3).

Such a high ratio may not be inappropriate, however, if the number of appellate judges is not high in relation to the amount of litigation in the state. For example, in 1976 in Alaska, 364 new appeals were filed with the supreme court. This is a ratio of 90.32 appeals per 100,000 population. In Idaho, for the same period, 295 new appeals were filed, which is a ratio of only 38.26 appeals per 100,000 population.6/ The ratio of appeals in Alaska to the population is more than twice the ratio in Idaho. While the ratio of appellate judges in Alaska to population is about twice the ratio in Idaho, the disparity is offset by the higher ratio of appeals to population.

Some tentative conclusions may be drawn from these figures. First, although the number of appellate judges in Alaska when compared to other states appears to be extremely high in relation to the population, the number is not so high when the amount of litigation in the state is taken into consideration. Secondly, the amount of litigation in Alaska is relatively large in relation to the size of the population.

Without regard to population figures, the charts in Appendix II present comparative data on the workloads of the supreme court

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6/ Perhaps more interesting is the comparison of appeals to trial court filings. In Idaho for this period there were 262,419 trial court filings, and one appeal for every 889 trial court cases. In Alaska, there were 102,239 trial court filings, or one appeal for every 280 trial court cases. In other words, three times as many cases are appealed in Alaska as in Idaho.

in Alaska and in eight other states.[7] These particular states were selected for comparison because, like Alaska, they have no intermediate appeallate court, and each of them has a five-justice court except for Maine, which has six justices. Based on the data in Appendix II, the 1976 workload of the Alaska Supreme Court, in comparison with other relatively similar states, appears to be about average.

During 1976, 364 appeals were filed with the Alaska Supreme Court, and 133 opinions were issued. Of the eight other supreme courts reviewed, only Nevada and New Hampshire reported having issued significantly more opinions than did Alaska during 1976.[8] The Nevada court issued 252 opinions and had 607 appeals filed during 1976. New Hampshire reported having issued 205 opinions from July 1, 1974, through June 30, 1975.

Three of the eight courts appear to have workloads much lighter than Alaska's. Hawaii reported 253 appeals filed from July 1, 1975 to June 30, 1976, with opinions issued in 84 cases. North Dakota reported for calendar year 1975 that 128 appeals and original proceedings were filed, and 93 opinions were issued. The Wyoming court issued 75 opinions during 1976, with 138 appeals having been filed.

7/ Hawaii, Idaho, Maine, New Hampshire, Nevada, North Dakota, Vermont, and Wyoming.

8/ The New Hampshire statistics cover fiscal year 1975, the North Dakota statistics cover calendar year 1975, and the Hawaii statistics cover fiscal year 1976. All others cover calendar year 1976.

The three states having apparent caseloads and dispositions nearest to Alaska's were Idaho, Maine and Vermont. During 1976, 351 appeals were filed in the Vermont Supreme Court, and opinions were issued in 141 cases. Idaho reported 295 appeals filed during 1976, and 136 opinions issued. The Maine Supreme Court issued 168 opinions during 1976, but as the following chart indicates, the average number of opinions per justice in Maine was quite comparable to the Alaska average:

STATE	TOTAL OPINIONS	AVERAGE PER JUSTICE
Nevada	252	50.4
New Hampshire	205	41
Maine	168	28
Vermont	141	28.2
Idaho	136	27.2
Alaska	133	26.6
North Dakota	93	18.6
Hawaii	84	16.8
Wyoming	75	15

It is noteworthy, however, that for the first eight months of 1977, the Alaska Supreme Court published 128 opinions. If the court continues to publish opinions at this rate for the remainder of 1977, it could reach a total for the year of over 190 opinions.

Of the states included in this review, six of them have supreme courts which, like Alaska's, have both administrative and rule-making authority.[9] Of the remaining two, Nevada has no administrative responsibilities, but does have rule-making authority. The Vermont court, conversely, has administrative responsibilities, but no rule-making authority. The data in Appendix II shows that the Maine and New Hampshire courts, with both administrative and rule-making authority, issued more opinions than did the Vermont court, which lacks rule-making authority. While we know intuitively that a court which does not exercise either administrative or rule-making authority should be able to handle a higher number of cases than a court that does, this data does not tell us to what degree the absence of such responsibilities increases a court's capacity to handle cases.

Furthermore, the comparative data is insufficient to provide an answer to the question of whether the Alaska Supreme Court is approaching or has reached its limit in terms of the number of cases it can handle, or whether the Alaska court could be producing as many opinions as does the Nevada court, for example. Extensive research would be required to determine whether the Alaska Supreme Court is faced with a greater number of complex cases than are the courts that issue more opinions. Even more difficult to determine is the question of whether the quality of the opinions issued by these courts is up to the

present standard of the Alaska court, and whether our court would be willing to sacrifice some quality to increase substantially its rate of dispositions.

II. POSSIBLE SOLUTION TO THE CASELOAD PROBLEM

Although the workload of the Alaska Supreme Court has increased substantially over the last several years, neither the size of the court itself nor the number of law clerks has increased at all.[10/] During 1976, a total of 364 appeals were filed with the court, as compared to 249 in 1975. This represents an increase in appeal filings of 46% in one year. Because the increase in filings for petitions for review and original applications was not so high, the overall percentage increase in filings from 1975 to 1976 was 38%. Further, a recent statistical report by the Clerk of the Supreme Court showed that the number of pending cases in the "awaiting decision" category as of April 30, 1977, was nearly double the number in that category on the same date in 1976.[11/] It is therefore understandable that the staff and court are feeling burdened by the workload.

10/ Memo dated May 20, 1977, from Donna Spragg Pegues to Chief Justice Boochever.

11/ The number in that category on April 30, 1977 was 125, and on April 30, 1976, the number was 64. See, Memorandum to the Justices from Donna S. Pegues, 5/24/77.

The solutions which come most readily to mind and which have been used by other states to cope with increasing appellate caseloads are the following:

1. Increase the size of the supreme court.
2. Establish panels of the supreme court.
3. Limit appeals of right to the supreme court.
4. Establish central research and screening staff.
5. Establish intermediate court of appeals.

This report will review each of these solutions generally:

1. Increase the size of the supreme court. In many ways court expansion appears to be the simplest solution to the caseload problem. Increasing the number of justices on the court would obviously divide the workload among more people, so that the opinion writing burden on each person is reduced--and this is one of the important goals of any change in the appellate system. Court expansion is an attractive solution also in that it would not necessitate any change in appellate procedures.

The use of either a seven-justice or five-justice court would be compatible with the American Bar Association Standards relating to Court Organization, which state in part:

> A supreme court should be constituted of an odd number of judges, so the decisions can be reached by majority vote. The number most common and generally satisfactory is seven. This number facilitates the working relationships required to establish concurrence of opinion on difficult legal questions, while at the same time being large enough to provide breadth of viewpoint and the manpower to prepare the opinions that

> are the principal work product of appellate courts. Nevertheless, some appellate courts have operated effectively with five judges . . . [EMPHASIS ADDED]12/

A change in the size of the court could be achieved by an amendment to A.S. 22.05.020, which establishes the composition of the court.13/ No constitutional amendment would be necessary, since article IV, section 2(a), of the Alaska Constitution, authorizes the legislature to increase the number of justices upon the request of the supreme court.14/

However, the efficacy of court expansion as a solution to the caseload problem may be illusory. As stated in the American Bar Association Standards on Court Organization, "Adding additional judges to a highest court may actually slow down its operation rather than speeding it up."15/ The additional justices

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12/ American Bar Association Standards Relating to Court Organization, Standard 1.13, at 34 [hereinafter cited as ABA Standards on Court Organization].

13/ A.S. 22.05.020 provides: "Composition and general powers. The supreme court is a court of record and consists of three justices including the chief justice. On December 1, 1968, the total number of justices shall be increased to five. The supreme court is vested with all power and authority necessary to carry into complete execution all its judgments, decrees and determinations in all matters within its jurisdiction, according to the constitution, the laws of the state, and the common law. It may prescribe by rule the fees to be charged by all courts for judicial justices."

14/ Alaska Constitution, article IV, section 2(a) provides: "The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court."

15/ ABA Standards on Court Organization at 35.

would certainly make it possible for the court to increase its outpout of opinions, but, at the same time, each case might take somewhat longer to decide because there would be additional points of view to be dealt with and more justices among whom draft opinions and memoranda would have to circulate. Additionally, each justice would still have to review each draft opinion. Assuming that seven justices would produce more opinions in a given year than would five, the workload on each justice with respect to the opinion review function would actually increase with seven justices. One commentator has described the situation as follows:

> [W]hatever added work can be done by the extra judges is dissipated by the increased consultation time, by the difficulties inherent in drafting opinions to accommodate multiple points of view, and by the administrative problems involved in increased personnel.16/

Increasing the size of the supreme court has not been a widely-used method of dealing with appellate caseload problems. In fact, the National Center for State Courts reported to the Idaho committee that no state judiciary had expanded the size of its supreme court in recent years.17/

16/ Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Wash. L. Rev. 577, 594 (1969), quoted in Donaldson, A Crisis in the Idaho Court System: An "Appealing Remedy, 13 Idaho L. Rev. 1, 4 (1976).

17/ An Investigation into the Problems Created by the growing Appellate Caseloads in Idaho, Report of the Supreme Court Appellate Court Committee, August 1977, Draft Report of June 29, 1977, at 37. [Hereafter cited as Draft Idaho Appellate Court Report.]

The projected cost of adding two justices to the supreme court, including staff, space and equipment requirements, would be approximately $300,000 the first year and $285,000 each subsequent year.

2. Establish panels of the supreme court. Another possible solution to the caseload problem is to divide the supreme court into panels of three. The advantage of sitting in panels is that, while three judges are hearing arguments or deliberating on or writing opinions relating to certain cases, the other two justices would be free to tend to other work of the court. The use of panels would necessitate some change in the internal procedures of the supreme court, but this solution does have the advantage of not requiring procedural changes for the attorneys or litigants.

There is no constitutional, statutory or administrative requirement that the supreme court sit en banc,[18] and Appellate Rule 16 does provide that three justices shall constitute a quorum.[19]

18/ A.S. 22.05.010(b) does include the following provision: "For the purpose of considering appeals of sentences on [the grounds that the sentence is excessive or too lenient], the supreme court may sit in divisions." [Emphasis added.] It is at least arguable that the principle of statutory construction inclusio unius est exclusio alterius would apply, and, if so, the use of divisions would be valid only for the specified sentence appeals.

19/ Appellate Rule 16(a) provides: "A quorum shall consist of a minimum of 3 justices or judges designated to sit on the supreme court."

It therefore appears that the change to panels could be made by internal administrative action, without the necessity of constitutional amendment or legislative action.

The commentators, however, are uniformly opposed to the use of panels by a state's highest appellate court. The American Bar Association Standards on Court Organization, for example, contend that the use of panels dilutes the appellate function, "particularly that of developing the law."[20/] The American Bar Association Standards Relating to Appellate Courts state a more emphatic position against the use of panels. The Standard itself reads as follows:

> 3.01 Internal Organization of Appellate Courts.
> (a) Supreme Court. In hearing and determining the merits of cases before it, the supreme court should sit en banc. Except for those who may be disqualified for cause or unavoidably absent, all members of the court should participate in the decision of each case. The court should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners.[21/]

The Commentary explains the rationale behind this position.

> The internal organization of an appellate court should be designed to permit the court to fulfill its functions in the court system. The primary responsibility of a supreme court is that of developing and maintaining the consistency of the

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20/ ABA Standards on Court Organization at 35.

21/ American Bar Association Standards Relating to Appellate Courts, Standard 3.01, at 7-8 [hereinafter cited as ABA Standards on Appellate Courts]

law to be applied in subordinate courts in the system... In deliberating upon and deciding the legal questions that come before it, the supreme court's entire membership should participate so that its collective professional and intellectual resources are brought to bear in the development of the law. To the extent that such a court subdivides itself into panels or divisions, it creates possibilities of conflict or inconsistency in its decisions, which can be resolved only through en banc hearings.

In some states having no intermediate appellate court, the supreme court sits in divisions in order to cope with a caseload which would be too large to handle if the court were to sit en banc in every case. This arrangement has often been used as a means of transition to the establishment of an intermediate appellate court. The result of such an arrangement is that the court functions simultaneouly as a court of intermediate review when it sits in divisions and as a court of subsequent review when it sits en banc. If the court's docket in such a system is carefully administered, so that important or difficult cases are identified before being heard and assigned directly for en banc hearing, a single supreme court can handle the system's appellate responsibilities in an effective way. Experience indicates, however, that such an arrangement may persist long after the point has been reached when an intermediate appellate court should have been established.

Moreover, internal inconsistency in the court's decisional product may be ignored or tolerated to an excessive degree in the hope of avoiding the cost of establishing an intermediate court.22/

The blue-ribbon committee which recently studied appellate caseload problems in Idaho considered the possibility of using panels of the supreme court, but the committee finally rejected that alternative:

[T]here seemed to be more arguments against the use of panels than arguments in favor: both of the "outside experts" who testified before the committee, Chief Judge Schwab and Chief Justice

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22/ Id. at 8-9.

> Cameron, urged that any Supreme Court has a law-stating function, and that this function is weakened by the operation of panels within a supreme court. Other committee members felt that decisions by panels should be final only if they are unanimous--meaning that a panel which developed disagreement would then have to return an appeal to the entire appellate body or to another panel, causing further delay. Other committee members felt that panels placed too much emphasis on the luck of the draw, and that panels are not appropriate for decisions of a court of last resort, although they would be useful for an intermediate appellate court. Committee members seemed to take the view that the function of a court of last resort is to take a broad and balanced view of the law and the needs of society, and that dividing any court of last resort into smaller units of decision would interfere with this basic role. The committee finally determined that the use of panels, either in connection with increasing the size of the Supreme Court or within the present structure, is not desirable.[23/]

In Nevada the legislature in 1976 gave final approval to a constitutional amendment which would permit the supreme court to sit in panels if there are more than five justices on the court. There are currently only five justices on the Nevada court, and this amendment has had no effect in practice, since no implementing legislation has been sought.[24/]

With the assistance of the Clerk of the Supreme Court, we have attempted to determine how panels might actually operate and to quantify to some extent the reduction in workload that

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23/ Draft Idaho Appellate Court Report, supra, note 17, at 31-32.

24/ David Frank, Legal Assistant to the Nevada Supreme Court, telephone conversation on June 16, 1977.

a panel system could be expected to produce.

By use of a standard mathematical formula, it was determined that in order to have the five justices sit in all possible combinations of three justices each, a total of ten panels would be required. The composition of each panel would be as follows:

Panel 1:	Boochever/Rabinowitz/Connor
Panel 2:	Rabinowitz/Connor/Burke
Panel 3:	Connor/Burke/Matthews
Panel 4:	Burke/Matthews/Boochever
Panel 5:	Matthews/Boochever/Rabinowitz
Panel 6:	Boochever/Connor/Burke
Panel 7:	Connor/Matthews/Boochever
Panel 8:	Matthews/Rabinowitz/Burke
Panel 9:	Burke/Rabinowitz/Boochever
Panel 10:	Matthews/Connor/Rabinowitz

It must be remembered that even if panels are utilized, each justice will still have the responsibility for drafting the same number of opinions each year as he would if panels were not used. The two areas in which the use of panels would reduce the workload of individual justices are in the preparation for oral argument and in the review of draft opinions from other justices. Since each justice will not be participating in four of the ten panels, the time he spends presently on preparation for oral argument and on reviewing drafts would be

reduced by a maximum of 40 percent. Assuming for purposes of illustration that a justice devotes 40 percent of his total time to these two tasks, then the panel system would theoretically reduce his overall workload by 16 percent.[25/]

In practice, however, the 40 percent reduction figure is unrealistically high when applied to total workload because a certain percentage of the total appeals will be heard by the Court en banc. For example, if the Court had an annual caseload of 200 appeals, and 50 of the 200 were heard en banc, then the workload reduction in the preparation and review functions would be diminished from the maximum 40 percent to 30 percent.[26/] Again assuming that a justice devotes 40 percent of his total time to these two tasks, the overall savings in workload for that justice would be 12 percent, or 4.8 hours per 40 hour week. And as the ratio of en banc cases to panel cases increases, the workload reductions are further diminished.

Even if the philosophical objections were set aside, the use of panels is generally agreed to be a temporary solution to the workload problem at best. The following chart illustrates that if the caseload continues to increase, then the actual

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25/ This figure is arrived at by multiplying the 40% reduction by the percent of total time spent on preparation for argument and review of opinions.

26/ If only 150 of the total 200 cases are heard by panels, then each justice would not be required to participate in 40% of the 150 panel cases, or 60 cases. These 60 cases represent 30% of the total 200.

workload of each justice under a panel system will approach and finally increase beyond the present actual workload within a relatively short period of time.

Year One

It is assumed that 200 cases will be filed, ready for argument, and decided during the year. It is also assumed that 25% of the total, or 50 cases, will be heard en banc.27/

Each justice must write opinions in	40 cases
Each justice must fully participate in	140 cases*

*50 cases en banc plus 90 cases in panels.

Year Two

It is assumed that the caseload increases by 25%, for a total of 250 cases. 25% of the total, or 63 cases, will be heard en banc.

Each justice must write opinions in	50 cases
Each justice must fully participate in	175 cases*

*63 cases en banc plus 112 cases in panels.

Year Three

It is assumed that the caseload will again increase by 25%, for a total of 325 cases. 25% of the total, or 81 cases, will be heard en banc.

Each justice must write opinions in	65 cases
Each justice must fully participate in	227 cases*

*81 cases en banc plus 146 cases in panels.

27/ The estimate of 25% en banc cases was somewhat arbitrary, since a more accurate figure could not be determined. It does, however, take into account the 1976 experience of dissenting opinions filed in 17% of the opinions, with the additional 8% intended to reflect those cases involving important questions of law requiring full court participation. It may be that the estimate is too low to adequately take into account the number of these cases.

Thus after two years, the actual number of cases that each justice must fully participate in will exceed the number of total cases from the hypothetical "Year One."

This chart also illustrates the problems attending the adoption of a solution that is geared toward percentage reductions in workload as is the panel system. At some point along the graph of caseload rise, a court will reach its saturation point. A justice has time to write only a certain number of opinions each year and can participate fully in only a certain number of cases each year without seriously sacrificing the quality of the court's work product. When the saturation point is reached, it hardly matters in practical terms that next year's workload will be reduced by 15 or 20 percent by the use of panels if the actual workload will exceed the capacity of the justices. The court will continue to fall behind, whether panels are utilized or not. At the trial court level, when a court reaches this saturation point, the solution is to add another judge so that judicial capacity is increased. It has been suggested that the panel system will provide real relief only if pro tempore appointments of superior court judges are included on the panels. The inclusion of pro tem justices on panels could be accomplished in at least two different ways.

If an extra judicial position were assumed to exist on the Supreme Court (to be filled each time with a different pro tem justice), then the judicial capacity for use on panels would

increase from 5 to 6. By using the same mathematical formula discussed above, 20 panels would be required to have the six positions combined into panels of three without repeating a combination. While this would certainly augment any workload reductions that would otherwise be achieved by panels, it would be administratively too unwieldy to attempt to manage 20 panels. If additional pro tempore assistance were to be used in concert with the panel system, it would be preferable to keep the same ten panels described above, and substitute a pro tem justice for each of the five sitting justices periodically and on a rotating basis.

There are, however, both philosophical and practical limitations on the frequent use of superior court judges on the panels as justices pro tempore. In order to achieve a significant additional workload reduction by use of pro tem assistance, a fairly large number of cases would have to be heard by panels made up of two justices and one pro tem justice. With only two of the five justices sitting on a large number of panel calendars, the Supreme Court's law-making function is even more diluted. The predictability of results declines, and the potential for conflicts among the panels increases greatly, necessitating further hearing by the Court en banc.

There is also a limit to the amount of time that a superior court judge can be expected to divert from his trial court duties. In this vein, it must be remembered as well that the

pro tem justice cannot work as efficiently as a full time justice. He may have one law clerk at the most, and will not have the level of assistance for preparation of pre-argument memoranda and draft opinions that a sitting justice has. Further, he lacks the advantage of being able to devote full time to appellate matters and thereby develop a routine for efficient disposition of these types of cases.

Some further problems should also be noted. It has been suggested that one way of meeting the objection concerning the dilution of the law-making function is to provide that in any case where the panel decision were not unanimous, or if a non-participating justice disagreed with the draft opinion, then the case would be referred to the court for en banc resolution. While this requirement would to some extent reduce the problems concerning the dilution of the law-making function, it would also mean that such a case would probably have to be argued again before the full court and certainly would require another conference. This would result in inconvenience and delay to counsel and litigants, and a duplication of effort for the members of the panel who initially considered the case.

As another means of safeguarding the lawmaking function, it has been suggested that before argument, a single justice on a panel should be empowered to order any case before the panel moved to the en banc calendar. Again, this would provide some additional safeguards. However, while it is impossible,

without some experience to draw upon, to predict how frequently this prerogative might be exercised, it would certainly be exercised to some extent, and this would result in further diminishing the overall percentage workload reduction that a panel system might achieve, by increasing the number of en banc cases.

Finally, in order for a panel system to operate efficiently, there must be a mechanism for identifying those cases that will be amenable to panel treatment. If unanimity on the panels is required, this means in addition that the identification process must include the ability to predict with some accuracy those cases that will be likely to result in a unanimous decision. (Otherwise delay and duplication of effort will be increased). It is unlikely that the recently established central staff attorney position will be able, without additional attorney assistance, to perform this screening function adequately and also provide substantial assistance to the court on motions and petitions. Additionally, the Clerk of the Supreme Court has expressed the concern that the initiation of a ten-panel system would require the hiring of an additional calendar clerk to coordinate the assignments and the calendaring of cases for the ten panels and for the en banc calendars.28/

28/ It would be possible, of course, to reduce the number of panels from ten to five, with each justice sitting on three different panels. The number of panels could not be fewer than five, however, and still maintain an equal distribution of panel assignments. In this event, it is estimated by the Clerk that an additional one-half time calendar clerk would be required. Five panels would achieve the same percentage workload reductions as would ten panels, but such a system would not be fully rotating.

It is anticipated that an additional central staff attorney and an additional calendar clerk would be required to implement the panel system. The approximate cost for the first year of an attorney, secretary, and equipment would be $69,000 and for each year thereafter $65,000. If a calendar clerk were added the total cost would be $90,000 for the first year and $74,000 each year thereafter.

Limit appeals of right to the supreme court. Since the primary goal of these changes in the appellate system is to reduce the workload of the supreme court, one direct method of dealing with the problem would be to permit fewer appeals. This could be done by abolishing appeals of right to the supreme court in certain types of cases or by totally eliminating appeals of right and authorizing the supreme court to grant writs of certiorari for those cases which it wishes to hear. The primary advantage of such a system is that it would produce an immediate reduction in the caseload of the supreme court and would enable the court itself to exercise control over the size of its caseload.

Although the right to at least one appeal is traditional in the American judicial system, such a right is not conferred by the United States Constitution. The American Bar Association Standards on Court Organization include the following statement: "[I]t should be recognized that a litigant has no unqualified right to an appeal..."29/

29/ ABA Standards on Court Organization at 35.

A limitation or abolition of appeals of right to the supreme court would require an amendment to A.S. 22.0 010(a), which currently reads in part:

> The supreme court has final appellate jurisdiction in all actions and proceedings. ...An appeal to the supreme court is a matter of right. ...

Article IV, section 1, of the Alaska Constitution grants to the legislature the authority to prescribe the jurisdiction of courts: "The jurisdiction of courts shall be prescribed by law." This would seem to preclude any constitutional problems with the elimination of appeals of right, but article IV, section 2, may place some limitation on the legislature's power to prescribe jurisdiction. Article IV, section 2(a), provides in part: "The supreme court shall be the highest court of the State, with final appellate jurisdiction." [Emphasis added.] Thus, although under section 1 the legislature has the authority to "prescribe jurisdiction", under section 2 it may not have the authority to grant final appellate jurisdiction to any court other than the supreme court.

Since no legislative attempt has been made to limit appeals of right to the supreme court, the Alaska Supreme Court obviously has had no opportunity to consider the constitutionality of such a limitation. However, if appeals of right were limited or abolished, the supreme court would retain the power to accept cases by certiorari, and the Alaska Supreme Court has indicated that the exercise of such a power is equivalent to the exercise of "final appellate jurisdiction". In State v. Browder[30/] the court stated:

30/ 486 P. 2d 925 (Alaska 1971).

> We think it significant that the legislature in prescribing this court's jurisdiction specifically provided that "The supreme court may issue injunctions, writs of review, mandamus, certiorari, prohibition, habeas corpus, and all other writs necessary or proper to the complete exercise of its jurisdiction." In our view this provision is a clear manifestation of the legislature's intent that the supreme court would be able to exercise its final appellate jurisdiction other than by appeal.31/

It is possible then that the limitation or abolition of appeals of right could be construed as a legitimate exercise of the legislature's power to prescribe jurisdiction and not as an unconstitutional grant of final appellate jurisdiction to a lower court. The resolution of this constitutional question, however, is far from clear, and it would have to be given serious consideration if an attempt is to be made to obtain an amendment of A.S. 22.05.010(a) so as to limit or abolish appeals of right to the supreme court.

The consensus of the commentators appears to be that limiting the right to appeal is not a desirable solution to the caseload problem. Hufstedler, for example, is strongly opposed to this approach:

> There are direct and indirect ways to trim an appellate docket. The direct way is to cut off or limit the right to appeal. The indirect way is to create a series of procedural or financial impediments which discourage appeals. We can dispose of the indirect methods summarily.

31/ Id. at 930.

> Entwining the appellate process in even more red tape than there is at present or making appeals even more expensive is a vigorous step backwards. There remains the direct route. The amputation method will undoubtedly cure congestion, but the treatment may be worse than the disease. [FOOTNOTE OMITTED.]32/

The American Bar Association Standards on Appellate Courts take the position that litigants generally should have at least one appeal of right.33/ The Commentary to Standard 3.10, Opportunity for Appellate Review, states in part:

> The right of appeal, while never held to be within the Due Process guaranty of the United States Constitution, is a fundamental element of procedural fairness as generally understood in this country. That right should be accorded an aggrieved party to a trial court proceeding.34/

Even if there are no legal problems with limiting the right of appeal, such a limitation does raise serious policy questions. Indeed, the Idaho committee rejected this approach solely for policy reasons:

> Ultimately, the suggestion that the right of appeal should be limited was rejected by the committee, but not on legal grounds. Overwhelmingly, committee members felt that in a state such as Idaho with a strong western tradition of independence, persons should have the right to at least one appeal from a trial judge's decision to allow for correction of error. Limiting the right to appeal in any way would not be popular with Idaho citizens and would be opposed. Thus, this alternative was discarded.35/

32/ Hufstedler, Constitutional Revision, supra, note 15, at 586-87.

33/ ABA Standards on Appellate Courts at 14.

34/ Id. at 15.

35/ Draft Idaho Appellate Court Report, supra, note 17, at 28.

The limitation of the right of appeal would create no significant new costs to the court system, and would probably result in a reduction of costs.

A less drastic alternative to direct limitation on the right to appeal would be to devise some disincentives to appealing. One possible disincentive would be to provide for substantially higher awards of attorney fees to the prevailing party. The criticisms of such an approach are identical to those surrounding the continuing Rule 82 controversy. Primarily, the objection is that meritorious appeals as well as unmeritorious ones are discouraged, and access to the court is denied on the basis of one's financial ability to take the risk of losing.

While Alaska's ratio of appeals to trial court cases is substantially higher than Idaho's, it may be that this higher ratio is more appropriate. (In fact, the relatively high reversal rate in Alaska suggests that at least in Alaska this may be the case.) Before any disincentives should be adopted as a method of reducing caseload, the Court must conclude that a substantial number of the appeals coming before it should not have been brought. And the particular disincentive chosen must be directed at discouraging only those that should not be brought. It might be appropriate, for example, to award substantial attorney fees to a prevailing appellee in a clearly frivolous appeal. Of course, the truly difficult question (and one that

goes beyond the scope of this study) is whether Alaskan litigants do in fact appeal "too many" cases, and if so, why they do. For until the cases that should not be appealed can be identified, and the reasons for appealing them divined, then disincentives cannot be fashioned that will discourage only these sorts of cases.

It has also been suggested that the Court consider limiting the right to oral argument. The advantage of such an approach is that the Court would spend less time preparing for and hearing oral arguments in cases that do not warrant it. For example, in the First District of the Court of Appeals in California, the central screening staff identifies the more routine cases that are amenable to summary disposition. If the panel assigned to the case agrees with the staff conclusion, then counsel are notified that the case will not be placed on the argument calendar unless the request for argument is renewed within a certain period of time. Such a procedure requires, of course, an operating central screening staff, but it does permit the Court to handle the more routine cases in a truly summary fashion. A similar approach (and more effective in terms of controlling workload) would be to permit oral argument generally only at the discretion of the court. This approach would also require careful review and recommendations from a central staff if substantial savings in

judicial time were to be achieved.36/

Finally, it has been suggested that the Court adopt a procedure whereby counsel can stipulate to disposition of their appeal without opinion. It is impossible to predict how many parties would choose this approach, but even a few such stipulations would provide some relief. Adoption of this suggestion would require a preliminary decision as to whether such a stipulation would require a waiver of oral argument, and procedures setting out time limitations would need to be drafted. Finally, the Court should retain discretion to disapprove the stipulation.

4. Establish central research and screening staff. There are currently several states which have established a central staff of attorneys to perform research and screening duties in an attempt to deal with the problem of increasing caseload. As outlined in the American Bar Association Standards on Appellate Courts, the duties of such a staff may include the following:

> (1) Monitoring and reviewing cases coming before the court to assure compliance with procedural rules, and making recommendations for disposition of routine procedural matters in accordance with criteria established by the court;

36/ Limiting the opportunity for oral argument may result in increasing the average time to dispose of cases. The addendum to the 1976 Appellate Delay Study prepared by the Administrative Office (6/21/76) showed that the average time from the assignment of a case on the briefs to the publication of the opinion was 218 days, while the average time from oral argument to publication was 159 days. This disparity may have lessened since the publication of that study, and the use of central staff to recommend dispositions in more routine cases would further alleviate this problem.

(2) Preparing case summaries, including procedural history, facts, and principal issues and authorities, for the court's use in managing its caseflow and conducting its deliberations;

(3) Reviewing all matters presented in propria persona and taking measures necessary to put them in correct and intelligible form;

(4) Supplementing the research of the judges' individual law clerks; and

(5) Acting for the court in supervising preparation of complex records...37/

In 1971 the National Center for State Courts began the Appellate Justice Project which established experimental central research staffs in Nebraska, Virginia, New Jersey and Illinois.38/ The evidence accumulated during these projects supported the following initial hypotheses of the project:

1. That a central staff of lawyers can increase an appellate court's productivity.

2. That a court with a staff can retain effective control over the decisional process and the final decisions.

3. That a substantial number of appeals are "routine" and can be decided appropriately by short, unsigned opinions.

4. That in such a routine case a central staff memorandum is helpful to the judges and makes it feasible to utilize a short, unsigned opinion.

37/ ABA Standards on Appellate Courts at 98-99.

38/ D. Meador, Appellate Courts: Staff and Process in the Crisis of Volume (1974). This book is the official report on the Appellate Justice Project and contains detailed discussions on how the staff functioned in each project state.

5. That appellate staff assistance of this sort is acceptable to the practicing bar.39/

However, for three other initial hypotheses, the evidence either did not support the hypothesis or the evidence was too ambiguous to permit a conclusion:

1. That adding a central staff would increase productivity more than providing additional law clerks for the judges.

2. That adding a central staff would increase productivity and preserve collegiality more effectively than adding judges to the court.

3. That adding a central staff would allow more judge time to be devoted to difficult cases.40/

The report on the project emphasizes the project did not disprove those unsupported hypotheses; it only failed to verify them.41/ The conclusion of the report which is most pertinent to this study is the following:

> Among the positive showings perhaps the most important point is that central staff lawyers do contribute to appellate productivity and expedition. A staff allows a court to handle a heavier caseload than the court could handle without it. Precisely how much a staff can step up the court's capacity depends on a number of variables, including the size of the staff and the court's internal procedures for deciding the staff processed cases.42/

A single staff attorney position was recently requested by the Alaska Supreme Court and funded by the legislature. Recruitment

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39/ Id. at 163.

40/ Id. at 163-64.

41/ Id. at 164.

42/ Id.

for this position closed July 5, 1977, and the position will be staffed by November 1, 1977. As proposed and currently contemplated, the central staff will consist of one attorney, who will report to and work with the Clerk of the Supreme Court. The Clerk of the Court will serve as staff director for the central staff. Temporary secretarial staff will be provided for the remainder of this fiscal year, and the request for permanent support staff will be renewed in the FY 1979 budget request. The proposed duties of the staff attorney are as follows:

1. Perform legal research on matters filed with the supreme court.
2. Review all appeals once all briefs are in and propose possible disposition of routine cases.
3. Recommend consolidation of appeals for argument.
4. Review petitions for review and prepare memoranda recommending appropriate disposition.
5. Review and research complex motions presented to the court.
6. Review and research briefs and records in sentence appeals and prepare memoranda recommending possible disposition.
7. Assist clerk in scheduling expedited appeals before the court.
8. Assist clerk in preparing complicated records on appeal.
9. Develop systems for operation of the staff attorney position.43/

43/ Recruitment Bulletin dated June 4, 1977. See Appendix III.

While the establishment of this one position may contribute to the administrative efficiency of the court's operations, as currently staffed it is by no means the equivalent of a full-scale program of central staff research and screening designed to increase significantly the court's capacity to process cases.[44] The experimental staffs which were established by the Appellate Justice Project included several staff attorneys, who worked under the supervision of a senior attorney functioning as the staff director. Of course, the courts participating in the project were much larger, higher volume courts than Alaska's.

In 1976 the Idaho Supreme Court established the position of central research attorney with the primary duties of screening petitions and motions and carrying out specialized research projects for the court.[45] In a telephone conversation on July 29, 1977, Carl Bianchi, Administrative Director of the Courts for the State of Idaho, indicated that the central staff approach is working very well and has been of particular benefit in the

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44/ The Administrative Office is currently developing a federal grant under which two additional clerical support positions for the central staff would be funded. The request for clerical support in the FY 1978 budget was denied by the Legislature.

45/ Draft Idaho Appellate Court Report, supra, note 17, at 21. This action was taken in accord with a proposal prepared by Carl Bianchi, Administrative Director of the Courts for the State of Idaho. A copy of this proposal has been forwarded to Donna Pegues, Clerk of the Supreme Court.

area of petitions for review and motions. The court currently has one staff attorney and is considering hiring an assistant staff research attorney in the near future.

The only real disadvantage of a central staff approach to the caseload problem is the risk that the staff may assume judicial responsibilities which properly should be performed by the justices. The Commentary to Standard 3.62, Legal Staff, of the American Bar Association Standards on Appellate Courts, comments on this problem:

> The problem created by use of a central legal staff is that judicial responsibility may be diffused among the staff to the detriment of the appellate process. Where a court employs a central staff, it must be continually alert to the risk of internal bureaucratization and guard against any tendency to rely on staff for decisions that should be made only by judges personally. Some arrangements involving central staff....seem to involve excessive delegation to staff.46/

Since the use of a central staff is purely a matter of internal operating procedure, such a system could be adopted by administrative action. No constitutional or statutory amendments would be required.

It is extremely difficult to quantify the workload reductions that a central research staff would achieve for the court. Cer-

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46/ ABA Standards on Appellate Courts at 100.

tainly the use of central staff for researching and making recommendations for disposition in petitions for review, complex motions, sentence appeals, and other routine appeals will free the justices' personal law clerks for work on draft opinions and bench memoranda. There is also some advantage to be gained from a permanent central staff in terms of both experience and the development of an efficient routine.

It has been suggested that the Court may wish to consider pooling five of the ten existing law clerk positions and relocating these five positions in the central staff, leaving each justice with one personal law clerk. While this suggestion may have some merit, it cannot be said conclusively that this would permit the Court to handle its caseload more effectively. As noted above, the National Center's Appellate Justice Project failed to demonstrate that the addition of central staff would increase productivity more than additional law clerks. Further, five additional attorneys are probably more than this Court requires for a central staff, although internal procedures could be designed to re-distribute some existing law clerk functions to such an augmented central staff.47/

47/ For example, the augmented central staff might be assigned all bench memoranda, leaving the personal law clerks only with the tasks of drafting opinions and preparing substantive and technical comments.

It appears in addition that centralizing law clerk positions would permit a more even distribution of workload among the non-judicial legal assistance and might well result in increased productivity for the Court overall. It is debatable, however, whether this redistribution of positions and workload would result in a sufficient increase in productivity to warrant the upheaval involved in making the change.

The projected cost of establishing a minimal central staff of two attorneys and one secretary, including space and equipment requirements, would be approximately $138,000 the first year and $130,000 each subsequent year. This includes the cost of the existing staff position, so the additional cost would be substantially less.

5. Establish intermediate appellate court. The commentators are uniformly in agreement that the most desirable method of dealing with increasing appellate caseloads is the establishment of an intermediate court of appeals. Several recent articles have advocated this solution,[48] and the American Bar Association Standards on Court Organization are emphatic in their

48/ See e.g., Hopkins, The Role of an Intermediate Appellate Court, 41 Brooklyn L. Rev. 459 (1975); Hufstedler, Constitutional Revision and Appellate Court Decongestants, 44 Washington L. Rev., 577 (1969); and Appellate Court Reform, 45 Miss. L. J. 121 (1974). Appendix IV to this report contains summaries of these articles prepared by the Idaho Administrative Office.

support of this solution:

> Where a supreme court by reason of workload is unable to perform both its principal functions, some additional mechanism of appellate review becomes necessary. This situation has long since prevailed in states with large population, and is becoming increasingly prevalent in states of smaller population. The immediate necessity for an intermediate appellate court may be met or postponed by such devices as use of per curiam and memorandum decisions in cases having limited general significance, by limiting oral argument in appropriate circumstances, and by improved efficiency in management of the highest appellate court's work... Since there seems little prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish an intermediate appellate court rather than temporizing with substitute arrangements. [EMPHASIS ADDED.]49/

In addition to being the solution most often advocated by the commentators, the creation of an intermediate appellate court is the solution which has been chosen most frequently to relieve congestion in a single appellate court.50/ Twenty-eight states now have intermediate appellate courts, and several states are studying their need for such a court.51/ The following table52/ indicates the status of intermediate appellate courts in the western states:

49/ ABA Standards on Court Organization at 35.

50/ Hopkins, supra, note 48, at 462.

51/ Draft Idaho Appellate Court Report, supra note 17, at 25.

52/ Id. at 26.

INTERMEDIATE APPELLATE COURTS IN WESTERN STATES

States With Intermediate Appellate Courts	States Without Intermediate Appellate Courts	States Considering Establishing Intermediate Appellate Courts
Oregon	North Dakota	North Dakota
Washington	South Dakota	
California	Montana	
Arizona	Wyoming	
New Mexico	Idaho	Idaho
Oklahoma	Utah	Utah
Texas	Hawaii	Hawaii
	Alaska	
	Nebraska	
	Nevada*	Nevada

* A constitutional amendment is pending in Nevada to create an intermediate appellate court. The amendment has passed one session of the Nevada Legislature.53/

Although the creation of an intermediate appellate court is the most often recommended solution as well as the most frequently adopted solution, the creation of such a court in Alaska would raise some of the same constitutional questions which were discussed above54/ in connection with limiting appeals of right to the supreme court.

The basic question which must be resolved is whether article IV, section 2, of the Alaska Constitution, which specifies that the supreme court has "final appellate jurisdiction", prevents the

53/ See Appendix V for a copy of the Nevada Legislation.

54/ See p. 25-26, supra.

exercise of final appellate jurisdiction by lower courts. Since no intermediate appellate court exists in Alaska, the Alaska Supreme Court obviously has had no opportunity to consider the question of the jurisdiction which may be exercised by such a court under the constitution. However, an analogous question did arise in State v. Marathon Oil Company.[55] In that case the criminal defendant had appealed a district court decision to the superior court, and the supreme court then had to consider whether the state could appeal the superior court's decision to the supreme court. In concluding that the state did have the right to such an appeal, the court treated the superior court as an intermediate appellate court and found that final appellate jurisdiction could not lie in that court:

> In this matter the superior court must be recognized as an intermediate appellate court since final appellate jurisdiction by reason of Article IV, Section 2, of the Alaska state constitution rests in this court:
>
> > "The supreme court shall be the highest court of the State, with final appellate jurisdiction."
>
> Once the appellate process is properly invoked, final appellate jurisdiction is in the Supreme Court; for to hold otherwise would contravene the explicit constitutional provision. [Emphasis added.][56]

55/ 528 P. 2d 293 (Alaska 1974).

56/ Id. at 295.

If the right to appeal to the supreme court from decisions of an intermediate court of appeals is retained in all cases, no constitutional question would arise. However, the primary purpose of establishing an intermediate court of appeals would be to reduce the caseload of the supreme court, and retention of appeals of right to the supreme court in all cases would defeat that purpose. On the other hand, of course, if appeals of right to the supreme court are abolished, the intermediate court of appeals would then be the court of final appellate jurisdiction, and arguably this would be a direct contravention of article IV, section 2, of the constitution, as interpreted in Marathon.

It is more likely, however, that the abolition of appeals of right to the supreme court would be found not to contravene the constitution. Any statute establishing an intermediate appellate court and abolishing appeals of right to the supreme court would most likely grant to the supreme court the authority to accept petitions for writs of certiorari and to hear cases on that basis at its discretion. Since the supreme court could exercise its discretion to hear any case, it could be found that final appellate jurisdiction still lies in the supreme court, although it may choose not to exercise that jurisdiction.57/

57/ As discussed above at p. 25-26, it appears that the supreme court in State v. Browder, 486 P. 2d 925 (Alaska 1971), interpreted the exercise of the power to grant certiorari to be equivalent to the exercise of final appellate jurisdiction. Such an interpretation would eliminate any constitutional problem with a grant of "final" appellate jurisdiction to an intermediate appellate court.

The primary benefits which can be expected to result from the creation of an intermediate court of appeals are a reduction in the court's backlog of cases and a reduction in the elapsed time between the submission of briefs and final disposition. In Oregon, for example, the average number of days from submission of briefs to a final decision dropped from 221 days to 130 days following the creation of an intermediate appellate court in 1969.

If a decision is made to create an intermediate appellate court, decisions must then be made on several subsidiary issues relating to such a court. We have not attempted in this report to resolve or make recommendations concerning these subsidiary issues, but the following are illustrative of some of the major issues. The primary question which must be resolved is what the jurisdiction of an intermediate court of appeals should be.58/ The American Bar Association Standards on Court Organization make the following recommendation relating to jurisdiction:

58/ In the Draft Idaho Appellate Court Report, supra, note 17, no specific recommendations were made as to the jurisdiction of the proposed intermediate appellate court. However, at its meeting on July 26, 1977, the committee decided to include a definite jurisdictional statement in its final report, and that statement is expected to receive final committee approval on September 16, 1977. Carol Bianchi, Administrative Director of the Courts for the State of Idaho, telephone conversation on July 29, 1977.

> Every level and division of appellate court should have authority to hear all types of cases; appellate courts of specialized subject-matter jurisdiction should not be established. An appellate court should have jurisdiction of original proceedings for mandamus, prohibition, injunction, and similar remedies, comparable but subordinate to that of the Supreme Court, to protect its supervisory authority.59/

The primary reason stated in the Commentary for not establishing courts of specialized subject-matter jurisdiction is that "the appellate court function of developing the law cannot be performed in a coherent and consistent way if jurisdictional divisions compel the law's fabric to be made in a decisional patchwork."60/

Another issue which must be resolved is how appeals should be lodged with the intermediate court. The American Bar Association standard on this point reads as follows:

> Appellate review should be initiated by a single filing procedure effective for the appellate court as a whole. Docketing of cases within the appellate court and transfer of cases between levels or divisions of the court should be by simple motion or order.61/

In line with the American Bar Association recommendations, a one-filing/one-fee procedure has been recommended for the proposed intermediate appellate court in Idaho.62/

59/ ABA Standards on Court Organization at 33.

60/ Id. at 37.

61/ Id. at 33.

62/ Draft Idaho Appellate Court Report, supra, note 16, at 41-42.

Still another matter about which decisions must be made is the process of appealing cases from the intermediate appellate court to the supreme court. The American Bar Association standard on this point reads as follows:

> Appeal as of right should be to the intermediate appellate court only. Review by the Supreme Court should be available only at the discretion or with the permission of that court, by certiorari or similar procedure, including discretion to allow an appeal directly from the trial court in cases of great emergency and importance.63/

The Commentary explains the rationale for this position:

> [A] litigant should have only one appeal of right, to the intermediate appellate court. Review by the highest appellate court is designed to serve the general public in the proper administration and development of the law and only secondarily the interest of litigants in having their cases considered by the highest judicial authority. Accordingly, review by the highest appellate court should be available only with its permission. There should be no category of cases in which such review is mandatory, even--as is now required in some states--in capital cases. At the same time, the highest court should have authority to permit an appeal to bypass the intermediate appellate court where there is urgent public necessity to do so--for example in litigation involving impending elections or deadlocked disputes as to the authority of government officials.64/

The Idaho committee approved this concept of discretionary appeals with this comment: "If a court system provides for automatic

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63/ ABA Standards on Court Organization at 33.

64/ Id. at 37.

review both at an intermediate level and before the court of last resort, no useful purpose is served by an intermediate appellate court."65/

Other matters which also would require attention are the number of judges on an intermediate court, how those judges would be selected, and what staff would be required for an intermediate court.

The clear advantage of establishing an intermediate appeals court is that it permits the Supreme Court to control its caseload via the exercise of discretionary review. The following table is an excerpt from a report provided by the Arizona Supreme Court, and illustrates how that court has kept pace from 1965 to the present, while during the same period experiencing an increase in filings of nearly 300%.66/

FILINGS		DISPOSITIONS				
		OPINIONS			TERM. W/O WRITTEN	CASES PENDING
YEAR	FILED	WRITTEN	MEMORANDUM	TOTAL	OPINIONS	DEC. 31
1965	321	176	0	176	262	462
1966	449	192	0	192	313	373
1967	448	158	0	158	401	258
1968	531	164	0	164	347	269
1969	575	205	0	205	360	320
1970	709	224	0	224	493	331
1971	688	186	0	186	482	383
1972	701	191	0	191	528	385
1973	714	230	56	286	478	341
1974	713	210	109	319	437	350
1975	799	222	68	290	659	307
1976	921	185	84	269	774	327

65/ Draft Idaho Appellate Court Report, supra, note 17, at 42.

66/ The Arizona Court of Appeals was established in 1965.

An intermediate court of appeals will bring long term and substantial relief to the Supreme Court's workload problems. The cost of establishing an intermediate court of appeals consisting of three judges, and including two law clerks and a secretary for each judge would be $440,000 for the first year and $425,000 for each year thereafter.[67]

III. CONCLUSIONS AND RECOMMENDATIONS

If the appellate caseload continues to increase at the rate of recent years, an intermediate court of appeals is the most desirable long term solution. Panels may provide some short term relief, but as the report demonstrates, the workload reductions are probably not going to be as significant in practice as they appear to be in theory. Further, while the effect of the dilution of the law-making function cannot be quantified, it is nonetheless a serious concern and should not be set aside lightly. And as noted in the report, the procedures suggested for meeting this concern (by permitting individual justices to transfer any case from a panel to the full court) not only diminish the overall advantages of using panels, but are likely to result in an increase in the amount of work spent on a case that is considered once by a panel and again by the full court.

67/ These figures do not take space requirements into account.

Based on the National Center's appellate project, it is safe to conclude that the use of central research staff will contribute to the more efficient and expeditious dispatch of the court's business, whether combined with one or mc the other suggested solutions discussed, or by itself. Unfortunately, the workload reductions that can be expected from the use of central staff cannot be quantified, as can the use of panels, without some experience to draw upon. Similarly, until this experiential base can be established, the optimum size of central staff cannot be determined or related statistically to caseload figures. While the court might understandably choose to experiment with panels because of the estimates of workload reduction are to some degree quanitifiable rather than await the results of the use of central staff, the use of panels cannot be recommended as a desirable solution.

As a final note, the solutions discussed in the report are not mutually exclusive, and obviously a large variety of compatible combinations of solutions could be considered. (For example, it would be possible to increase the size of the court as well as institute panels, and this combination might be instituted either with or without a central research staff.) However, because of the number of such combinations, and in order to keep the report a manageable size, we have dealt with each solution individually. The recommendations that follow do assume that combinations of solutions will be chosen.

Recommendations

1. The Supreme Court should not seek to increase the size of the court.

2. The Court should not establish a panel system. However, if the Court chooses to establish panels, it is recommended:

(a) For ease of administration, five panels should be used rather than ten unless the court believes it is important to have all possible combinations of justices sitting on the panels.

(b) For the reasons discussed earlier in the report, superior court judges should not be used initially on the panels except when necessary to replace a disqualified justice. If experience demonstrates that the panels are considering a fair number of cases that involve no significant new statements of law, then superior court judges might appropriately be assigned to panels for these types of cases.

(c) To insure maximum benefit in workload reductions from the use of panels, the Court should not implement the system until it has developed standards for identifying cases that should be heard by panels and until the newly established central research position has developed its screening capabilities.

(d) The Court should establish procedures for transferring cases from the panels to the full court and include these in the previously adopted internal operating procedures.

3. The Court should not seek to limit the right of appeal. However, the Court should consider adoption of the following:

(a) a rule amendment to permit the parties to stipulate to a disposition without opinion, subject to the Court's approval;

(b) a rule amendment limiting the right to oral argument in routine cases (along the lines of the procedure followed by the First District Court of Appeals of California);

(c) a firm policy of awarding substantial attorney fees to the prevailing appellee in a frivolous appeal.

4. The Clerk of the Supreme Court should carefully monitor the work of the newly established central research position and attempt to develop a quantifiable measure of the workload reductions achieved by the position. Preferably, such a measure should be calculated in a way that the number of central staff positions needed can be directly related to caseload.

5. The Court should request the Administrative Director to begin planning for the establishment of an intermediate court of appeals as soon as possible. Recommendations should be prepared for the Court's consideration concerning the following matters:

(a) The number of justices and personal staff required;

(b) Jurisdiction of the intermediate court and the supreme court;

(c) Requirements relating to the clerk's office staff, including recommendations for consolidated versus separate offices;

(d) Facilities requirements and alternatives for providing necessary space;

(e) Transitional measures to deal with cases already filed in the supreme court when the intermediate court is ready to begin operations; and

(f) A detailed analysis of the fiscal impact of the recommendations and any alternative recommendations.

APPENDIX I

Louisiana Survey on Number of Appellate Judges

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
ALABAMA	108 0	8 0	9 0	3.0	0.4	15.7
ALASKA	37 0	0 0	5 0	5.4	1.5	27.8
ARIZONA	72 0	12 0	5 0	3.4	0.8	23.6
ARKANSAS	56 0	0 0	7 0	2.7	0.3	12.5
CALIFORNIA	520 0	56 0	7 0	2.5	0.3	12.1
COLORADO	94 0	10 0	7 0	3.8	0.6	18.0
CONNECTICUT	40 0	4 0	6 0	1.3	0.3	25.0
DELAWARE	18 0	4 0	3 0	3.1	1.2	38.8
FLORIDA	287 0	25 0	7 0	3.7	0.4	11.1
GEORGIA	91 0	9 0	7 0	1.9	0.3	17.5
HAWAII	18 0	0 0	5 0	2.1	0.6	27.7
IDAHO	27 0	0 0	5 0	3.5	0.6	18.5
ILLINOIS	610 0	34 0	7 0	5.4	0.3	6.7

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
INDIANA	248 0	9 0	5 0	4.6	0.2	5.6
IOWA	92 0	5 0	9 0	3.1	0.4	15.2
KANSAS	131 0	7 0	7 0	5.7	0.6	10.6
KENTUCKY	87 0	14 0	7 0	2.6	0.6	24.1
LOUISIANA	152 0	30 CIV 0	7 0	4.0	0.9	24.3
MAINE	14 0	0 0	7 0	1.3	0.6	50.0
MARYLAND	90 0	13 0	7 0	2.2	0.4	22.2
MASSACHUSETTS	0 0	0 0	0 0	0.0	0.0	0.0
MICHIGAN	512 0	18 0	7 0	5.6	0.2	4.8
MINNESOTA	215 0	0 0	9 0	5.5	0.2	4.1
MISSISSIPPI	65 0	0 0	9 0	2.8	0.3	13.8
MISSOURI	115 0	22 0	7 0	2.4	0.6	25.2
MONTANA	29 0	0 0	5 0	4.0	0.6	17.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
NEBRASKA	45 0	0 0	7 0	2.9	0.4	15.5
NEVADA	26 0	0 0	5 0	4.7	0.9	19.2
NEW HAMPSHIRE	13 0	0 0	5 0	1.6	0.6	38.4
NEW JERSEY	271 0	21 0	7 0	3.6	0.3	10.3
NEW MEXICO	0 0	0 0	0 0	0.0	0.0	0.0
NEW YORK	0 0	0 0	0 0	0.0	0.0	0.0
NORTH CAROLINA	55 0	9 0	7 0	1.0	0.3	29.0
NORTH DAKOTA	19 0	0 0	5 0	2.9	0.7	26.3
OHIO	184 0	38 0	7 0	1.7	0.4	24.4
OKLAHOMA	143 0	6 0	9 CIV 3 CRI	5.3	0.6	12.5
OREGON	70 0	6 0	7 0	3.1	0.5	18.5
PENNSYLVANIA	0 0	0 0	0 0	0.0	0.0	0.0
PUERTO RICO	187 0	0 0	8 0	6.3	0.2	4.2

STATE	TRIAL COURT	INTERMEDIATE APPEALS COURT	COURT OF LAST RESORT	TRL JDG PER 100,000 POP	APP JDG PER 100,000 POP	APP JDG PER 100 TRL JDG
RHODE ISLAND	17 0	0 0	5 0	1.7	0.5	29.4
SOUTH CAROLINA	25 0	0 0	5 0	0.9	0.1	20.0
SOUTH DAKOTA	0 0	0 0	0 0	0.0	0.0	0.0
TENNESSEE	117 0	18 0	5 0	2.8	0.5	19.6
TEXAS	261 0	42 CIV 0	9 CIV 5 CRI	2.2	0.4	21.4
UTAH	24 0	0 0	5 0	2.0	0.4	20.8
VERMONT	19 0	0 0	5 0	4.0	1.0	26.3
VIRGINIA	107 0	0 0	7 0	2.2	0.1	6.5
WASHINGTON	101 0	12 0	9 0	2.9	0.6	20.7
WEST VIRGINIA	57 0	0 0	5 0	3.1	0.2	8.7
WISCONSIN	0 0	0 0	0 0	0.0	0.0	0.0
WYOMING	15 0	0 0	5 0	4.2	1.4	33.3
WASHINGTON DC	44 0	0 0	9 0	5.9	1.2	20.4

APPENDIX II

Comparative Data on Workloads

ALASKA SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS (Including Sentence Appeals)		
Pending at Start		241
Filed		364
Terminated		241
**Opinions Filed	123	
Other Dispositions	118	
	241	

Petitions for Review and Original Proceedings		
Pending at Start		17
Filed		102
Terminated		94
**Opinions Filed	25	
Review Denied	52	
Other Dispositions	17	
	94	

***Motions and Petitions for Rehearing	
Pending at Start	Not Available
Filed and Terminated	340

*Source: Clerk of the Alaska Supreme Court

**Opinions filed include total of 16 per curium opinions and 2 cases disposed of by special summary order of the Court. The total number opinions filed in 1976 was 133. The total shown here is greater because of the separate ~~Court~~ of cross-appeals disposed of by same opinion as the first appeal.

***Estimated. Excludes approximately 500 routine motions for extension of time, etc.

Count

25
123
148

HAWAII SUPREME COURT
July 1, 1975-June 30, 1976*

APPEALS		
Pending at start		218
Filed		253
Terminated		155
Opinions Filed	84	
Withdrawn or dis-continued	50	
Dismissed on Motion	14	
Other	7	
	155	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		12
Terminated		11
Opinion Filed	5	
Other	6	
	11	
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		7
Filed		375
Terminated		354
Opinion Filed	6	
Other	348	
	354	

*Source: Hawaii 1976 Annual Report

IDAHO SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		312
Filed		295
Terminated		
Opinions filed (Includes 29 P.C.'s)	136	228
Other	92	
	228	
ORIGINAL PROCEEDINGS		
Pending at start		3
Filed		32
Terminated		20
Opinion filed	4	
Other	16	
MOTIONS/PETITIONS FOR REH		
Pending at start		823
Filed		794
Terminated		Not Available

*Source: Idaho Administrative Director of Courts

MAINE SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		246
Filed		262
Terminated		236
Opinion (Includes 11 P.C. and 2 "advisory" opinions)	168	
Dismissed	68	
	236	

ORIGINAL PROCEEDINGS
Not available

MOTIONS/PETITIONS FOR REHEARING
Not available

*Source: State of Maine, Administrative Office of Courts, 1977 Annual Report.

NEVADA SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		256
Filed		607
Terminated**		
ORIGINAL PROCEEDINGS		
Pending at start		(Included in 256 above)
Filed		120
Terminated**		
MOTIONS/PETITIONS FOR REHEARING		
Pending at start		(Included in 256 above)
Filed		59
Terminated**		
TOTAL DISPOSITIONS		803
By order of court	535	
By opinion	252	
Consolidated cases	16	
	803	

*Source: Statistics provided by Nevada Supreme Court

**The number of each type of proceedings terminated was not broken out from total dispositions.

NEW HAMPSHIRE SUPREME COURT
July 11, 1974-June 30, 1975*

APPEALS	
Pending at start	Not Available
Filed	Not Available
Terminated by opinion	205
Includes 38 P.C.	
15 Memorandum	
15 "Opinions of Justices"	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REH.
Not Available

*Source: 17 New Hampshire Bar Journal 3 (1976)

NORTH DAKOTA SUPREME COURT
January 1, 1975-December 31, 1975*

APPEALS		
Pending at start		0
Filed		128
Terminated		128
Opinion	93	
Dismissed	10	
Other	25	
	128	

ORIGINAL PROCEEDINGS
(Original Proceedings are included in the appeals.)

MOTIONS/PETITIONS FOR REHEARING		
(Includes only Petitions for Rehearing)		
Pending at start		0
Filed		20
Terminated		20
(Denied apparently without opinion)	20	

*Source: National Center for State Courts--Williamsburg Project.

VERMONT SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS		
Pending at start		286
Filed		351
Terminated		346
Opinion (Includes 21 P.C.)	141	
Withdrawn or Discontinued	112	
Dismissed on motion	93	
Other	-	
	346	

ORIGINAL PROCEEDINGS		
Pending at start		1
Filed		15
Terminated		14
Opinion (Includes 2 P.C.)	3	
Withdrawn	1	
Dismissed by Court	10	
	14	

MOTIONS/PETITIONS FOR REHEARING**	
Pending at start	3
Filed	12
Terminated	15

*Source: "Judicial Statistics, State of Vermont," Office of the Court Administrator 1976.

**Includes Petitions for Rehearing only.

WYOMING SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS

Pending at start		Not Available
Filed		138
Terminated		116
By Opinion	75	
Dismissed	34	
Other	7	
	116	

ORIGINAL PROCEEDINGS
Not Available

MOTIONS/PETITIONS FOR REHEARING
Not Available

*Source: National Center for State Courts - Williamsburg Project.

APPENDIX III

Recruitment Bulletin for Staff Attorney Position

ALASKA COURT SYSTEM

AN EQUAL OPPORTUNITY EMPLOYER

RECRUITMENT BULLETIN

JOB TITLE	SALARY	LOCATION
SUPREME COURT STAFF ATTORNEY	$2,296./mo. to start (Range 20/22*)	JUNEAU

Job Duties:

Under the general direction of the Clerk of the Supreme Court performs legal research related to cases and other matters filed in Supreme Court. Reviews all appeals which have been fully briefed. Recommends consolidation for argument of appeals which involve similar legal issues. Proposes possible disposition of routine cases. Reviews Petitions for Review requiring extensive legal research and preparation of memoranda recommending appropriate disposition. Reviews, researches and makes preliminary analysis of complex motions presented to the court. Reviews and researches the briefs and records in sentence appeals and prepares memoranda for the Court concerning possible disposition. Assists Clerk of Court in scheduling expedited, complicated appeals before the Supreme Court. Works with the Clerk of Court in the preparation of complicated records on appeal. Develops appropriate systems for efficiently accomplishing the duties of the position.

Minimum Requirements:

Graduation from an accredited law school and either membership in a state bar or current active pursuit of membership. Previous legal experience would be valuable.

* This position is flexibly-staffed, salary range 20/22. The successful applicant will be hired at salary range 20. After six months of successful job performance and admission to the Alaska Bar Association the employee may be promoted to a salary range 22.

Selection Process:

Applicants must meet the minimum requirements as stated above. The most qualified applicants will be invited to a personal interview.

How to Apply:

Applicants should submit an Alaska Court System application to the Personnel Office at 303 "K" Street, Anchorage, Alaska 99501. Applications may also be submitted to the Personnel Clerk, Room 241 at the Juneau court building. Applications must be filed no later than July 5, 1977.

APPLICATIONS FROM MINORITIES ARE ENCOURAGED

Date of Bulletin: 6/24/77

APPENDIX IV

Summaries of Articles

APPELLATE COURT REFORM
45 Mississippi Law Journal 121 (1974)

The function of the highest court of any state is ~~to~~ two fold: To correct errors made in the determination of the rights of the litigants and, more importantly, to determine the standards by which persons within the jurisdiction are to conduct their affairs. Where such a court is delayed in the performance of these two duties, the ends of justice are not served. Increases in the workload of a highest court of a jurisdiction either reduce the amount of time which may be spent on a case or increase the time required to dispose of all cases before the court. An increase in appellate workload ultimately causes delay which is regarded by most judicial reformers as inherently evil.

The workload of nearly every high court has substantially increased and shows no signs of subsiding. Two methods of reducing the workload and congestion of appellate courts are: (1) Those which increase the efficiency of the court and (2) those which reduce the amount of work required of the judges of the highest court.

I. INCREASE IN EFFICIENCY

Efficiency of the court can be dramatically improved by the use of a professional court administrator. This is a generally accepted technique and is utilized by the majority of all of the states. Another method is for the highest court to exercise its

rulemaking power in order to increase the efficiency of judicial operation. Controlling oral arguments and the expeditious use of law clerks are also means of increasing the efficiency of the high court. Other methods are the reduction in the size of records and briefs and use of merit selection in judges.

II. REDUCTION IN THE WORKLOAD PER JUSTICE

Another solution to case overload problems is to reduce the number of cases handled by each justice. This can be accomplished by: (1) Increasing the number of justices on the court; (2) hearing cases in panels; (3) using court commissioners; (4) taking legislative action to reduce the number of cases eligible for appeal. All of the above methods have numerous disadvantages but with modifications can be used in certain circumstances.

III. CREATION OF A PERMANENT LOWER APPELLATE COURT

The most permanent and effective way of reducing the workload of a highest level of a state court system is the creation of a lower appellate court. As of 1971, at least 23 states had a lower appellate level in their court system. This method of workload reduction is greatly favored by both judges and commentators. The benefits of introduction of a lower appellate court into a court system are: (1) The lower appellate court can reduce the workload of the highest appellate court thus allowing an improved work product; (2) it allows a division of the workload

between the lower and highest appellate court keeping both from being overworked; (3) it allows the traditional American concept of the right to one appeal in every case to be retained; and (4) in some cases allows the appellate court to accommodate more litigants. Objectionable characteristics to the creation of an intermediate appellate court are: (1) Increased expense to the taxpayer for additional courts; (2) instances of double appeals causing increased delay and expense to the litigants and (3) the creation of additional work for the highest level in settling disputes over original appellate jurisdiction.

CONCLUSIONS AND RECOMMENDATION

Many of the measures which were discussed to relieve court congestion have been implemented and are helpful, however they have not proven to be solutions but merely forestall the burden under which the courts labor. The establishment of a lower appellate court could greatly relieve the congestion in the appellate system.

CONSTITUTIONAL REVISION AND APPELLATE COURT DECONGESTANTS
(Shirley M. Hufstedler 44 Washington Law Review 577 (1969)

The most venerable criticism of the courts is delay. Delay is the offspring of court congestion caused by surging urban population growth, by inadequate court systems, by cumbersome and archaic judicial and administration procedures, and by the rising expectation of all of our people about the availability and quality of justice.

Successful judicial reformation comes in two packages, constitutional revision and implementing legislation. A judicial article should include no more than is absolutely necessary to create the essential structure of the judicial system. All details should be filled in by statutes and rules which are more easily changed when the need arises.

Individuals studying state judicial articles have generally devoted their attention to three major topics: (1) The structure of the judicial system; (2) selection, tenure and removal of judges; and (3) court administration. The structure of the judicial system considers such questions as whether there should be one trial court or two, should there be a single appellate court or should there be a court of last resort and an intermediate appellate court. Plans for the selection, tenure and removal of judges are generally divided into two categories: (1) those in which a panel of nominees is initially selected by a commission, from whose number the governor must appoint and (2) those

in which the nominees are selected by the governor who thereafter submits their name to a council which has a veto power. Tenure of judges varies from lifetime appointments, to short term, partisan, terms of office. The creation and maintenance of an adequate and efficient system of court administration is essential for the effective administration of justice. Not only should the courts be subject to the same management standards as industry, but judges should not have to spend their time on non-judicial duties.

APPELLATE COURT DECONGESTANTS

The capacity of an appellate court to handle its caseload depends upon the number of cases docketed in a given year, the number of judicial hours which must be devoted to each case, and the number of judicial hours available during the year. Reducing a backlog and thus reducing court congestion requires treatment of the following: (1) The size of the docket, (2) the judicial time expended per case, and (3) the judicial time available.

Dockets can be reduced directly by cutting off or limiting the right to appeal and indirectly, by creating a series of procedural impediments to discourage appeals. However, as appellate courts exist to formulate policy and precedent, to assure uniformity in the administration of justice, and to provide executive direction and assistance to trial courts, such is not an adequate solution.

No one has suggested that judges reduce their backlog of cases by giving less than an adequate time to each case. Although efficient time saving techniques should be employed by appellate court judges, they still must have adequate time to ponder and consider each case.

One solution some states have used in order to reduce the backlog of cases is to divide the court in two departments or divisions consisting of three or more judges. However, divisional sitting only modestly increases the productive capacity of a court and may create more administrative problems which ultimately eliminate any advantage to the divisional sittings.

Another way to alleviate appellate court congestion is to increase the number of appellate judges. However, this has practical application only within very narrow limits. Whatever additional work can be done by the extra judges is dissipated by the increased consultation times, by the difficulties inherent in drafting opinions to accommodate multiple points of view. and by the administrative problems involved in increased personnel.

The most practical solution presently available to decongest a supreme court is to create a new tier of appellate courts to undertake the caseload. As of 1969 there were 21 states with intermediate appellate courts.

The jurisdiction of the supreme court and the intermediate courts of appeal is usually established by provisions of the judicial article of the state constitution. Certain threshhold questions need to be determined such as whether the appellate courts shall have any original jurisdiction, and whether there is an appeal to the supreme court from the appellate court as a matter of right.

The modern trend in structuring a two-tiered appellate system is to eliminate all direct appeals as a matter of right to the supreme court except in cases where the death penalty or life imprisonment has been imposed. Critics of the development of the two-tiered system have often raised the specter of the waste of judicial resource by creating the potential of double appeals. However, if the supreme court judiciously exercises its power to order transfer of causes to the supreme court, and if there is no appeal from the intermediate appeal as a matter of right, that problem is eliminated. Additionally, double appeals are by no means necessarily wasteful and it is often thought that the double appeal actually presents a better opportunity for a true consideration of the issues involved in the case.

A final consideration is the composition and structure of the intermediate appellate court. There are two general types: (1) Those in which there is more than one intermediate appellate court, each of which occupies its exclusive geographical territory and (2) those in which there is a single state-wide

appellate court. The most desirable organization is a single intermediate appellate court with state-wide jurisdiction. This not only can be more efficiently administered, but eliminates the problems of lack of uniformity within the divisions of the appellate court.

THE ROLE OF AN INTERMEDIATE APPELLATE COURT

(James D. Hopkins)
41 Brooklyn Law Review 459 (1975)

Intermediate appellate courts are initially the products of increased judicial business. Although there are various alternatives available to relieve the congested appellate court calendar such as dividing the court into panels, use of commissioners, reducing jurisdiction, and reducing the right of appeal, the method which has been most often employed and most effectively used is the two-tier system of appellate courts.

The advantage of the two-tiered system of appellate courts is that it permits an integrated procedure with supervision of the process placed in the highest appellate court. The assistance to the highest court from the appellate court assumes two forms: (1) It reduces the sheer number of appeals and (2) it releases the highest court to address itself solely to determination of questions of law with a particular view toward the development of the law as a whole.

Intermediate appellate courts have fulfilled their initial role of relieving supreme court congestion and freeing the highest court to exercise its primary rulemaking and decision making function. However, as the full flow of litigation shifts to and converges upon the intermediate appellate court, that court in turn has assumed an additional role, of: Assisting the highest court in its ultimate determination by rendering thorough expositions of the relative merits of alternative solutions to novel or controversial questions of law; and, to function as the court of last resort for the majority of cases.

APPENDIX V

Nevada Legislation Creating an Intermediate Appellate Court

NEVADA

Assembly Joint Resolution No. 2--Assemblymen Barengo, Mann, Hickey, Wagner and Schofield

FILE NUMBER-----

ASSEMBLY JOINT RESOLUTION--Proposing to amend the Nevada constitution to create an intermediate appellate court.

Resolved by the Assembly and Senate of the State of Nevada, jointly, That a new section be added to article 6 and sections 1, 4, 7, 11, 15, 20 and 21 of article 6, section 3 of article 7, and section 22 of article 17 of the constitution of the State of Nevada be amended to read respectively as follows:

1. The court of appeals consist of three judges or such greater number as the legislature may provide by law. If the number of judges is so enlarged, the supreme court shall provide by rule for the assignment of each appeal to a panel of three judges for decision.

2. Except as otherwise provided in this subsection, the judges of the court of appeals shall be elected by the qualified electors of the state, at the general election, for terms of 6 years beginning on the 1st Monday of January next after the election. The terms of the first three judges elected are 2 years, 4 years and 6 years respectively, which shall be separately specified for their election, and in any increase or reduction of the number of judges, the legislature shall provide initial terms of 6 or fewer years such that one-third of the total number of judges, as nearly as may be, is elected every 2 years.

3. The judges of the court of appeals shall elect a chief judge from among their number. The term of office of the chief judge is 2 years, beginning on the 1st Monday of January of each odd-numbered year. A chief judge may succeed himself.

4. The legislature may provide by law, or may authorize the supreme court to provide by rule, for the assignment of one or more judges of the court of appeals to devote a part of their time to service as supplemental district judges where needed.

Section 1. The Judicial power of this State [shall be] is vested in a court system, comprising a Supreme Court, a Court of Appeals, District Courts, and Justices of the Peace. The Legislature may also establish, as part of the system, Courts for municipal purposes only in incorporated cities and towns.

Section 4. The supreme court [shall] and the court of appeals have appellate jurisdiction in all [cases in equity; also in all cases at law in which is involved the title, or the right of possession to, or the possession of, real estate or mining claims, or the legality of any tax, impost, assessment, toll or municipal fine, or in which the demand (exclusive of interest) or the value of the property in controversy, exceeds three hundred dollars; also in all other civil cases not included in the general subdivisions of law and equity,] civil cases arising in district courts, and also on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. [The court shall] The legislature shall apportion this jurisdiction between them by law, and shall provide for the review by the supreme court, where appropriate, of appeals decided by the court of appeals. These courts also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of [its] their appellate jurisdiction. Each of the justices [shall have] and judges has power to issue writs of habeas corpus to any part of the state, upon petition by, or on behalf of, any person held an actual custody, and may make such writs returnable [.] before himself or the [supreme] court, or before any district court in the state or before any judge of [said] those courts.

In case of the disability or disqualification, for any cause, of [the chief justice or one of the associate] one or more justices of the supreme court [, or any two of them,] or judges of the court of appeals,

the governor [is authorized and empowered to] may designate any district judge or judges to sit in the place or places of such disqualified or disabled justice, [or] justices, judge or judges, and [said] the district judge or judges so designated [shall] are entitled to receive their actual expense of travel and otherwise while sitting in [said] the supreme court[.] or court of appeals; or the governor may designate any judge of the court of appeals to sit in the place of any disabled or disqualified justice of the supreme court.

Section 7. The times of holding the Supreme Court and District Courts shall be as fixed by law. The terms of the Supreme Court shall be held at the seat of Government unless the Legislature otherwise provides by law, except that the Supreme Court may hear oral argument at other places in the state. The terms of the Court of Appeals shall be held where provided by law. The terms of the District Courts shall be held at the County seats of their respective countries; Provided, that in case any county shall be hereafter divided into two or more districts, the Legislature may by law, designate the places of holding Courts in such Districts.

Section 11. The justices of the supreme court, the judges of the court of appeals and the district judges [shall be] are ineligible to any office, other than a judicial office, during the term for which they [shall] have been elected or appointed; and all elections or appointments of any such judges by the people, legislature, or otherwise, during [said] that period, to any office other than judicial, [shall be] are void.

[Sec:] Section 15. The Justices of the Supreme Court, the Judges of the Court of Appeals and District Judges [shall each] are each entitled to receive for their services a compensation to be fixed by law and paid in the manner provided by law, which shall not be increased or diminished during the term for which they [shall] have been elected, unless a Vacancy occurs, in which case the successor of the former incumbent [shall] is entitled to receive only such salary as may be provided by law at the time of his election or appointment; and provision shall be made by law for setting apart from each year's revenue a sufficient amount of Money, to pay such compensation.

Section 20. 1. When a vacancy occurs before the expiration of any term of office in the supreme court or the court of appeals or among the district judges, the governor shall appoint a justice or judge from among three nominees selected for such individual vacancy by the commission or judicial selection.

2. The term of office of any justice or judge so appointed expires on the first Monday of January following the next general election.

3. Each nomination for the supreme court or the court of appeals shall be made by the permanent commission, composed of:

(a) The chief justice or an associate justice designated by him;
(b) Three members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

4. Each nomination for the district court shall be made by a temporary commission composed of:

(a) The permanent commission;
(b) A member of the State Bar of Nevada resident in the judicial district in which the vacancy occurs, appointed by the board of governors of the State Bar of Nevada; and
(c) A resident of such judicial district, not a member of the legal profession, appointed by the governor.

5. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the petitions designated in this section to be occupied by members of the State Bar of Nevada.

6. The term of office of each appointive member of the permanent commission, except the first members, is 4 years. Each appointing authority shall

appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. The additional members of a temporary commission shall be appointed when a vacancy occurs, and their terms shall expire when the nominations for such vacancy have been transmitted to the governor.

7. An appointing authority shall not appoint to the permanent commission more than:

(a) One resident of any county.
(b) Two members of the same political party.

No member of the permanent commission may be a member of a commission on judicial discipline.

8. After the expiration of 30 days from the date on which the commission on judicial selection has delivered to him its list of nominees for any vacancy, if the governor has not made the appointment required by this section, he shall make no other appointment to any public office until he has appointed a justice or judge from the list submitted. [If a commission on judicial selection is established by another section of this constitution to nominate persons to fill vacancies on the supreme court, such commission shall serve as the permanent commission established by subsection 3 of this section.]

Section 21. 1. A justice of the supreme court, a judge of the court of appeals or a district judge may, in addition to the provision of article 7 for impeachment, be censured, retired or removed by the commission on judicial discipline. A justice or judge may appeal from the action of the commission to the supreme court, which may reverse such action or take any alternative action provided in this subsection.

2. The commission is composed of:

(a) Two justices or judges appointed by the supreme court;
(b) Two members of the State Bar of Nevada, a public corporation created by statute, appointed by its board of governors; and
(c) Three persons, not members of the legal profession, appointed by the governor.

The commission shall elect a chairman from among its three lay members.

3. If at any time the State Bar of Nevada ceases to exist as a public corporation or ceases to include all attorneys admitted to practice before the courts of this state, the legislature shall provide by law, or if it fails to do so the court shall provide by rule, for the appointment of attorneys at law to the positions designated in this section to be occupied by members of the State Bar of Nevada.

4. The term of office of each appointive member of the commission, except the first members, is 4 years. Each appointing authority shall appoint one of the members first appointed for a term of 2 years. If a vacancy occurs, the appointing authority shall fill the vacancy for the unexpired term. An appointing authority shall not appoint more than one resident of any county. The governor shall not appoint more than two members of the same political party. No member may be a member of a commission on judicial selection.

5. The supreme court shall make appropriate rules for:

(a) The confidentiality of all proceedings before the commission, except a decision to censure, retire or remove a justice or judge.
(b) The grounds of censure.
(c) The conduct of investigations and hearings.

6. No justice or judge may by virtue of this section be:

(a) Removed except for willful misconduct, willful or persistent failure to perform the duties of his office or habitual intemperance; or
(b) Retired except for advanced age which interferes with the proper performance of his judicial duties and which is likely to be permanent in nature.

7. Any person may bring to the attention of the commission any matter relating to the fitness of a justice or judge. The commission shall, after preliminary investigation, dismiss the matter or order a hearing to be held before it. If a hearing

is ordered, a statement of the matter shall be served upon the justice or judge against whom the proceeding is brought. The commission in its discretion may suspend a justice or judge from the exercise of his office pending the determination of the proceedings before the commission. Any justice or judge whose removal is sought is liable to indictment and punishment according to law. A justice or judge retired for disability in accordance with this section is entitled thereafter to receive such compensation as the legislature may provide.

8. If a proceeding is brought against a justice of the supreme court, no justice may sit on the commission for that proceeding. If a proceeding is brought against a judge of the court of appeals, no judge of that court may sit on the commission for that proceeding. If a proceeding is brought against a district judge, no judge from the same judicial district may sit on the commission for that proceeding. If an appeal is taken from an action of the commission to the supreme court, any justice who sat on the commission for that proceeding is disqualified from participating in the consideration or decision of the appeal. When any member of the commission is disqualified by this subsection, the supreme court shall appoint a substitute from among the eligible judges.

9. The commission may:

(a) Designate for each hearing an attorney or attorneys at law to act as counsel to conduct the proceedings;
(b) Summon witnesses to appear and testify under oath and compel the production of books, papers, documents and records;
(c) Grant immunity from prosecution or punishment when the commission deems it necessary and proper in order to compel the giving of testimony under oath and the production of books, papers, documents and records; and
(d) Exercise such further powers as the legislature may from time to time confer upon it.

[Sec:] Section 3. For any reasonable cause to be entered on the journals of each House, which may [,] or may not be sufficient grounds for impeachment, the [Chief

Justice and Associate] Justices of the Supreme Court, Judges of the Court of Appeals and Judges of the District Courts shall be removed from Office on the vote of two thirds of the Members elected to each branch of the Legislature, and the Justice or Judge complained of [,] shall be served with a copy of the complaint against him [,] and shall have an opportunity of being heard in person or by counsel in his defense, Provided, that no member of either branch of the Legislature shall be eligible to fill the vacancy occasioned by such removal.

[Sec:] Section 22. In case the office of any Justice of the Supreme Court, Judge of the Court of Appeals, District Judge or other State officer [shall become] becomes vacant before the expiration of the regular term for which he was elected, the vacancy may be filled by appointment by the Governor until it-[shall be] is supplied at the next general election, when it shall be filled by election for the residue of the unexpired term.

and be it further

Resolved, That the secretary of state shall assign a number to the new section added to article 6 according to the number of section contained in that article when the addition of the new section becomes effective.

members files
SB 104 am

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 4210
KENAI, ALASKA 99611
TELEPHONE 283-7167

April 17, 1979

Representative Terry Gardner
Speaker of the House of Representatives

Representative Charles Parr
Chairman - House Judiciary Committee

Representative Hugh Malone

Representative Patrick McConnell

Senator Clem Tillion
President - State Senate
Pouch B
Juneau, Alaska

Dear Mr. Parr:

Enclosed please find a copy of a resolution which was passed by the Kenai Peninsula Bar Association at its April 13, 1979 meeting, supporting the creation of an intermediate criminal appellate court. We felt that it was important for the legislature to be aware that this bar association is very much in favor of the creation of an intermediate court of criminal appeals, in light of the strong opposition to such a court voiced by the Tanana Bar Association.

Very truly yours,

Ken Cusack

KENNETH J. CUSACK
President
Kenai Peninsula Bar Association

KJC/aj

Encl.

KENAI PENINSULA BAR ASSOCIATION
P. O. BOX 397
KENAI, ALASKA 99611
TELEPHONE 283-7534

RESOLUTION

Upon motion duly made, seconded, and passed by the Kenai Peninsula Bar Association, it was resolved:

The Kenai Peninsula Bar Association supports the establishment of an Alaska Intermediate Court of Appeals for criminal cases, provided that review from said appellate court to the Alaska Supreme Court shall be by writ of certiorari and not by automatic right of appeal.

RESOLVED this 13th day of April, 1979.

KENNETH J. CUSACK, President
Kenai Peninsula Bar Association

02-001B (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

members files
SB 104

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

DATE: April 20, 1979

FILE NO:

TELEPHONE NO:

SUBJECT: Senate Bill 104 am (Establishing Court of Appeals)

FROM: Stuart C. Hall, Commissioner
Alaska Public Utilities Commission

Cheri C. Jacobus, Chairman
Alaska Pipeline Commission

Pursuant to your conversation with Commissioner Hall on Friday, April 6, in Juneau, we submit our comments on SB 104. This is not a position paper of the Department of Commerce and Economic Development nor of the agencies on which we serve; it represents the individual and collective concerns of the writers.

SB 104, establishing an intermediate appellate court, represents one of the options that the Judicial Council has had under consideration for some time to alleviate the workload of the Supreme Court, particularly in the area of the criminal appeals. The other options were: expansion of the membership of the Supreme Court to seven justices and creation of an appellate division of the Superior Court (as in New York State). Instead, the Judicial Council and the state court system opted for the intermediate appellate court. A significant number of other states provide for such a court. We have no position as to whether such a new court is wise or unwise.

Proponents of the legislation refer to this proposed new court as a "Court of Criminal Appeals" and indicate that this court was intended to provide appellate relief in the criminal law area only. The drafters of the legislation, however, have included in the new court's jurisdiction "appeals to the superior court from a decision of an administrative agency".

This concerns us because it creates a third level of appellate review of decisions of the regulatory commissions. We believe this is entirely unnecessary. If a third level of appellate review is created, we believe the APUC will require a third staff attorney to juggle the various cases under review, and this will contribute to "regulatory lag". The new court's jurisdiction will similarly impact the ATC, APC and ACFEC. The Supreme Court is not presently burdened by appeals from the APUC's decisions or those of any of the other principal regulatory agencies (ATC, APC, etc.). We believe only two levels of appellate review are required to ensure compliance with applicable statutes, constitutionally prescribed due process, etc. At the federal level, appeals from the decisions of the FCC, FTC, ICC, FERC and like agencies are taken directly to the Circuit Courts of Appeal. They do not start in the trial court of general jurisdiction, the federal district court. As the Jager case makes clear, to this point in time in Alaska, the Superior Court has acted as the intermediate appellate court. Jager v. State, 537 P.2d 1100, 1106 (Alaska, 1975). If an intermediate court of appeal is created, there is no need for the superior court to perform that function. Consequently, we believe the Superior Court should be bypassed in favor of review by the new Court of Appeals. Ideally, SB 104 am should be further amended to so provide, as should the Administrative Procedure Act (APA). We attach proposed amendments to SB 104 am accomplishing that purpose.

The Judiciary Committee should consider that different types of administrative appeals are heard by the courts under the APA, such as:

(1) appeals from the regulatory commissions;
(2) appeals from denials of various benefits, e.g., unemployment insurance, workmen's compensation, or those administered by the Department of Health & Social Services;
(3) appeals from adoption of regulations, or declaratory judgments concerning the regulations of the various administrative bodies, including the APUC, Department of Fish & Game, Environmental Conservation, etc.

Further SB 104 does not define "administrative agency".

We are advised that the drafters of this legislation did not intend that appeals from our decisions would have three appellate reviews. The effect of this bill, however, would be three appellate reviews. Another provision in the bill does allow the Supreme Court, by rule, to bypass the Court of Appeals for appeals from administrative agencies' decisions and further provides that those decisions would be heard by the Supreme Court after a Superior Court review. We do not regard this as the "clean" approach. We believe SB 104 should be amended to provide for direct appeals from the regulatory commissions' decisions to the Court of Appeals. The drafters concede that the approach in the bill as drafted is not a good one.

cc: Charles Webber, Commissioner
Dept. of Commerce & Economic Development

Keith Specking
Legislative Assistant to the Governor

Proposed amendments to SB 104am (Per Cheri C. Jacobus and Stuart C. Hall)

On page 1, line 25, after "agency", insert:

", other than those agencies set out in (e) of this subsection"

On page 2, between lines 7 and 8, insert:

(e) The court of appeals has appellate jurisdiction in all actions and proceedings commenced before, and all final administrative orders or decisions of, the Alaska Public Utilities Commission, the Alaska Transportation Commission, the Alaska Pipeline Commission and the Alaska Commercial Fisheries Entry Commission. However, the court may, in its discretion, remand a commission matter to the superior court for a trial de note in whole or in part.

On page 2, line 8, delete "(e)" and insert "(f)"

On page 13, between lines 23 and 24, insert:

* Sec. 26. AS 44.62.560 is amended to read:

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court, or by the court of appeals, of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

ALASKA PUBLIC UTILITIES COMMISSION
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(b) The complete record of the proceedings, or parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in superior court, or the court of appeals, within 30 days after the appellant pays the estimated cost of preparing the complete or designted record or files a corporate bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, or the court of appeals, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court, or the court of appeals, may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court, or the court of appeals, may compel the agency to initiate action.

*Sec. 27. AS 44.62.570(a) is amended to read:

(a) An appeal shall be heard by the superior court, or the court of appeals, sitting without a jury.

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*Sec. 28. AS 44.62.570(h) is amended to read:

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court or court of appeals judgment or agency order.

Renumber remaining bill sections accordingly

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April 4, 1979

Representative Fred E. Brown
Chairman, House Commerce Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104 am.

Dear Representative Brown:

It has come to our attention that you are interested in the views of the Alaska Academy on the proposed legislation creating an intermediate court of appeals.

I have reviewed, with great interest the text of SB 104 am. and offer the following comments:

1) The case load currently placed upon the Supreme Court is far in excess of the capabilities of any five men, regardless of how hard they work at their task.

2) Increasing the number of Supreme Court Justices would, in our opinion, create more rather than less delay in the appeal system. It has been our experience that a smaller committee can reach agreement with far less time expenditure than a larger one. The idea of panels of Justices, all from one court, has the added inherent problem of conflicting rulings.

3) The proposed jurisdiction of the "appellate" court would take many of the more time consuming tasks currently performed by the Supreme Court, i.e., sentence review, appeal from administrative agencies.

4) The discretionary power of the Supreme Court to grant a further review under Sec. 22.07.030 is a method that has been followed by nearly all states with intermediate courts of appeal, and has allowed the Supreme Court to concentrate on more serious legal issues. We believe it should be made part of any bill.

5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to the Supreme Court for decision. This would be in line with the standard chain of appeal and further, would be more efficient in the use of the Court's time. If a case is permitted to go to the Supreme Court for a hearing as to whether the appeal should skip the "appellate" court -- that hearing, the briefs, the arguments and the Supreme Court's deliberations would take almost as much time as an appeal.

6) Other than the criticism of the Transfer of Appellate Case section of SB 104 am., we believe the bill would greatly benefit the citizens of Alaska.

While endorsing the creation of an intermediate court of appeals, we do not view such a court as a cure for all of the ills of the delay in the courts which results in great injustice to our citizens. There is a great need for both a more efficient use of the time of trial court judges and for additional judges- It currently requires nearly two years to bring a civil case to trial under the most ideal circumstances. Then the appeal process requires another two years or more. This bill would greatly reduce the appeal time and you are to be applauded for your efforts in that regard. The two plus year delay in the trial courts would, however, still be with us.

In the near future the delay at the trial court level must be reduced. We believe that such steps as a specific designation of a certain number of Superior Court Judges as civil and a certain number as criminal would be one step which should be considered. Funding of new judgeships, we believe, should at least weigh this as an alternative.

On behalf of all of our clients, we wish to thank you for your efforts, through the proposed creation of an intermediate court of appeals, to provide them with a true access to the courts.

ALASKA ACADEMY OF TRIAL LAWYERS

L. Ames Luce
President

LAL/cb

SB 104 master file only

STATE OF OREGON
SUPREME COURT
SALEM 97310

RALPH M. HOLMAN
ASSOCIATE JUSTICE

January 25, 1979

Mr. Arthur H. Snowden, II
Administrative Director
Alaska Court System
303 K Street
Anchorage, Alaska 99501

Attention: Ms. Susan Burke

Dear Mr. Snowden:

Judge Hicks, our Court Administrator, has referred to me your inquiry concerning the approach taken to secure legislative approval of an intermediate appellate court. The proposal for such a court was made to our legislature in 1969 and resulted in the establishment of such a court in the fall of that year. At that time I was a member of both the Supreme Court of Oregon and the Judicial Administration Committee of the Oregon State Bar and was designated by the Supreme Court to draw up a plan for such a court upon which plan the individual members of the Supreme Court could agree. It was thereafter my duty, after the court had reached a consensus, to sell the plan to the Judicial Administratin Committee of the Oregon State Bar and to secure approval at the annual Bar meeting of its members as well as to present the matter to the legislature. For these reasons Judge Hicks decided that I might be the logical person to respond to your inquiry.

Probably the best method of imparting information to another state concerning methods of convincing the legislature that an intermediate appellate court is necessary is to recount the Oregon experience. It might also be wise for Alaska, if it has not done so already, to contact the authorities in Colorado which have also recently gone through the same experience. At the time Colorado established its intermediate appellate court, I went to Colorado and met with the committee that had the matter under consideration and told them of our experience and problems. Colorado and Oregon had similar difficulties in that a large percentage of the population of the state was concentrated in a relatively small area, leaving a broad expanse with a comparatively small population. I would anticipate that Alaska also has a similar problem.

To begin with, the decision must be made whether the pressure of the appellate load is sufficiently large to justify at once a full-fledged intermediate appellate court. In Oregon it was decided that such a full-fledged court could not be justified upon our

original application. At that time a plan was presented to the legislature for an intermediate court of five judges which would have original appellate jurisdiction in limited classifications of cases. The five judges were to sit in two panels of three each with the Chief Judge sitting in both panels. These classifications were generally (1) criminal, (2) domestic relations, juvenile matters and adoptions, (3) probate, and (4) those in which state boards and bodies are involved which encompass such things as administrative law. The balance of the appellate litigation continued to come directly to the Supreme Court.

A statistical study was made for the past seven years in an effort to identify the percentage of total appellate litigation which arose from various classifications of cases so that the appellate load could be equitably distributed between the two courts. A dissatisfied litigant could, of course, ask that the Supreme Court review the decision of the intermediate court, and this additional duty for the Supreme Court had to be taken into consideration in making the allotment of the workload between the two courts. It was explained to the legislature that as the workload increased, the legislature would be requested to transfer original jurisdiction to the intermediate appellate court in other classifications until all original jurisdiction in appellate matters was vested in that court except for certain enumerated situations in which original appellate jurisdiction was frozen into the Supreme Court by the peculiarities of the Oregon Constitution.

The 1977 Legislative Assembly finally concluded the transition and, as of January 1, 1978, all original appellate jurisdiction (except for the constitutional exceptions) was vested in the intermediate appellate court, which now has ten judges and which presently needs at least two more. The legislature was told in advance that when the workload justified a full intermediate appellate court it was contemplated that there would be twelve intermediate appellate judges sitting in panels of three each, thus effectively making four intermediate appellate courts of three judges each. Presently, the intermediate court is sitting in panels of four with nine members being divided into panels of three and with the Chief Judge, sitting with each panel, making the fourth judge.

A word of caution is in order concerning the division of original appellate jurisdiction. In surveying what had occurred in other states, we observed that original appellate jurisdiction lines tend to become blurred. As an illustration: a constituent of Senator Jones from the cow country part of the state wants quick litigation results in cattle rustling cases. As a result, Senator Jones dumps a bill into the legislature that says appeals in all such cases will bypass the intermediate appellate court and go directly to the Supreme Court. As soon as it is generally understood that this can be done, all hell breaks loose and pretty soon a well-devised appellate plan becomes a complete mess, with special interest groups forcing through bills which require bypassing the intermediate appellate court in their particular field of interest. Therefore, it is important at the outset not to make any exceptions, be it first-degree murder or whatever. Such exceptions breed others. We have been relatively successful in Oregon in avoiding this pitfall which is exhibited in almost every other state in which different layers of appellate courts exist.

Another pitfall in this regard is the practical political aspects of getting something approved by the Bar and the legislature. If a full-scale intermediate appellate court is deemed not to be immediately feasible, as it was deemed not to be in Oregon, extreme care should be taken in deciding what kinds of litigation are going to be subject to the possibility of two appeals and what kinds of litigation are not. The tendency of the members of the Bar is to resist the possibility of having two appeals in the kinds of litigation out of which they make their real money. Therefore, it was deemed wise in Oregon, as a political ploy only, in an effort to get the camel's nose into the tent, to dump into the intermediate appellate court's jurisdiction as many classes of litigation as possible in which the cost of litigation on either one or both sides is borne by the public coffers. Lawyers seldom object to an increase in litigation for which they are being paid out of the public pocket when it is a kind of litigation in which their private clients can ill afford to pay. This does not necessarily tend to put into the intermediate appellate court's original jurisidiction those classes of litigation which should actually be there, but it is something to which resort may be had in a situation in which extreme difficulty is contemplated in getting the Bar's approval. Without the Bar's approval you will

probably not get far. We did it in Oregon in order to get our toe in the door, and we were successful. I am, of course, unable to make any such political judgment as to what the wise course may be in Alaska, or whether it is even necessary to do it by small bits over a period of ten years, as was necessary in Oregon.

Another decision which has to be made is whether the separate panels of the intermediate appellate court sit in one location or whether the various panels are distributed around the state. In Oregon it was decided that all members of the court should sit in the state capital, as does the Supreme Court. The reason was entirely one of finances. One of the most expensive parts of an appellate court is a law library. With all of the appellate judicial manpower located in one place (Supreme Court and all sections of the intermediate appellate court), one law library suffices. For any section of an appellate court that is located elsewhere, the law library must be duplicated. This involves a tremendous, monumental expense.

Our experience has shown that there are other benefits, and also detriments, from having the intermediate appellate court concentrated in one location. Having the various panels all in one place tends to minimize disparate decisions by separate panels. They talk to each other and go over each other's opinions. It also centralizes administration and minimizes the cost of furnishing space and equipment. Now that we have gone to computers for the printing and storing of opinions, I suspect that the savings are material. However, if every panel of the intermediate appellate court monitors what comes out of other panels, production tends to slow down as everyone is looking over everyone else's shoulders.

In addition to the problem of where the judges should sit is the problem of whether they should be selected from the state at large or from districts. In Oregon the judges are elected from the state at large. This tends to elect persons from the most heavily populated part of the state who have name familiarity there. Regardless of where the members of the court sit, our experience has indicated that there may be some justification for having members of the court elected from various part of the state, if it is felt that there is any value in a judicial representation from various areas.

The fact that the entire court may be centrally located in one area does not prevent its panels from actually sitting in various parts of the state to hear arguments. It is a means of showing the flag and servicing people locally with the judicial system, while still permiting the court to be centrally located with the attendant benefits that may come therefrom. In most sections of the state there are physical facilities for local trial courts and these, as a rule, can be easily used by a three-man judicial panel for the purpose of hearing cases which have arisen from a particular section of the state. In Oregon, upon occasion, even the Supreme Court travels about to hear cases--not usually--but sometimes.

It should also be remembered that it is valuable to have interchangeable appellate manpower. The Supreme Court should have the authority to assign its members to the intermediate appellate court, and members of that court should be assignable to the Supreme Court. As an illustration, last month I sat with a panel of the intermediate court that was shorthanded. I am, of course, disqualified to sit on those cases should they come to the Supreme Court. The system has worked well and makes the most of the available manpower.

If it is determined that a full intermediate court is not politically or financially feasible in Alaska at this time, as it was not at the beginning in Oregon, great care should be taken in defining the classification of the kinds of cases when making a division of original appellate jurisdiction. Time spent in writing opinions concerning which court has original appellate jurisdiction is wasted completely. Oregon law has a provision that if anyone contends an appeal has been filed in the wrong court, the Supreme Court shall decide it summarily without argument or briefing. We have never written one opinion on the subject and do not intend to. We have had trouble with consistency in how to devise certain informal internal rules for this purpose. The principal difficulty is with the administrative and governmental law classifications. I will not take your time to detail our experience further except to say that it is available, if desired.

Statistical studies are available in convincing a legislature that the establishment of the intermediate appellate court is necessary and desirable. In Oregon we made studies which showed

the increase in the number of appeals filed over a period of years and the percentage of appeals which came from each classification of litigation and the number of written opinions which resulted. We used statistics from other states showing the average number of opinions written by the members of the supreme courts of those states and compared them with the average number that must be written in Oregon to keep current in the absence of an intermediate appellate court. We made projections of the number of future appeals that could be anticipated, using as a basis therefor our past history of increases. These projections can be related to population, trial court litigation, and other relevant data. The statistics should be kept as simple and uncomplicated as possible; if they are too complex, the members of the legislature often get lost in the maze. If you have a genuine case, it can easily be demonstrated. Our investigation indicates that a supreme court judge should not be expected to write more than an average of 30 opinions a year of the detailed kind which is to be expected from such a court.

Since the establishment of the intermediate court in Oregon, the appellate system has been modified considerably. Originally, appeals from administrative decisions went to the top trial court where either a further hearing was had or a hearing was had on the record made before the state board or body. This has all been changed. Such appeals now go straight from the hearing agency of the state board or body to the Court of Appeals. We have a two-level trial court: district courts, which are of a limited and lesser jurisdiction, and circuit courts, which are of an unlimited jurisdiction. It used to be that losing litigants in the district court could get a new trial by appealing to the higher trial court. Recording devices have now been put into the lower trial courts and the tapes come directly to the Court of Appeals for review. I have no idea whether any of this is helpful to Alaska since I am unfamiliar with its administrative hearing and trial court procedure and composition.

Oregon still has an appellate litigation crisis. Since the 1967 statistics, which were the most recent ones available at the time of the formation of the Court of Appeals, the appellate load has increased more than five-fold. There are presently being filed more than 3,000 appeals each year. While many are dismissed before decision, the Court of Appeals, of necessity, decides many cases

without written opinion. In fact, many appeals do not merit a written opinion and the members of the profession seem to have accepted this state of affairs.

A detailed recapitulation of the procedure on petition to the Supreme Court from the Court of Appeals can be furnished, if desired. The Oregon law requires that three of our seven Supreme Court members must vote to allow review of an opinion of the intermediate appellate court. A number of statistical documents used in Oregon in our application before the legislature in 1967 are enclosed, as examples only, but I am sure much better ones could be evolved. One of the enclosures is a statistical study made in the state of Colorado. We made a similar one but I do not find it in my file. It is extremely difficult to anticipate in advance all relevant inquiries which might be of interest.

I am sure that you should contact Chief Judge Herbert M. Schwab of the Oregon Court of Appeals. While he did not participate in the planning and passage of the act which established the court, he has acted as Chief Judge since its formation and probably knows the pitfalls in the administration of such a court better than anyone in existence. The two of us have been the ones from Oregon who have traveled to other states that are planning the establishment of such a court.

Sincerely,

Ralph M. Holman

mta

3 of 5 here sounds good + it would be nice if that vote was required to be a part of the record

J K

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 co fuse 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

SUSAN BURKE
Staff Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501

April 2, 1979

Honorable Charles Parr
Chairman, House Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: SB 104am -- An Act Establishing the Court of Appeals.

Dear Representative Parr:

I understand from Mr. Snowden that the Judiciary Committee had some technical questions regarding Senate Bill 104. I will attempt to provide a brief explanation of those portions of the bill that the Committee inquired about.

1. Jurisdiction over Administrative Agency Appeals.

Proposed Section 22.07.020(a)(8) [page 1, line 24] grants jurisdiction to the court of appeals to review a superior court decision in an appeal from an administrative agency. These appeals currently go from the superior court to the supreme court. When the supreme court first considered the question of court of appeals jurisdiction, it believed the best combination of cases would be criminal cases and the administrative agency appeals. However, because it was difficult to know with absolute certainty how many criminal cases the new court could properly handle, the supreme court wished to provide some flexibility in the bill. It is contemplated that the supreme court would in the first instance provide for direct review to the supreme court for these kinds of cases and that they would be transferred to the court of appeals only if it appeared that that court was able to handle them.

A number of sections in the bill were included solely for the purpose of implementing this proposed transferability of administrative agency appeals. If the Committee determines

that this transferability should not be included in the bill, the following sections should be deleted from the bill:

(a) At page 1, delete lines 24 and 25;

(b) At page 2, delete lines 10 through 12;

(c) At page 5, delete lines 28 and 29;

(d) At page 6, delete line 1.

2. Jurisdiction over District Court Appeals.

Under current law, the superior court initially hears appeals from the district court, both civil and criminal, and there is a right of appeal by either party to the supreme court from the superior court's decision. Two purposes were intended to be achieved by transferring jurisdiction from the superior court to the court of appeals over civil appeals as well as criminal. First, there are more criminal district court appeals than civil. As long as the criminal appeals were going to be heard by the court of appeals, it was thought that there were too few civil appeals to warrant the maintenance of an appellate process in the superior court for these cases. Second, it provides a means to eliminate the current right to two appeals from a district court case while at the same time assuring that a district court appeal was decided by more than one person.

3. Transfer of Appellate Cases.

Section 3 of the bill at page 5 (AS 22.05.015) provides the mechanism for transferring appropriate cases from the court of appeals to the supreme court if it appears that the supreme court would be taking review in any event. This type of provision is a fairly standard one in court of appeals legislation from other states, and is generally intended to avoid requiring parties to take a case through both courts when the case was of sufficient importance that the supreme court would certainly take review. This section would also permit the supreme court to accept cases pending in the court of appeals in order to take care of temporary workload imbalances between the two courts.

4. Discretionary Review on the Supreme Court's Own Motion.

I have not had an opportunity to do extensive research on the question of whether the United States Supreme Court has the

authority to take review on its own motion of cases decided by the federal Circuit Courts. It is my understanding, however, that as a practical matter the U.S. Supreme Court does not do this, but may, in very extraordinary cases "invite" parties to apply for review. The inclusion of the authority by the supreme court to invoke its discretionary review "on its own motion" was not something that was considered to be terribly important one way or the other, and its deletion would have no effect on the efficient operations of the court of appeals and the supreme court.

5. Sentence Appeal Jurisdiction.

At page 9, line 4 and page 13, line 10, the bill proposes to change the limitation on sentence appeals from 180 days to 45 days. In 1976, the Supreme Court promulgated amendments to District Court Criminal Rule 7 and Appellate Rule 21 permitting appeals from sentences of 45 days or more. The Supreme Court was then of the view that this change was within its rule making authority. This view has been expressed again in a recent case, Wharton v. State, Opin. No. 1797 (February 16, 1979). The rationale behind the rule change was that 45 days is a significant period of incarceration and that the supreme court should review sentences in these cases. The amendments in the bill were included merely to conform the statute to the rule.

With respect to all of the matters that are raised in this letter, we would of course prefer that the provisions of the bill remain in the same form as passed by the Senate. However, it appears that none of the changes that the Committee is contemplating would be fatal to the operation of the court of appeals as envisioned by the Court System.

As a final matter, the Committee had requested that I furnish some additional information concerning the reversal rate of the Alaska Supreme Court as compared with reversal rates in other jurisdictions. Several years back we did prepare a very short comparative analysis for Senator John Rader. Because so few supreme courts regularly keep such figures, there were only a few other states included in that comparison and thus it did not provide a particularly accurate picture. Unfortunately, those of us who were likely to have kept a copy of that report have searched our files and cannot locate it. I have, however, enclosed a portion of the final report prepared by a committee from Idaho that examined recently the workload problems of the Idaho Supreme Court. This report does contain some information along these lines.

The Committee also requested the number of public defender appeals in relation to the total criminal appeals. This information requires the Supreme Court Clerk's Office to review the status cards of each case manually and it should be available to the Committee very shortly.

I am sorry that I was not able to appear personally before the Committee today, as some of these questions could perhaps have been answered at the hearing. If the Committee has additional questions, please let me know.

Sincerely,

Susan Burke

Susan Burke
Deputy Administrative Director

SB:ps
Encl.

Bacon

AN INVESTIGATION INTO THE PROBLEMS CREATED BY THE GROWING APPELLATE CASELOAD IN IDAHO

REPORT OF THE SUPREME COURT
APPELLATE COURT COMMITTEE

September 16, 1977

THE APPELLATE COURT COMMITTEE

Justice Charles R. Donaldson	Co-Chairman
Justice Allan G. Shepard	Co-Chairman
J. Charles Blanton	Attorney
Paul S. Boyd	Attorney
Peter J. Boyd	Attorney
Robert E. Brown	Attorney
Albert Carlsen	Business
Louis H. Cosho	Attorney
Fred J. Hahn	Attorney
Bill Hall	Editor
John Hepworth	Attorney
Howard Humphrey	Attorney
Gary J. Ingram	Representative
Richard B. Kading	Attorney
Samuel Kaufman	Attorney
Edith Miller Klein	Senator
Robert W. Macfarlane	Labor
Ellison M. Matthews	Attorney
Patricia McDermott	Representative
Wesley F. Merrill	Attorney
Z. Reed Millar	Attorney
Dean E. Miller	Attorney
Thomas A. Miller	Attorney
William Murphy	Lt. Governor
Thomas G. Nelson	Attorney
W. W. Nixon	Attorney
William A. Parsons	Attorney
Ray W. Rigby	Attorney
James E. Risch	Senator
T. W. Stivers	Representative
Jay L. Webb	Attorney
Dennis E. Wheeler	Attorney
Paul W. Worthen	Representative

FOREWORD

The court modernization effort of the late 1960's gave Idaho one of the most admired court structures in the nation, and that structure basically has remained unchanged and has well served the state. But events have occurred which could not be foreseen in the late 1960's: rapid state population growth, increasing numbers of attorneys admitted to practice, a litigious public attitude, new due process guarantees for criminal defendants, and a legislation explosion. The cumulative effect of these occurrences is causing a serious strain on one part of the court system structure--the Supreme Court's appellate capabilities.

Any proposal for change in the basic structure of the state's court system is bound to be greeted with controversy, particularly within the legal community. The Supreme Court Appellate Court Committee recognizes that no matter what may be suggested, its recommendations could not please the legal community in its entirety. This report is submitted, however, in the hopes that it will be read and digested, discussed and debated, before a final judgment is made.

September 16, 1977

Carl F. Bianchi
Reporter for the Committee

of the Supreme Court or within the present structure, is not desirable.[12]

Some discussion was held on whether a form of panelization--splitting civil and criminal jurisdiction between either two Supreme Courts or two units of the same Supreme Court--would be helpful. It was pointed out that this is the system used in Texas, which state has criminal and civil courts of appeal, and that this solution had led to jurisdictional disputes and opposition from district attorneys in Texas. As a result of the Texas experience, other states had rejected this approach.

Reversal Rates

The Appellate Court Committee spent considerable time examining how the Supreme Court dealt with appeals from the district court. At the May 9th committee meeting, some committee members inquired whether the Supreme Court's percentage of reversal itself was leading to an increase in the number of appeals. Between the two meetings, the Administrative Office of the Courts was requested to seek information from other states to verify whether the Idaho Supreme Court's activities on appeal were out of line with other state courts of last resort.

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12 The American Bar Association Standards Relating to Appellate Courts say that a Supreme Court "should not sit in panels or divisions, whether fixed or rotating, or delegate its deliberative and decisional functions to officers such as commissioners." Standard 3.01, at 7. Panels are said to dilute the function of developing the law and to lead to inconsistency of decisions.

Concerning only appeals from judgments in the district court, of a total of 5,144 final district court judgments in 1976, there were 196 appeals filed with the Idaho Supreme Court during that calendar year. Trial court decisions stood in 66 per cent of those appeals, were modified in 29 per cent of the appeals, and were directly reversed in 5 per cent of the cases. If the decisions ordering the district court judgment modified are lumped together with reversals, it could be said that the Supreme Court has a 34 per cent reversal rate. If only those appeals where the Supreme Court issued a final opinion are considered, (excluding dismissals prior to trial and settlements), the percentage is even higher. But whether the reversal rate is too high or too low is a subjective opinion without a frame of reference.

According to statistics obtained from other states and from the National Center for State Courts' National Courts Statistics Project, Wisconsin had a reversal rate in 1974 of approximately 30 per cent of its Supreme Court opinions, while Hawaii had a 39 per cent reversal rate in 1974. (The Hawaii reversal rate is actually even higher, since Hawaii classifies opinions where the trial court decision is ordered modified as affirmances.) The Alaska Supreme Court has reversed the lower courts in 51.5 per cent of the written opinions during 1976. The New Mexico Supreme Court, which has an intermediate appellate court, reversed 49 per cent of

its appeals. North Dakota, which does not have an intermediate appellate court, reversed 42 per cent of its appeals. In a comparison of twelve other states,[13] reversal rates (when modifications are included), ranged from a low of 15 per cent to a high of 54 per cent, with most in a range of 27 to 32 per cent.

The committee concluded that it was difficult to compare statistics between states due to differences in procedures and technology. However, the reversal rates obtained from other states led committee members to believe that the Idaho Supreme Court reversal rate is not much higher than other states and that the reversal rate in itself could not be identified definitively as a causal factor in the increasing rate of appeals. As pointed out by the vice-chairman of the Idaho Judicial Council, there are multiple factors affecting reversal rates of district judge opinions, including: the need for law clerks by judges in high-volume areas; complexity of cases handled; volume of cases handled; and change in status of the law between the time of trial and the time of consideration of the appeal. In light of the many factors involved in reversals, and the difficulty in identifying causal connections, the Appellate Court Committee abandoned this area of inquiry as a source of relief to the appellate caseload problem.

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[13] Only states without intermediate appellate courts were selected for comparison purposes.

Alaska Court System

State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

February 2, 1979

Honorable Robert H. Ziegler, Sr.
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Re: The Court of Appeals

Dear Senator Ziegler:

This is in response to your request for background information concerning the proposed intermediate appellate court.

In 1977 the supreme court became increasingly aware that the appellate workload was growing beyond the court's ability to handle it effectively and efficiently. Since 1970, following the increase in the supreme court's membership from three to five justices, the court's case filings have risen from 217 to 630, an increase of 300%. Though there have been slight increases in clerical staff, and two central legal staff assistants added, the supreme court is operating with essentially the same personnel it had in 1972 when the case filings were only 249.

During recent years the court has instituted a number of improvements designed to speed up the appellate process and to allow the court to handle better the increasing caseload.[1] Yet even with these improvements, the backlog of cases awaiting decision by the court continues to rise. In 1977 the chief justice requested the administrative office to explore additional solutions to the workload problems. A copy of the report prepared by this office is enclosed, but the report may be briefly summarized here.

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1. These improvements include delegating routine motions to the Clerk of the Court for decision, establishing a strict policy concerning extensions of time for filing briefs, providing a mechanism for parties to agree to a summary decision of their appeals, establishing a screening function for identifying cases that are amenable to summary decision, improving the case status monitoring capabilities, and increased use of per curiam and memorandum decisions.

Among the possible solutions identified in the report were to (1) increase the membership of the supreme court to seven; (2) limit the right of appeal; (3) have the supreme court hear cases in panels of three, with assistance from superior court judges; (4) increase the law clerk staff; and (5) establish an intermediate court of appeals. After reviewing the report, the supreme court determined that increasing the size of the court would not add significantly to its ability to decide more cases. The increased time required to achieve consensus of among more justices and the time required to review more draft opinions would nearly offset the advantage to be gained by having two more justices writing opinions. Limiting the right of appeal was rejected because it was believed that fairness requires that a party be entitled to one appeal. The court also agreed that the use of panels would not provide a significant workload savings and that such savings as would be achieved would only offer a temporary respite. Additionally, the use of panels, particularly if superior court judges were used on the panels, would unduly dilute the supreme court's law-making function. The court decided that an augmented central legal staff could provide some assistance,[2] but it also recognized that placing too much reliance on legal assistants is not desirable and runs the risk of having appeals decided essentially by law clerks and not by the court.

At the time the supreme court reviewed the report in September of 1977 it agreed that an intermediate appellate court was the one solution that offered the best hope of relieving the court's workload while maintaining the supreme court's essential law making function. The court, however, decided to wait one more year before making a final decision whether to seek the establishment of an intermediate appellate court. In the fall of 1978, it was clear that the workload situation on the court had not altered significantly, even though the appellate filings for 1978 increased only slightly over 1977. The court was deciding more cases than in 1977, writing more opinions, and generally working at a killing pace. Yet the backlog was still rising and at the end of 1978 the court had more cases under advisement and awaiting decision than ever before. The inevitable conclusion to be drawn from this is that even at the current rate of appellate filings, the court cannot keep pace. The backlog of cases awaiting

---

[2] The court now has two central staff attorneys working under the direction of the Clerk of the Supreme Court.

decision will continue to rise and the already significant delay in obtaining a decision on appeal will increase even further, even if appellate filings do not increase. Litigants will find themselves waiting not months, but years, for a decision.

A recent study by this office moreover, shows that there will undoubtedly be an increase in appellate filings over the next ten years. This study found an extremely high historical correlation between population growth and increases in appellate filings. Using the most conservative estimates for population growth (i.e., assuming there is no gas pipeline construction, no increase in litigation from the criminal code, etc.), the appellate filings in the supreme court are projected as follows:

	Expected	High
1981	673	844
1982	729	800
1983	784	856
1984	843	915
1985	906	979
1986	969	1043
1987	1013	1106
1988	1098	1174

Clearly the supreme court cannot handle these anticipated future increases.

We have also recently compared the Alaska Supreme Court's current workload with that of several other supreme courts in the nation at the time that those courts sought and obtained legislation in their states to establish intermediate appellate courts. Although such comparisons are less than totally accurate because courts tend not to measure precisely the same things, it does appear that our supreme court is in very close to the same circumstances as these other courts.

For example, Arizona's intermediate appellate court was established in 1965. During 1964, the Arizona Supreme Court had total appellate filings of 672, slightly more than our court's during 1978. However, the Arizona court, with five justices, terminated only 473 cases in 1964, many fewer than the 560 terminated by our court, and wrote only 177 opinions compared to 237 opinions by the Alaska court last year. Similarly, New Mexico's intermediate court was also established in 1965. During 1964 the New Mexico Supreme Court, also with five justices, disposed of 163 cases by written opinion and terminated a total of 435 cases.

Although the supreme court clerk's office is still completing its 1978 statistical report, we have attached some preliminary 1978 figures and should have a more complete report shortly. Also attached are reports showing the court's activity during recent years, and a report showing a breakdown of how the 1978 case filings would have been distributed between the proposed court of appeals and the supreme court, based on the proposed criminal jurisdiction of the court of appeals.

The final point of discussion concerning the creation of the court of appeals is its cost versus its benefit to litigants. The projected startup expense for this court for the six month period of January 1, 1980 to June 30, 1980, is $325,000. The annual operating expense is projected at $555,000.

Other than the judicial positions and immediate supporting staff, no additional positions are needed, as the clerk's office of the court of appeals will be combined with that of the supreme court.

To a large extent the additional expense associated with the court of appeals will be minimized through cost savings in the supreme court and trial courts. For example, the reduction in workload in the supreme court will eliminate the need for the additional legal research personnel requested in the Fiscal Year 1980 budget. By expediting the appeal process, litigants will experience savings in direct expenses as well as benefiting from the prompt final determination of their cases.

We appreciate very much your assistance with the court of appeals bill. If you wish further information, please let us know.

Sincerely,

Arthur H. Snowden, II

AS/pmr

SB 104 file

Alaska State Legislature

HOME ADDRESS
P.O. BOX 65
GALENA, ALASKA 99741

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811
TELEPHONE 465-3753

Senate

SENATOR
John C. Sackett
CHAIRMAN
SENATE FINANCE COMMITTEE
MEMBER
LABOR & MANAGEMENT COMMITTEE

April 24, 1979

Honorable Charlie Parr, Chairman
Judiciary Committee
Alaska State House of Representatives
State Capitol
Juneau, Alaska 99811

Dear Charlie,

I would appreciate your consideration in scheduling Senate Bill 104, (Establishing the Court of Appeals), for hearing in your committee within the very near future.

This legislation is of priority interest to me, and your assistance would be most helpful. If you should have question regarding the bill, please contact me. Please notify my office if a hearing can be scheduled within the immediate future. Again, I thank you for your consideration and assistance.

Very sincerely,

John

John C. Sackett

Dear John -

I didn't get your letter about SB 104 (Court of Appeals) until I returned to my office late last night.

This bill has had four hearings, for a total of about six hours. Here are some of the questions which have surfaced:

1. Is this the best solution to the Court's problems?
2. Should the Court of Appeals have civil rather than criminal jurisdiction, or both?
3. Under what circumstances, and using what mechanism, should the Supreme Court review cases which ~~had~~ have already been decided by the Court of Appeals?
4. Should appeals from district courts and administrative agencies go directly to the Court of Appeals (or to the Supreme Court or to Superior Court)?
6. Is there a need to restrict sentence appeals, in light of past Supreme Court rulings?
7. & 8. Should a judge rejected by the voters be eligible for appointment to a different court?
~~8. Should~~ Should a judge be allowed to be a delegate to a constitutional convention?
5. Should there be a limitation on cases which can be appealed?

This is the most significant change ~~proposed~~ proposed to the court system since statehood. The legislature is constitutionally mandated to establish courts and define their jurisdiction, and should take this responsibility seriously. It does not seem to me appropriate that the court system should be making decisions to take [illegible]

I have been looking for ~~~~ a way to set up the Court of Appeals now, without resolving all the major questions first. The idea would be to permit the Judicial Council to ~~ solicit applications for judgeships, review and make recommendations to Governor so that he could appoint, ~~~~ with a delayed date for the court to begin operations. This would also give time for the administrative director of the court system to arrange for ~~space~~ furniture, personnel, etc. Unfortunately I have not found a satisfactory way to do this.

As you may be aware, there are still several important senate bills to go through Judiciary Committee. It is possible to schedule another hearing on SB 104, but this would interfere with action on those bills.

I would be happy to discuss this ~~would be~~ with you personally.

Sincerely,

340 Returns

LEGISLATIVE PREFERENCE POLL

Although the Board of Governors does not feel it should take an active position on substantive law issues to come before the Alaska Legislature, the Board does feel that certain pieces of pending legislature potentially would have a broad effect on the administration of justice. Therefore, the Board is asking for membership response on those issues which currently are pending before this session of the legislature.

Please indicate your response on each of the issues stated on the following survey. MAIL YOUR RESPONSE TO THE ALASKA BAR ASSOCIATION, P.O. BOX 279, ANCHORAGE, ALASKA 99510 AS SOON AS POSSIBLE.

Thank you for your co-operation.

Ronald L. Kull
Executive Director

	Support	Oppose	Take No Position
Proposed Constitutional amendment requiring the election of Judges	65	268	7
Proposed Constitutional amendment requiring the election of the Attorney General	107	229	10
Proposed Intermediate Appellate Court	203	113	22
Court Appropriations bill, including judicial salary legislation	163	80	83
University of Alaska Law Program	76	165	81

Additional legislation which you feel should receive Association attention.

(Specify)

COMMENTS:

Signature (optional)

January 30, 1979

M E M O R A N D U M

TO: Ms. Susan Burke
Deputy Administrative Director

INFO: Mr. Mel Martin
Technical Operations

FROM: Robert D. Bacon
Clerk, Supreme Court

SUBJECT: Caseload of New Intermediate Appellate Court

As you requested, I have brought down to the end of 1978 the statistics which I sent you on December 1, 1978.

	Pending 12/31/78		Filed 1978	
CIVIL		297		256
Extradition	3		8	
Habeas other than extradition	2		2	
Criminal Rule 35	3		3	
Civil forfeiture of property used to commit crime	3		3	
Civil suit re conditions in prison	1		0	
Review proceeding re criminal contempt of District Court	1		1	
Other civil	284		239	
CRIMINAL		209		135
SENTENCE		51		56
PETITION FOR REVIEW		61		156
Civil	34		104	
Criminal	27		52	
ORIGINAL		6		27
Civil	4		17	
Criminal	2		10	
TOTAL		624		630
Within jurisdiction of Court of Appeals*		302		270
Within new jurisdiction of Supreme Court*	322		360	

* We do NOT at the present time have an accurate count of matters pending in the Supreme Court which originated in the District Court. Furthermore, this would not be the statistic required for these purposes, since it includes only District Court cases which are appealed a second time from the Superior Court to the Supreme Court. The number of "other civil" cases in this

table, all of which are included in the last item on the table as within the new jurisdiction of the Supreme Court, includes a small number of cases which originated in the District Court and would not in fact be within the new jurisdiction of the Supreme Court. If you or Mel is able to get from the Superior Court the number of appeals filed with them, it would be a more useful statistic than any that this office might be able to provide on District Court cases.

RDB RDB

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.

RDB

ALASKA SUPREME COURT December 31, 1978	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING 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
Bar 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 Merits	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.

Photostat Copy
Clerk's
File
1976 Filings shown
as 468
not 466

SUPREME COURT ACTIVITY, 1977

The following is the Clerk's annual report of the activity of the Alaska Supreme Court.

I. FILINGS

Total Filings. The total filings in the Alaska Supreme Court increased from 466 in 1976 to 613 in 1977, or an overall increase of 32 per cent. (See Tables I and II for further comparisons.)[1]

Appeal Filings. Of the 613 cases filed or reinstated in 1977, 470 were appeals. Of this number, 251 or 53 per cent were civil appeals or cross-appeals. Criminal and juvenile appeals accounted for 156 filings. There were 63 sentence appeals filed.

Petitions for Review and Originals. A total of 126 petitions for review were filed in 1977 as compared to 86 filed in 1976. There were 17 applications for original relief filed in 1977 as compared to 16 filed in 1976.

II. DISPOSITIONS

A total of 450 cases were disposed of by the Supreme Court in 1977. In 1976, 335 cases were disposed of during the year. (See Tables III and IV for details on 1977 case dispositions.)

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[1] The increase in filings is a continuing trend. For example, 337 cases were filed in 1975. The 1977 filings mark a 73 per cent increase over 1975.

Of the total 450 cases, 214 (or nearly 50 per cent of dispositions) were disposed of by opinion or mandate.[2] This figure may be compared with 148 cases disposed of by opinion and mandate in 1976. A total of 17 cases were disposed of by summary order in 1977.

Of the total dispositions in 1977, 152 were cases dismissed by the Court or by the parties. These dismissals represent about one-third of all dispositions and about one-fourth of all 1977 filings. Other dispositions include 67 (or about one-half of filings) petitions for review denied without opinion.

III. PENDING CASELOAD

The pending caseload of the Supreme Court at the end of 1977 was 554 cases. This figure may be compared with 391 cases pending at the end of 1976 and 258 pending at the end of 1975. The pending caseload has almost doubled in two years. (See Tables IV, V, and VI for further analysis of the pending caseload.) The 1976-77 increase in pending cases is more than 40 per cent.

Of the 554 cases pending at the end of 1977, 212 or 38 per cent were awaiting decision. About 25 per cent were awaiting record and another 25 per cent were awaiting briefs. (See Table V for more detail.)

IV. MOTIONS

Over 1,200 motions were processed by the Court in 1977. (See Table VII) Of this number, 182 were substantive motions determined by the full Court and 35 were petitions for rehearing determined by the full Court. A total of 65 stay applications were assigned to individual justices during 1977. The balance of the motions were routine motions determined by a single justice or by the Clerk under the authority of Appellate Rule 14(c).

---

2 The total of 214 case dispositions by opinion does not match the figure of 189 actual opinions filed in 1977. (See Clerk's report of "Opinions by Justice" dated January 17, 1978.) This is true because the 214 dispositions include a separate accounting of appeals and cross-appeals disposed of in single opinions. Also, the 214 dispositions include some opinions filed in 1976 on which mandates did not issue until 1977.

V. TIME PERIODS FOR DISPOSITION OF APPEALS

For 1977 we have attempted to analyze the time periods for bringing appeals to issue and to decision.

Civil Appeals. For 1977, 101 civil appeal opinions were analyzed. The analysis follows:

1. Number of Days From Notice of Appeal to Mandate[3]

Greatest Number	1,006 days
Least Number	150 days
Average Number	485 days (or one year, 120 days)

---

[3] The time periods for resolving appeals in Alaska may be compared to the standards of timely disposition proposed by the American Bar Association in its Standards Relating to Appellate Courts:

Record Preparation	30 days
Briefing	70 days
Argument	(promptly)
Decision	90 days
Total	190 days

The actual time periods may also be compared to the time limits set by appellate rule and by internal procedures:

Record Preparation	40 days
Briefing	80 days
Argument	30 days
Decision	120 days
Total	270 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing)

Greatest Number	497 days
Least Number	1 day
Average Number	120 days
Median	103 days

3. Number of Days From Certification of Record to Completion of Briefing

Greatest Number	354 days
Least Number	5 days
Average Number	135 days

4. Number of Days From Completion of Briefing to Hearing or Submission

Greatest Number	199 days
Least Number	1 day
Average Number	70 days

5. Number of Days From Hearing or Submission to Mandate

A. Number of Days From Hearing or Submission to Circulating Draft Opinion:

Greatest Number	233 days
Least Number	0 days
Average Number	85 days

B. Number of Days From Circulating Draft Opinion to Publication Date:

Greatest Number	189 days
Least Number	6 days
Average Number	65 days

C. Number of Days From Publication Date to Mandate:

Greatest Number	173 days
Least Number	10 days
Average Number	18 days

Criminal Appeals. A less extensive analysis of 54 1977 criminal and juvenile appeals follows:

1. Total Number of Days From Notice of Appeal to Mandate:

Greatest Number	1,076 days
Least Number	294 days
Average Number (or 1 year, 288 days)	593 days
Median Number	578 days

2. Number of Days From Notice of Appeal to Certification of Record (Commencement of Briefing):

Greatest Number	411 days
Least Number	20 days
Average Number	153 days
Median Number	142 days

3. Number of Days From Certification of Record to Completion of Briefing:

Greatest Number	528 days
Least Number	22 days
Average Number	193 days
Median Number	173 days

4. Number of Days From Completion of Briefing to Hearing or Submission:

Greatest Number	220 days
Least Number	4 days
Average Number	65 days
Median Number	49 days

5. Number of Days From Hearing and Submission to Opinion Publication:

Greatest Number	334 days
Least Number	47 days
Average Number	169 days
Median Number	165 days

Sentence Appeals: A total of 21 sentence appeals were classified as follows:

Number of Days From Notice of Appeal to Opinion Publication:

Greatest Number	662 days
Least Number	130 days
Average Number	304 days
Median Number	263 days

VI. TYPE OF DISPOSITION

Civil Appeals. For 1977, 101 civil appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	48
Cases Affirmed in Part, Reversed in Part	18
Cases Reversed	8
Cases Reversed and Remanded	23
Cases Remanded	4
Total	101

Criminal Appeals. For 1977, 54 criminal and juvenile appeal opinions were classified as to type of disposition. The classification follows:

Cases Affirmed	38
Cases Reversed and Remanded	13
Cases Reversed	3
Total	54

Sentence Appeals. The classification of 21 sentence appeal opinions follows:

Sentences Affirmed	15
Sentences Affirmed in Part, Reversed in Part	1
Sentences Reversed and Remanded	4
Sentences Too Lenient	1
Total	21

TABLE I

ALASKA SUPREME COURT CASE FILINGS 1970-1977

	1970	1971	1972	1973	1974	1975	1976	1977
Regular Appeals and Sentence Appeals Filed	172	197	188	195	208	249	364	470
Petitions for Review Filed	33	12	45	49	60	81	86	126
Original Applications Filed	12	6	16	11	22	7	16	17
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		NUMERICAL	PERCENTAGE
Increase all Categories	1970-71	-2	--
	1971-72	+34	16%
	1972-73	+6	2%
	1973-74	+35	14%
	1974-75	+47	16%
	1975-76	+129	38%
	1976-77	+147	32%
Increase Appeals and Sentence Appeals	1973-74	+13	7%
	1974-75	+41	20%
	1975-76	+115	46%
	1976-77	+106	29%

TABLE II

ALASKA SUPREME COURT CASE FILINGS 1975-1977

	1975	1976	1977	% Increase 1975-1977	%Increase 1976-1977
Appeals					
Civil	151	214	251		
Criminal & Juvenile	76	119	156		
Sentence	22	31	63		
Total Appeals	249	364	470	90%	29%
Petitions for Review	81	86	126		
Original Applications	7	16	17		
Total Filings	337	466	613*	73%	32%

*Case filings for 1977 include 22 reinstated cases.

TABLE III

ALASKA SUPREME COURT DISPOSITION OF CASES 1977

	Opinion and Mandate	Summary Disposition by Order	Dismissed by Court or Parties	Review Denied	Total
Appeals					
Civil	120	5	76		201
Criminal & Juvenile	54	1	33		88
Sentence	21		19		40
Total Appeals	195	6	128		329
Petitions for Review	16	7	13	67	103
Original Applications	3	4	11		18
Total	214	17	152	67	450

TABLE IV

ALASKA SUPREME COURT
FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

Civil Appeals and Cross Appeals	
Pending 12/31/76	218
Filed or Reinstated 1977	251
Total	469
Disposition	
By Opinion and Mandate	120
By Summary Order	5
Dismissed	76
Total	201
Pending 12/31/77	268
Criminal and Juvenile Appeals	
Pending 12/31/76	132
Filed or Reinstated 1977	156
Total	288
Disposition	
By Opinion and Mandate	54
By Summary Order	1
Dismissed	33
Total	88
Pending 12/31/77	200

Sentence Appeals	
Pending 12/31/76	16
Filed or Reinstated 1977	63
Total	79
Disposition	
By Opinion and Mandate	21
Dismissed	19
Total	40
Pending 12/31/77	39
Petitions for Review	
Pending 12/31/76	20
Filed 1977	126
Total	146
Disposition	
Opinion and Mandate	16
By Summary Order	7
Dismissed or Withdrawn	13
Review Denied	67
Total	103
Pending 12/31/77	43

TABLE IV (Continued)

Original Applications		
Pending 12/31/76	5	
Filed or Reinstated 1977	17	
Total	22	
Disposition		
Opinion and Mandate	3	
By Summary Order	4	
Dismissed	11	
Total	18	
Pending 12/31/77	4	
Total Pending Cases December 31, 1976		391
Total Filings and Reinstatements 1977		613
Total		1004
Total Dispositions 1977		450
Total Pending December 31, 1977		554

TABLE V

ALASKA SUPREME COURT
REASON FOR CASES PENDING DECEMBER 31, 1977

	CASES AWAITING					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
Appeals							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	6	9		19	1	4	39
Total Appeals	137	125	36	183	6	20	507
Petitions for Review		12	1	26	2	2	43
Original Applications			1	3			4
TOTAL	137	137	38	212	8	22	554
% of Total	24.6	24.6	6.9	38.3	1.6	4.0	100%

ALASKA SUPREME COURT PENDING CASELOAD 1961-1977

	Total Cases Pending at Year End	Regular and Sentence Appeals	Petitions for Review	Other	Increase or Decrease
1961	78	76	1	1	
1962	75	73	1	1	-3
1963	99	96	2	1	+24
1964	66	57	2	7	-33
1965	85	78	5	2	+19
1966	93	85	2	6	+8
1967	100	91	5	4	+7
1968	122	107	3	12	+22
1969	114	100	11	3	-8
1970	165	145	15	5	+51
1971	182	175	3	4	+17
1972	211	188	18	5	+29
1973	188	172	14	2	-23
1974	216	193	20	3	+28
1975	258	241	16	1	+42
1976	391	366	20	5	+133
1977	554	507	43	4	+163

Percent of Increase	1961-1977	600%
Percent of Increase	1968-1977	354%
Percent of Increase	1976-1977	41%

TABLE VII

ALASKA SUPREME COURT
MOTION PRACTICE 1977

	TOTAL 1977
Stay Applications Determined by Single Justices	65
Routine Motions Determined by Single Justices	192
Routine Unopposed Motions Determined by Clerk (estimated)*	800
Substantive Motions Determined by Full Court	182
Petitions for Rehearing [Full Court]	35
TOTAL MOTIONS	1274

*Almost all were unopposed motions to extend time to file briefs and other papers.

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	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 & 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 1978 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	Originals	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

M E M O R A N D U M

January 31, 1979

TO: Susan Burke
Merle Martin

FROM: Beverly Haywood

SUBJECT: Annual Report Preview

Bob Bacon asked me to send along the attached copies of statistics which will form part of our annual report. Sort of a sneak preview!

BH

BH

NUMBER OF CRIMINAL CASES BEING REPRESENTED

BY PUBLIC DEFENDER
[Filings in 1978]

P.D.	Ct. Appointed	Retained	Pro Se
87	56	39	3
[24 are sentence appeals]	[7 are sentence appeals]	[21 are sentence appeals]	

TYPE

Juv. Appeal
ppeal
Cross-Appeal
Original
Cr. Appeal
Petition
Sent. Appeal

JANUARY 1978

NO.	NAME	DATE FILED	TYPE
3822	Chin, Hilbers, et al v. Municipality of Anch.	1/5/78	Petition
3823	Mossberg, Clifford W., et al v. State	1/5/78	Petition
3824	Meyer, Gregory v. John Schober, et al	1/5/78	Petition
3825	Darling, Valeria v. Michael Darling		Appeal
3826 ✓	Quinn, Daniel James v. State of Alaska	9/20/77	Cr. Appeal
3827	Willis, Jennie v. Anchorage, Municipality of	1/13/78	Petition
3828	Fowler, Julian V. & Fowler, Roberta R. v. State, Dept. of Agriculture	1/9/78	Petition
3829	Boice, Stanley, et al v. Duane A. Coon	1/10/78	Petition
3830	McKie, John Lee v. State	1/16/78	Petition
3831	Nelson, Bill, et al v. Matanuska Sand & Gravel, Inc., et al	1/6/78	Appeal
3832	Flores, Christine v. David Flores	1/11/78	Petition
3833 no	Preston, Melody J. v. State	1/11/78	Sent. Appeal
3834 ✓	Alpiak, Oscar, Jr., v. State	1/3/78	Sent. Appeal
3835	AK Workmen's Comp. Bd., v. Saling, Mac L.	1/3/78	Appeal
3836	State v. Hartman, Jordan, et al		Petition
3837	Nana Dev. Corp., Inc., et al v. Douglas D. McLean	1/16/78	Petition
3838	Piaz, Virginia Dahl, et al v. Hickel Invest. Co., et al	1/16/78	Petition
3839 no	Buchanan, Terry C. v. State et at.	11/28/77	Cr. Appeal
3840	In the Matter of D.C., a Minor & In the Matter of E.C., a Minor	1/3/78	Juv. Appeal
3841 ✓	Klepinger, Michael Ross, et al v. State	1/5/78	Cr. Appeal
3842	AK Public Defender Agency, Juneau v. Superior Court of the St. of AK, 1st Jud. Dist., Juneau	1/18/78	Original
3843	Great American Ins. Co., et al v. State, Dept. of Highways, et al	1/5/78	Appeal
3844	In the Matter of the Dissolution of Marriage of Karyn M. Settle & Thomas J. Settle	1/6/78	Appeal
3845	General Motors Corp., et al v. Russell Bartoo	1/5/78	Cross-Appeal
3846	Fraternal Order of Eagles, Fbks., et al v. Bablinskas, Marie Ann	1/27/78	Petition
3847 ✓	Griffith, Leroy v. State	1/6/78	Cr. Appeal
3848	Fernandes, Nicola J. v. Fernandes, Raymond F.	1/9/78	Appeal
3849	Avery, Charles Richard v. Bd. of Governors, ABA		~~Appeal~~ petition
3850	Wear, Gordon v. Farmers and Merchan s Bank of Las Cruces, New Mexico	1/9/78	Appeal
3851	State, Dept. of Trans. v. 14,313 Sq. Feet, etal		Petition

Juv. Appeal (ppeal
Cross-Appeal
Original
Cr. Appeal
Petition
Sent. Appeal

NO.	NAME	DATE FILED	TYPE
3852	Cox Enterprises, Inc. & Edna H. Cox v. Chandler Leasing Corp.	1/13/78	Appeal
3853	In the Matter of the Adoption of L.A.H., a Minor	1/11/78	Civil / Juv. Appeal
3854	Lounsbury, Hewitt V. & Assoc. v. AK Mutual Savings Bank		Appeal
3855 no	Gonzales, Norberto P. v. State	1/23/78	Cr. Appeal
3856	AK National Bk of the North v. Robert F. & Theresa Pierce	1/13/78	Appeal
3857 no	Burnett, Monte v. State	1/24/78	Sent. Appeal
3858	Puget Sound Tug & Barge Co., et al v. North Slope Borough	1/16/78	Cross-Appeal
3859	Hammond, Roy W. v. Becthel, Inc., et al	3/17/77	Appeal
3860 no	Rask, Douglas R. v. Municipality of Anch.	1/19/78	Cr. Appeal
3861	Libbey, John, et al v. City of Dillingham & Engstrom Brothers Co., Inc.	1/18/78	Appeal
3862	U. S. Fire Insurance Co., etal v. Warren C. Clover, et al	1/20/78	Appeal
3863	City of Anchorage v. Dale W. Rusnell	1/20/78	Appeal
3864	Freeman, George T. v. ABA		Petition
3865	Delbert, Susan v. ABA & Mary LaFollette	1/26/78	Appeal
3866	Strange, Beulah v. Midnight Logging, Inc.	1/20/78	Appeal
3867	Cavanah, Orvel C. v. Martin, Richard J.	1/18/78	Appeal
3868	Williams, Polley W. v. Anchorage	1/27/78	Petition
3869	In the Matter of N.P.M.		Petition
3870	McKay, Neil v. Pfeil, Robert		Petition
3871	Sollenberger, Lee Ann v. Ted Moninski	1/31/78	Original
3872 ✓	McConnell, Gary v. State	1/27/78	Crim. Appeal
3873 no	Penn, Robert v. State et at.	1/26/78	Sent. Appeal
3874	Williwaw Lodge et al v. Bernard E. Locke	1/30/78	Appeal
3875	George A. Barth v. Patricia M. Barth	2/1/78	Appeal
3876	Carbin, Joseph E. v. State	1/30/78	Petition
3877	Australaska Corp. et al v. Mun. of Anchorage	2/1/78	Appeal
3878	Callen, Wayne d/b/a/ Valdez Charterers v. Alyeska Pipeline Service Co., Inc., et al	1/27/78	Appeal
3879	White, Cecil L. v. Alyeska Pipeline Service	2/2/78	Appeal
3880 ✓	Sakar, Sinka v. State	2/2/78	Cr. Appeal
3881	Michael, Minnie, etal v. State of Ak.	2/3/78	Petition
3882	Industrial Indemnity Company of Ak. v. Richard M. Cassa et al	2/2/78	Appeal

Juv. Appeal (Appeal
Cross-Appeal
Original
Cr. Appeal
Petition
Sent. Appea

NO.	NAME	DATE FILED	TYPE
3883 no	Lopez, Willard, v. Anchorage	2/3/78	Cr. Appeal
3884 no	Hill, Willie B., Jr., v. State et. al.	2/6/78	Cr. Appeal
3885 no	Deacon, Herman Morgan v. State et. al.	2/6/78	Cr. Appeal
3886	State v. Eddie L. Moreland	2/9/78	Petition
3887	Chin, Hilbers v. Municipality of Anch.		Petition
3888	State v. Lundgren Pacific Construction Co., Inc	2/10/78	Petition
3889	Santos, Bernard T. v. A.B.A.	2/15/78	Petition
3890 no	Ferguson, John Raymond v. State et al.	2/14/78	Sentence Ap
3891 no	Gambardella, Alice v. State	2/7/78	Cr. Appeal
3892	Allstate Insurance Co., Inc., v. Anchorage	1/3/78	Appeal
3893	State of Alaska v. Robert Wayne Smith	2/7/78	Appeal
3894	In the Matter of F.S., a minor under the age of 18 years.	2/17/78	Petition
3895	North St. Telephone Co. v. RCA Ak. Comm.	2/17/78	Appeal
3896 no	Deal, Edgar v. State of Alaska et al.	2/17/78	Sent. Appe
3897	Amoco Prod. Co. v. W.C. Church Welding & Contracting	3/13/78	Petition
3898 ✓	Garlejo, Jose A. v. State	2/7/78	Cr. Appeal
3899 no	Johnson, Earl Lakev. State et al.	2/14/78	Cr. Appeal
3900 no	Wright, Robert Dale v. Anchorage, Munic. of	2/14/78	Cr. Appeal
3901 ✓	Williams, Jimmie Roy v. State	2/14/78	Cr. Appeal
3902 ✓	Oxereok, Nathan v. State	2/14/78	Cr. Appeal
3903 ✓	Sovalik, Thomas v. State	2/27/78	Cr. Appeal
3904 no	McGee, Donavan Wesley v. State	2/16/78	Cr. Appeal
3905	Arctic Motor Freight v. Ak. Teamsters Employer Service	2/17/78	Appeal
3906	United Benefit Insurance Company v. Warren Fraser	2/17/78	Appeal
3907	Troyer, Marvin L., et al v. State of Ak.	3/2/78	Petition
3908 ✓	Shelton, Anthony v. State of Ak.	3/6/78	Sent. Appe
3909	Troyer, Ivy Jewell, et al v. Allstate Insurance Company, et al		Petition
3910	Wilson, York, Jr., v. City of Kotzebue	3/10/78	ORIGINAL Petition
3911 no	Prenesti, Carmine T. v. State	2/10/78	Cr. Appeal
3912	State, Highways, Depart. of v. Brown, Charles E.	2/27/78	Appeal
3913	Locke, Bernard E. v. Williwaw Lodge	2/7/78	Cross Appeal
3914 no	Anchorage, Municipality of, v. Cook, J.Wesley	2/24/78	Cr. Appeal
3915 ✓	Adams, Hannah v. State	3/6/78	Cr. Appeal
3916 no	Self, Mark v. Alaska, State of et al et appnt	3/6/78	S.A.
3917	Levar, William L. v. Elkins, Mary	3/3/78	Appeal

TYPE

Juv. Appeal(Appeal
Cross-Appeal
Original
Cr. Appeal
Petition
Sent. Appeal

NO.	NAME	DATE FILED	TYPE
3918	Thetford, Terry et al v. Juneau et al	3/8/78	Civil Appea
3919	Carlson, Julie et al v. State of Alaska et al	3/2/78	Appeal
3920	Dolchok, Andrew D. v. Alaska, State of	3/6/78	Appeal
3921 no ct.appnt.	Harvey, Raymond Anthony v. Alaska, State of	3/6/78	Cr. Appeal
3922	Doisher, Bobby v. State of Alaska	3/14/78	Petition
3923	Bartoo, Russell R. v. Deltaga Boat Works Ltd and Thermo Electron Engine Corp.	3/8/78	Appeal
3924	Deltaga Boat Works Ltd v. Russell R. Bartoo	3/8/78	Cross-Appeal
3925	Thermo Electron Engine Corp. v. Russell Bartoo	3/8/78	Cross-Appeal
3926 ✓	Edinger, Donald v. State	3/15/78	Sent.Appeal
3927	DeMille, Tommy A. v. State	3/16/78	Petition
3928	Westdahl, Andrew v. State	3/30/78	Civil Appeal
3929	Doisher, Bobby v. State	3/14/78	Petition
3930	McIntosoh, Richard L., et al v. John C. Mason, etal		Petition
3931	Alaska, State of v. Myers, Michael, et al	3/20/78	Petition
3932	Myers, Michael et al v. Alaska, State of	3/24/78	Cr-Petition
3933	Norman, Isaac C. v. Nichiro Gyogyo Kaisha, Ltd. et al		Petition
3934	Lind, Lola A. v. Employment Security Div.	3/1/78	Appeal
3935	Winship Air Service, Inc., v. Morris	3/20/78	Cross-Appea
3936 ✓	Watkins, Oleana v. Alaska, State of	3/22/78	Cr. Appeal
3937 no	Stumbaugh, Ronald v. Alaska, State of	3/22/78	Cr. Appeal
3938	Charmley, Frank J. v. Ak. Mun. Emp. Fed Cr. Union	3/22/78	Appeal
3939 no ct.appnt.	Fields, Danny Rube v. Alaska, State of	3/21/78	Cr. Appeal
3940	B&G Meats, d/b/a/ Mr. Prime Beef v. State	3/13/78	Appeal
3941	Leighton, Karen L. v. Leighton, Ronald	3/16/78	Appeal
3942	Humbard, Covell B. et al v. Alyeska Pipeline Service Co., et al	3/13/78	Appeal
3943	International Union of Operating Engineers, Local 302 v. Jacques Veillon, etal	3/28/78	Petition
3944	Fawcett, Allan W. et al v. Ketchikan Pulp etal	3/20/78	Appeal
3945 ✓	Dayton, Andrew v. State	3/10/78	Cr. Appeal
3946 no	Handley, Joe E. v. State	3/10/78	Cr. Appeal
3947	Hakala, Ronald M. v. State, Comm. Fish. Entry	3/16/78	Appeal
3948	Green Construction Company et al v. Ak. Dept. of Labor et al	3/16/78	Appeal
3949	Wall, Robert, et al v. State	3/30/78	Original
3950	Troyer, Ivy Jewell et al v. Allstate et al	3/23/78	Appeal
3951	Conway, John v. Poirier, Brenda A.	3/23/78	Appeal

TYPE

Juv. Appeal (Appeal
Cross-Appeal
Original
Cr. Appeal
Petition
Sent. Appea

NO.	NAME	DATE FILED	TYPE
3952	Ivey, Richard C. v. State of Alaska	3/24/78	Petition
3953	ALYESKA Pipeline Service et al v. Aurora Air	3/12/78	Appeal
3954 ✓	Sielak, James v. State	4/5/78	Sent. Appea
3955	In the Matter of N.P.M. v. Neil Mackay		ORIGINAL (Stay Applic
3956	Fry, William J. v. Bliss, Elizabeth Holmes	3/28/78	Appeal
3957 ✓	Marsden, Donald v. Alaska, State of	3/31/78	Sent. Appea
3958	In the Matter of N.P.M.		Original
3959	Miller, Joan R. v. Vosella Maliszewski	3/29/78	Appeal
3960	Marine Advisers et al v. Adams, James S.	3/31/78	Appeal
3961 ✓	Thomas, Ellis v. State	4/3/78	Sent., Appea
3962 no	Winslow, Brian K. v. Alaska, State of	4/7/78	Sent. Appea
3963	Wilson, York v. City of Kotzebue		Petition
3964	Jennings, Millie v. Alaska, State of	3/31/78	Appeal
3965	Bonjour, Lindsey v. Randall G. Bonjour	4/7/78	Appeal
3966	Adams, James S. v. Marine Advisers, et al	4/10/78	Cross-Appeal
3967	Alaska, State of v. Andrew D. Dolchok	4/7/78	Cross-Appea
3968	Alaska, State of v. Davidson, Hugh A.	4/ 7/78	Original
3969 ✓	Burke, Luther Jr. v. Alaska, State of	4/3/78	Cr. Appeal
3970	Coffel, Bill v. Steward, Patrick	4/4/78	Appeal
3971	18 King Crab Pots with Lines and Buoys bearing ADF & G No. 6448, et al v. Alaska, State of		Petition
3972 ✓	Brookins, Tommy L. v. State	4/14/78	Sent. Appeal
3973	F/V American Eagle,et al v. State	4/10/78	Appeal
3974	State v. F/V American Eagle, et al	4/10/78	Cross-Appeal
3975	Kenai Baptist Temple v. Kenai City Council	4/4/78	Appeal
3976	Alaska, State of, et al v. Salzwedel, Benjamin, et al	4/11/78	Appeal
3977	Fairbanks, City of v. AK Public Utilities Commission and Wire Communications	4/10/78	Appeal
3978	Sheldon Jackson College v. State	4/14/78	Appeal
3979	Webster, et al v. Bechtel, Inc.	6/19/78	~~Petition~~ Appeal
3980	Farley, Raymond, et al v. N & T. Construction	4/26/78	Petition
3981	Komok, Alfred v. The Honorable L. Eugene Williams, et al	4/17/78	Original
3982	Tugatuk, David H. v. State of Ak.	4/17/78	Petition
3983	State of Ak. v. Honorable District Court Judges of the State of Ak.	4/17/78	Original
3984 no	Mills, David v. Alaska, State of	4/17/78	Sent. Appea
3985	Mackay, Neil S. v. Pfeil, Robert P. et al	4/14/78	Petition
3986 ✓	Oksoktaruk, Phillip v. Alaska, State of	4/12/78	Cr. Appeal

Juv. Appeal Appeal Cr. Appeal
Cross-Appeal Petition
Original Sent. Appeal

NO.	NAME	DATE FILED	TYPE
3987	Wick Construction co. v. Lull, John H., et al	4/18/78	Appeal
3988	Nichiro Pacific v. Norman, Isaac C.	4/17/78	Appeal
3989	Harpell, Eric Wade v. Estate of Willis R. Harpel		Petition
3990	Sebring, Lawrence v. Colver, Warren C. et al		Petition
3991	Jones, Stanley v. Patton, Jaunell		Petition
3992 no	Wightman, Steven v. Alaska, State of	4/20/78	Sent. Appeal
3993	Kodiak Island Borough v. Royal v. Large		Petition
3994	Nicholson, Elmer v. STate of Ak.	4/28/78	Petition
3995	Hammond, Jay, et al v. Ramona Kelley, et al	4/24/78	Petition
3996	Gutterman, Michael v. The First National Bank of Anchorage	4/7/78	Appeal
3997 no	Grant, John v. Alaska, State of	4/26/78	Sent. Appeal
3998	Helms, Sandi M., et al v. Behlke, Jane	4/7/78	Appeal
3999	Marsden, Zane d/b/a Golden Nugget Jewelry v. Alaska, State of	4/18/78	Appeal
4000	Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc., et al	4/20/78	Appeal
4001 no	Cossey, Charles v. State of appnt.	4/20/78	Cr. Appeal
4002	Inupiat Univ. of the Arctic v. State	4/24/78	Appeal
4003 ✓	Keith, Robert L. v. State	4/24/78	Cr. Appeal
4004	Friedman, Martin v. District Court	5/3/78	Appeal
4005 (no)	In the Matter of E.D.R.	4/19/78	{Crim. Juv. Appeal
4006 no	Rice, Michael v. State of Alaska ct appnt.	4/25/78	Cr. Appeal
4007 ✓	Cisneros, Kay v. State of Alaska	4/26/78	Sent. Appeal
4008 ✓	Jones, James v. State of Alaska	4/26/78	Cr. Appeal
4009 no	Mossberg, Clifford Wayne v. Staet of Alaska	4/27/78	Cr. Appeal
4010	Anchorage, Municipality of v. Shackleton, Eugene	4/26/78	Appeal
4011 ✓	One, Rudy Paul v. Alaska, State of	4/27/78	Sent. Appeal
4012 ✓	Frank, Andrew v. Alaska, State of	4/27/78	CRIM. ~~Sent.~~ Appeal
4013 ✓	Abraham, Fred v. Alaska, State of	4/27/78	Sent. Appeal
4014	Plumley, Norma, et al v. George E. Hale	4/28/78	Petition
4015	In the Matter of F.S.	5/15/78	Petition
4016 no	Anchorage v. Arthur Geber	4/27/78	Cr. Appeal
4017	Fiddler, Eula, et al v. Peter O'Hanson, et al	5/4/78	Petition
4018	Wien Air Alaska, Inc. v. Koozaata, Harry, et al	5/2/78	~~Petition~~ ~~Appeal~~
4019 no	Saganna, David v. Alaska, State of	5/4/78	Sent. Appeal
4020	Johnson, Clyde L. et al v. U.S. Fidelity & Guaranty Co.	5/4/78	Appeal
4021	North Staff Borough v. Millie Jennings et al	5/4/78	Appeal

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4022	Hyning, Jack Van v. University of Alaska	5/5/78	Appeal
4023	Alaska, State of v. F/V American Eagle	5/5/78	Appeal
4024	Reynolds, Phillip A. v. State	5/8/78	Sent. Appeal
4025	Black, Dennis C. v. State	5/8/78	Sent. Appeal
4026	Trott v. Alaska International Contractors		Petition
4027	Koozaata v. Wien Air Alaska, Inc.	5/8/78	Petition
4028	V. Lathrop v. Chester Lampert	5/17/78	Petition
4029	Valenzuela, Joseph v. State of Ak.	5/15/78	Petition
4030	Lull, John H. et al v. Wick Construction	4/27/78	Cross-Appeal
4031	Wainscott, Robert N., et al v. Charles J. Ossenkop, et al	5/10/78	Petition
4032	Moore, Anthony v. State		Sent. Appeal
4033	Lott, Abraham C. v. State	5/10/78	Sent. Appeal
4034	Edwards, Joseph C. v. State of Ak.	5/12/78	Petition
4035	Fickes, Lester J. et al v. Petrolane-Alaska Gas Service, Inc.	5/9/78	Appeal
4036	Grafton, Scott, v. Alaska, State of	5/9/78	Cr. Appeal
4037	Earley, David v. State of Alaska	5/10/78	Cr. Appeal
4038	Holton, Paul Edward v. State o Alaska	5/10/78	Cr. Appeal
4039	Alaska, State of v. Marsden, Zane	5/10/78	Cross-Appeal
4040	Juneau, City and Borough of v. Commercial Union Insurance Company	4/17/78	Appeal
4041	Commercial Union Ins. Co. v. Juneau	4/17/78	Cross-Appeal
4042	State of Alaska, Comm. Fisheries Entry Commis. v. Phillip M. Templeton	5/10/78	Appeal
4043	Ackers, Lenney D. v. State of Alaska	5/15/78	Appeal
4044	Ross, Wayne Anthony v. Neil S. Mackay, et al	5/19/78	Petition
4045	Giammalva, Joe et al v. Corroon & Black	5/16/78	Appeal
4046	Anchorage Municipality v. Jerry D. Buffington	5/19/78	Petition
4047	Sturm, Ruger v. Roy David	5/22/78	Petition
4048	Baxter, M. Dewey, et al v. Ketchum Air Serv.	1/30/78	Appeal
4049	Alaska, State of v. Nangle, Paul	5/22/78	Petition
4050	Thomas, Genevieve, [redacted] v. Anchorage Telephone Utility	6/2/78	Petition
4051	Vokacek, James Mill v. Vicki Vokacek	1/26/78	Appeal
4052	Rueger, Reynold B. v. Roberta Lea Rueger	1/9/78	Appeal
4053	Wheat, Marion B. v. Robert W. Barclay, et al	3/31/78	Appeal
4054	Chappell, Margaret v. Alaska, State of	5/11/78	Sent. Appeal
4055	Argonaut Insurance Companies v. State	5/4/78	Appeal
4056	Free, James L. v. Alaska, State of	5/16/78	Cr. Appeal

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4057	Alyeska Pipeline Service Co. v. Larry Alexander et al	5/16/78	Appeal
4058	Hon. Judge S. J. Buckalew et al v. James Holloway	5/18/78	Appeal
4059	Alaska Transportation Commission v. Keystone	5/18/78	Appeal
4060 nb ctappt	Harris, Rock Martin v. Alaska, State of	5/18/78	Cr. Appeal
4061	Woline, William F. et al v. Alaska, State of et al	5/18/78	Appeal
4062	Anchorage, Mun. of v. Wallace, Thillman F. etal	5/18/78	Appeal
4063	Ford, Albert v. Charles Moses et al	5/18/78	Appeal
4064	Koonooka, Esther et al v. Wien Air Alaska, Inc.	5/19/78	Appeal
4065 ✓	Maleski, Mark Anthony v. Alaska, State of	5/8/78	Cr. Appeal
4066	Kotzebue, City of et al v. Jessup, Marie et al	5/19/78	Appeal
4067	Everette, Kelley Key v. Alyeska Pipeline Service et al	5/18/78	Appeal
4068	Alyeska Pipeline Service Co. et al v. Everette	5/18/78	Cross-Appeal
4069	Anchorage, A Munic. Corp. v. Harold Bostow	5/10/78	Appeal
4070	Bostow, Harold v. Anchorage	5/19/78	Cross-Appeal
4071	Horwitz, Mark, et al v. Goerge Bishop, et al		Petition
4072	Calantas, Rudy v. State of Ak.	5/26/78	Petition
4073	Dietz, David, et al v. Robin Padie, et al	5/30/78	Petition
4074	Campbell, Leon v. Sta of Ak.		Petition
4075	Circle Seal Corp. v. Wien Air Ak.	5/30/78	Petition
4076	Teamsters Local 959 v. Robin Padie, et al	5/30/78	Petition
4077	Petrolane-Alaska Gas Service, Inc. v. Lester J. Fickes et al	5/24/78	Cross-Appeal
4078 nb ctappt.	Williams, Dennis Scott v. Alaska, State of	5/25/78	Cr. Appeal
4079	Wright, Sande v. Vickaryous	4/18/78	Appeal
4080	Vickaryous, James et al v. Wright, Sande	4/18/78	Cross-Appeal
4081	In re the Application of Mary Lee Hollen		Original
4082	[illegible]	5/2/78	P/C
4083 ✓	Martinez, Joseph v. State	5/30/78	Cr. Appeal
4084	Schmit, Robert v. William Stewart, et al	5/15/78	Appeal
4085	Air Logistics of Ak., Inc., et al v. Era Helicopters, Inc., et al	6/7/78	Petition
4086 ✓	Evans, Emmett v. Alaska, State of	6/07/78	Cr. Appeal
4087 nb	Rosendahl, John v. State of Alaska	6/7/78	Sent. Appeal
4088 nb	Starrish, Roberta v. State of Alaska	6/8/78	Sent. Appeal
4089	Morgan, Ernest v. Alaska, Stat of	6/7/78	Petition
4090	Wallace, Thillman F. et al v. Anchorage	6/8/78	Cross-Appeal
4091	Martin, William R. v. Kenneth J. Mears	6/7/78	Appeal

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4092 no	Graham, Marjorie v. Alaska, State of	6/5/78	Cr. Appeal
4093	McCracken Jack Jeffrey v. Charles G. Moses	6/7/78	Original
4094	Roderick, Barry v. Employment Security Div., Alaska Dept. of Labor	5/11/78	Appeal
4095	C Street Foodland, an Alaskan Corporation and Lewis R. Shell v. The Estate of John A. Renner	6/9/78	Appeal
4096	McCoy, Jeannette F., et al v. Toppers Oil	6/9/78	Petition
4097 no.	Kelly, Thomas F. v. Alaska, State of	6/12/78	Sent. Appea
4098 no	Nelson, Thomas v. Alaska, State of	6/12/78	Sent. Appea
4099 no	Walls, Thomas Dale v. Alaska, State of		Sent. Appeal
4100	Ivey, William, v. Gary Archer		Petition
4101	International Chevron Services v. Rainproof Roofing Co.		Petition
4102	Welton, Ernest v. Charles Moses, State	6/16/78	Appeal
4103	Ivey, Richard C. v. Avrum M. Gross, et al	6/19/78	Appeal
4104 ✓	Johnson, Ronald Eugene v. Alaska, State of	6/19/78	Sent. Appea
4105	Western Modular Corp. v. Wiley F. Beaux	5/30/78	Appeal
4106 ✓	Stonefield, Allan v. Alaska, State of	6/20/78	Sent. Appea
4107	Brinson, Thelma v. Joseph Jackson d/b/a A-B-C Real Estate	6/23/78	Appeal
4108	Racanelli, John v. State of Ak.		Petition
4109	Alaska, State of v. O'Neill Investigations, Inc.	6/23/78	Appeal
4110 no	Ahwinona, Sam Jr. v. Alaska, State of	6/26/78	Sent. Appeal
4111 no	Ferguson, David M. v. Alaska, State of	6/26/78	Sent. Appeal
4112	Alaska, State of; Revenue, Dept. of v. Cook Inlet Pipeline Company	6/28/78	Appeal
4113	Penn, Darrel v. Albert H. Ivey and Karen J. Ivey	6/16/78	Appeal
4114	Alaska, State of, Agriculture, Division of v. Raymond F. Pedrick, et al.	6/28/78	Appeal
4115	Fleckenstein, Larry and Helen Fleckenstein v. Tom Faccio	6/28/78	Appeal
4116	Clayton, George O. et al v. Alaska, State of	5/30/78	Appeal
4117 no	LeDuff, Melvin v. Alaska, State of	6/16/78	Cr. Appeal
4118	Palmer, City of v. Anderson, DAle A. et al	6/9/78	Appeal
4119	Castner, Clifford v. Toomgs, Bill , et al	6/19/78	Appeal
4120	Rentz, Patricia et al v. Sullivan, George et al	6/19/78	Appeal
4121	Alaska, State of v. AK Continental Development Corp., et al	6/21/78	Appeal
4122	Continental Development Corp., et al v. State	6/28/78	Cross Appeal
4123	Phillips, Gerald & James V. Kelly d/b/a The Leprechaun Bar v. City of Fairbanks	6/23/78	Appeal
4124 no	Valentine, Albert v. State of Alaska	6/28/78	Cr. Appeal
4125 ✓	Olanna, Agripina v. City & Boro. of Sitka	6/26/78	Cr. Appeal
4126 no	Ivey, Richard v. State of Alaska	6/28/78	Cr. Appeal

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4127	Alaska, State of v. Walter Thomas Walls	6/29/78	Sent. Appeal
4128	Dunne, James, d/b/a Cache Market v. Raymond Piceno, d/b/a Alaskan Victory Bar	6/29/78	Appeal
4129	Howe, Billy Joe v. State of Ak.	6/30/78	Petition
4130	Ludlow, Jerry Jo, a/k/a Jerry Jo Stone v. State of Alaska	7/?/78	Sent. Appeal
4131	Larry Larson v. State of Ak.		Cr. Appeal
4132	Morris, Phillip v. State of Alaska		Sent. Appeal
4133	Drickersen, Hortensia C. v. Charles G. Drickersen, as guardian and next friend of Pandora M. Drickersen	7/?/78	Appeal
4134	Lantz, Alvin L. et al v. Alyeska Pipeline Serv.	7/3/78	Appeal
4135	Muntz, John G. v. Alaska, State of	7/3/78	Cr. Appeal
4136	Thornton, Michael Wayne v. Alaska, State of	7/5/78	Cr. Appeal
4137	Simmons, Carol Gibson v. Trick, Wesley L.	7/5/78	Appeal
4138	Faccio, Tom v. Fleckenstein, Larry et al	7/5/78	Cross-Appeal
4139	Alaska, State of v. Bechtel Incorporated	7/5/78	Cross-Appeal
4140	Komok, Alfred v. State of Ak.	7/3/78	Petition
4141	Valley Construction, Inc., et al. v. Alfred Cunningham	6/19/78	Appeal
4142	Rowsey, Rodney v. Alaska, State of	7/5/78	Cr. Appeal
4143	Woodards, Roderick G. v. Alaska, State of	7/7/78	Cr. Appeal
4144	McGahan, Kenneth v. Alaska, State of	7/7/78	Cr. Appeal
4145	Younker, Alan L. v. Alaska Commercial Fisheries Entry Commission	7/10/78	Appeal
4146	Thomas, Danny S. v. Alaska, State of	7/10/78	Cr. Appeal
4147	Oksoktaruk, Phillip Noah v. Alaska, State of	7/10/78	Cr. Appeal
4148	Chilton, Eric v. Alaska, State of	7/11/78	Cr. Appeal
4149	Valdez, City of v. J.V. (Pete) Williams, d/b/a Totem Inn	7/10/78	Appeal
4150	Spielman, Barney v. Alaska, State of	7/13/78	Cr. Appeal
4151	Alyeska Pipeline Service Co. v. Howard Vicini		Petition
4152	Schultz, Donald E. v. Alaska, State of	7/13/78	Cr. Appeal
4153	ATKINSON, JEANNETTE v. BARBARA HALL, Administratrix of Est. of Joycelyn B. Bordeau, Deceased	7/13/78	Appeal
4154	Gregor, Thelma, et al v. City of Fairbanks	7/13/78	Appeal
4155	Alaska Children's Services v. Francis S.L. Williamson	7/14/78	Appeal
4156	Badger, Edward v. Alaska, State of	7/14/78	Cr. Appeal
4157	Yale, Patricia v. Robert B. Flint, et al	7/17/78	Appeal
4158	Triplett, Charmaine v. Lucena Palmaras Triplett	7/20/78	Appeal
4159	Williams, Michael Eugene v. Alaska, State of	5/8/78	Cr. Appeal
4160	Winslow, Brian K. v. Alaska, State of	7/19/78	Sent. Appea
4161	Campbell, Alphonso v. Alaska, State of	7/17/78	Sent. Appea

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4162	Heidel, Roy v. Fred Pankratz		P/R
4163	Industrial Power & Lighting Corp. v. Western Modular Corp.	7/17/78	Appeal
4164	Rogers Electric Company et al v. Richard Kouba	7/19/78	Appeal
4165	O'Neil Investigations, Inc., v. Alaska, State of	7/20/78	Cross-Appea
4166	Wamser, James v. State of Ak.		P/R
4167	Emsley, Irven R. v. Home Insurance Company, a foreign corporation	7/19/78	Appeal
4168	Engel, Murray v. Edgar Paul Boyko, et al	7/24/78	Appeal
4169 no	Deal, Kenneth E. v. Alaska, State of (d appnt.)	7/24/78	Cr. Appeal
4170	Fairbanks North Star Borough Board of Adjustment v. Wilcox Estates		Petition
4171	Ahmaogak, Maggie v. State of Ak.		Petition
4172 ✓	Alaska, State of v. Ivey, Richard	7/25/78	Sent. Appeal
4173	Bering Sea Originals et al v. Carol F. Chase et al	7/27/78	Appeal
4174	Adasiak, Allan et al v. Lucy Charlie et al	7/28/78	Petition
4175	[illegible]		[illegible]
4176	Western Modular Corp. v. Industrial Power & Lighting Corp.	7/28/78	Cross Appeal
4177	Waldock, Dennis v. State of Alaska et al	7/31/78	Original
4178	Hinkel, Ida Marie v. Anchorage		Petition
4179	Alaska Federal Savings and Loan et al v. State of Alaska, Dept. of Revenue	8/2/78	Appeal
4180 ✓	Creer, Wallace v. Alaska, State of	8/2/78	Sent. Appeal
4181	Ustaszewski, Maureen L. v. Green, William, et al	8/3/78	Civil Appeal
4182	Ustaszewski, Eugene v. Moses, Charles, et al	8/3/78	Civil Appeal
4183 no (d appt.)	Smith, Edward W. v. Alaska, State of	4/13/78	Cr. Appeal
4184 no (d appt.)	Smith, Edward W. v. Alaska, State of	4/13/78	Cr. Appeal
4185	Mackey, Neil v. The Estate of Muriel Pfeil		Petition
4186	Standard Oil Co. of California v. Anchorage	8/7/78	Civil Appeal
4187 ✓	Morgan, Ernest v. Alaska, State of	8/8/78	Sent. Appeal
4188	First National Banks of Anchorage v. May, Gary R. et al	8/8/78	Civil Appeal
4189	Veach, Norman J. v. Meyeres Real Estate, Inc.	8/10/78	Civil Appeal
4190 no (d appnt.)	Sanders, Carl Allen v. Alaska, State of	8/11/78	Cr. Appeal
4191 no (d appnt.)	Shine, Joseph T. v. Alaska, State of	8/11/78	Cr. Appeal
4192	Osness, Patricia v. Dimond Estates, Inc.	8/11/78	Civil Appeal
4193	Dimond Estates, Inc., v. Patricia Osness	8/11/78	Cross-Appeal
4194	Clary, Donald G. v. Stack Steel and Supply Co	8/11/78	Civil Appeal
4195 no (d appnt.)	Lock David A. v. Alaska, State of	8/14/78	Cr. Appeal
4196	Godbey, Williams Givens, et al v. Westours, Inc., et al	8/11/78	Petition

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4197	Ellerbe Assoc. v. Bering Straits	8/14/78	Petition
4198	Great Northern AK Transportation, Ltd., et al v. Don Dahl as Rep. of Est. of John Thomas	8/14/78	Petition
4199 ✓	Hughley, Howard v. Alaska, State of	8/16/78	Cr. Appeal
4200 no	Hawley, Timothy v. Alaska, State of (CtA.)	8/16/78	Cr. Appeal
4201	Bradley v. Tanana Valley Fair		Petition
4202 no	Kerwin, James J. v. Alaska, State of (ct ap.)	8/16/78	Cr. Appeal
4203 no	Alaska, State of v. Robert & Tom Van Brocklin	8/17/78	Cr. Appeal
4204	Thomas, Lowell Jr., et al v. Edgar Bailey, et al	8/24/78	Appeal
4205 no	Bright, Reginald et al v. Alaska, State of	8/24/78	Cr. Appeal
4206	Frontier Transportation Co., v. James E. Lee, et al.	8/24/78	Appeal
4207	Beavers, Grant, et al v. Munic. of Anchorage		Stay Appli
4208	Kerslake, Charlot v. Harold A. Kerslake	8/24/78	Appeal
4209	Brandman, et al v. State of Ak.	8/28/78	Petition
4210	Schmit, Robert M. v. Eugene Miller		Petition
4211	Kachemak, City of et al v. E.D. Springer	9/6/78	Petition
4212	Johnson, Julius v. State of Ak.		Petition
4213	Dowling Supply and Equipment v. Gardner, et al	8/24/78	Civil Appeal
4214 no	Viveros, George E. v. Alaska, State of	8/28/78	Cr. Appeal
4215	Swift, Justin v. Alaska, State of, et al	8/25/78	Appeal
4216	Wickwire, Thomas R. v. Transamerica Title Ins.	8/10/78	Civil Appeal
4217 no	Byrd, Tommy v. Alaska, State of (ct. ap.)	8/30/78	Cr. Appeal
4218	Tract C. 28-37, Philip Rahoi v. State, et al		Petition
4219 ✓	Nygren, Billie T. Ward v. Alaska, State of	8/31/78	Cr. Appeal
4220	Thomas, Lowell, Jr., et al v. Clifford E. Warren		Appeal
4221	C.Y. Inc. v. Alaska, State of	8/31/78	Appeal
4222	Earthmovers of Fairbanks, Inc., v. Pacific Insurance Company	9/1/78	Civil Appeal
4223	Valenzuela, Joseph W. v. State of Ak.	9/ /78	Petition
4224	White, Hugh B., et al v. State of Ak., et al	9/ /78	Petition
4225	Assoc. Pipeline Contractors,Inc., et al v. Jacqueline R. Finkel	8/31/78	Petition
4226 ✓	Putnam, Gerald P. v. Alaska, State of	9/7/78	Sent. Appea
4227 ✓	Larson, Fred v. Alaska, State of	9/6/78	Sent. Appea
4228 no	Smith, Allen J. v. Alaska, State of (et al.)	9/7/78	Cr. Appeal
4229	Alaska, State of, Human Rights, Commission of v. Yellow Cab	8/28/78	Appeal
4230 no	Grant, John O. v. Alaska, State of	9/7/78	Cr. Appeal
4231 no	Owen, Bob 1. v. Alaska, State of	9/7/78	~~Cr. Appeal~~ Sentence

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4232 ✓	Davis, Joshuway v. Alaska, State of	9/8/78	Cr. Appeal
4233 no	Lear, Jeffrey v. Alaska, State of	9/8/78	Cr. Appeal
4234	Jenkins, Helen, et al. v. Jenkins, Moses et al	9/11/78	Civil Appeal
4235	Prokopis, Taso & Theresa v. Chris Prokopis	9/5/78	Civil Appeal
4236	Jones, Stanley v. Jenell Patton		
4237	State of Alaska, Jack L. Silas	9/14/78	Petition
4238	City of Fairbanks & Edward L. Martin v. Mark N. Wayson	9/14/78	Stay
4239	Alaska, State of v. Firor, Betty Lou	9/13/78	Cr. Appeal
4240	Shatting, Jay v. Dillingham City School Dist.	9/8/78	Civil Appeal
4241	Jones, Stanley v. Jenell Patton		Petition
4242	Munro, Vivien v. Wilbert Burrow		Petition
4243	Alaska, STate of v. Brenda Flora		Petition
4244	Miller, David v. State of Ak.		Appeal
4245 ✓	Black, Lance v. Alaska, State of	9/13/78	Cr. Appeal
4246 no	Wilson, Daniel v. Alaska, State of	9/13/78	Cr. Appeal
4247	West, Margaret June, et al v. Alaska, State of	9/14/78	Civil Appeal
4248	Hotel and Restaurant Union Local 878 v. The Alaska State Commission for Human Rights	9/15/78	Civil Appeal
4249	Curry, David v. George & Carol Tucker, et al	9/1/78	Civ. Appeal
4250	Trott, v. Alaska International Constructors		Petition
4251	Walter Hickel, et al v. Lowell Thomas, Jr.,	9/22/78	Original
4252	Fairbanks, City of , et al v. Wayson, Mark N.	9/19/78	Petition
4253	Board of Education, Fairbanks, v. Ruth Ewig et al	9/15/78	Civil Appeal
4254	Whitson, Carl et al v. Anchorage	9/15/78	Civil Appeal
4255	Sjong, John K. v. Alaska, State of	9/15/78	Civil Appeal
4256	Wilson, York v. Kotzebue, City of	9/15/78	Civil Appeal
4257	Brown, George Jr., et al v. State of Ak.		Petition
4258	Peter Dana v. State of Alaska		Petition
4259	Wilson, Paul, et al v. Mine Safety Appliances Co.		Petition
4260	Ak. Constructors, Inc. v. Copper Valley Elect. Assoc.		Petition
4261	Carr, Jessie L. v. Lowell Thomas, Jr.		~~Petition~~
4262	Kemp, Frederick Henry v. Transport International Pool	9/25/78	Petition
4263 no	Williams, Shelley v. Alaska, State of	8/11/78	Cr. Appeal
4264 ✓	Morris, Anthony R. v. Alaska, State of	9/22/78	Cr. Appeal
4265	Dalton, Edwin, et al. v. Interior Credit Bureau	9/22/78	Civil Appeal
4266	Anderson, Bun et al v. Lowell Thomas Jr.	9/25/78	Civ. Appeal

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4267	Anchorage, a munic. corp. v. Carl Whitson	9/25/78	Cross-Appeal
4268	State v. Raymond N. Laymance	9/27/78	Original
4269 no	Sopko, Douglas v. Alaska, State of	10/2/78	Cr. Appeal
4270	Copper Valley Electric Assoc. v. Ak. Constructors, Inc.		Cross-Petit
4271 no	Gonzales, Norberto P. v. Alaska, State of	6/23/78	Cr. Appeal
4272 ✓	Elstad, Dennis v. Alaska, State of	10/4/78	Sent., Appeal
4273 no	Wall, Robert v. Alaska, State of et at.		Cr. Appeal
4274	Hammond, Jay v. Hickel, Walter J., et al	9/27/78	Cross-Appeal org.
4275	Croft, Chancy v. Hickel, Walter J. et al	9/27/78	Cross-Appeal org.
4276	Rhoads, M.A., et al v. The Reverend Roger Ford, et al	9/28/78	Civ. Appeal
4277	Alaska, State of, Human Rights, Commission of v. Yellow Cab	10/9/78	Civ. Appeal
4278	Dean Whitter & Co. v. Douglas Lantz	10/9/78	Petition
4279	Kelly, Harry v. State of Ak.		Petition
4280	Valenzuela v. State of Ak.	10/11/78	Petition
4281	Hammond, Jay v. Walter Hickel J.		Appeal
4282	Croft, Chancy v. Walter Hickel J.		Appeal
4283	Thomas, Lowell, Jr., et al v. Hickel, et al		Appeal
4284	Hickel, Walter v. Lowell Thomas, et al		Cross Appeal
4285	Merdes, Ed v. Lowell Thomas, Jr., et al		Cross-Appeal
4286	Nix, Barry, et al v. State of Alaska		Petition
4287	Alaska International Contractors, Inc., etal v. Patricia M. & Janice M. Trott, et al	10/9/78	Appeal
4288	Swenson Trucking & Excavating, Inc. v. Truckweld Equipment Co.	10/2/78	Appeal
4289	Saker, Alexie v. State et at.	10/2/78	Appeal
4290 no	Pascoe II, James J. v. State	10/2/78	Cr. Appeal
4291	Kertula, Jalmer v. Walter Hickel, et al		Appeal
4292	Hendrickson, Joseph J. v. Freericks, Charles etal	9/11/78	Civil Appea
4293 ✓	Calder, Lance v. Alaska, State of	10/2/78	Cr. Appeal
4294	Mumby, Robert J. et al v. Lyon, George A., et al	10/2/78	Civil Appea
4295 no	Johnson, David v. Alaska, State of et.at.	9/15/78	Cr. Appeal
4296	Hilbers, Chin, et al v. Anchorage	10/4/78	Civil Appea
4297	Frontier Flying Service, et al v. Hughes, Larry	10/5/78	Civil Appea
4298	Jeffries, Johnston v. Glacier State Telephone	10/5/78	Civil Appea
4299	Alaska Insruance Co. v. RCA Alaska Communications	10/9/78	Civil Appea
4300	Atlantic Richfield Company v. Frontier Equip. Company	9/13/78	Appeal
4301	Frontier Equip. Co. v. Atlantic Richfield Co.	9/16/78	Cross-Appeal

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4302	Rodacker, Ronald Ray v. Moses, Charles	10/11/78	Cr. Appeal
4303	Bower Office Products v. State of AK	10/24/78	Petition
4304	Alaska Pacific Assurance Co., et al v. Thomas Turner	10/16/78	Civil Appeal
4305	Jones, Kenneth W. v. Ak. Workmens' Comp., et al	10/19/78	Civil Appeal
4306	Douglas, John H., et al v. Glacier State Tele. et al	10/23/78	Civil Appeal
4307	Ranger Insurance Company v. George O'Leary, et al	10/23/78	Civil Appeal
4308	Spencer, Maria V. v. Alaska, State of	10/25/78	Cr. Appeal
4309	Spencer, Robert v. American Bonding Company	10/25/78	Civil Appeal
4310	Horowitz, Bruce et al v. Alaska Bar Association	10/16/78	Civil Appeal
4311	Alaska Bar Association v. Horowitz, Bruce et al	10/26/78	Cross-Appeal
4312	Brodie Hotel & Restaurant Supply et al v. Charalampos Alefantinos, et al	10/26/78	Civil Appeal
4313	Yellow Cab v. State, Commission for Human Rights	10/16/78	Cross-Appeal
4314	Whittemore, Kermit D. v. State	10/17/78	Cr. Appeal
4315	Troyer, Marvin Lee v. State	10/23/78	Cr. Appeal
4316	Vincent, Calvin L. v. State	10/23/78	Cr. Appeal
4317	McGahan, Gerald B. v. State	10/23/78	Cr. Appeal
4318	Miller, Randolph Frances et at. v. State of Alaska	10/23/78	Cr. Appeal
4319	Victoria, Emercy v. Ricardo Victoria		Petition
4320	Cox, Francis v. Superior Court	10/30/78	Original
4321	In the Matter of K.M.M. and B.M.M.	10/13/78	Civil Appeal
4322	Coleman, Elijah v. State of AK	11/2/78	Orgiginal
4323	Alaska, State of v. Smith, Allen E.		Petition
4324	Thomas, Lowell, Jr. v. Tim Sanderson & Herbert Bartlett	11/4/78	Stay/Petitic
4325	Thibedeau, Rick L. v. Alaska, State of	11/6/78	Sent. Appea
4326	Messerli, Lloyd v. State of Ak.		Petition
4327	Kenai Air Service, Inc., et al v. Gary R. Eitel, et al		Petition
4328	Dale, Walter John v. State of Ak.		Petition
4329	Ristau, Melvin Charles v. Nicole R. Ristau	11/6/78	Civ. Appeal
4330	Stansel, Jerry v. Perini Arctic Construction	11/6/78	Civ. Appeal
4331	Owens, Ronald A. v. Alaska, State of	11/6/78	Cr. Appeal
4332	Classen, Thomas J. v. Alaska, State of, Highways, Dept. of	11/7/78	Civ. Appeal
4333	In the Matter of F.L.A.		Petition
4334	Karrer, Boyd A., et al v. Colson, Grady, et al	11/3/78	Civ. Appeal
4335	Alaska, State of v. Debenham Electric & Berkheimers, Inc.	11/3/78	Civ. Appeal
4336	Volkswagenwerk v. Klippan, et al	11/3/78	Civ. Appeal

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4337	Sowash, Robert v. Billie Garrett, et al	11/3/78	Civ. Appeal
4338	Sanders, Cyrus v. Alaska, State of	11/9/78	Civ.Appeal
4339	Trott, Patricia M., et al v. Ak. Intern'l Const.	11/3/78	Cross-Appeal
4340	Hagberg, Donna v. Alaska, State of	11/8/78	Cr. Appeal
4341	Coppock, Patricia M., etal v. Ak. Plastic Inc.		Petition
4342	State of Alaska v. Daniel Cassell		Petition
4343	Daniel Cassell v. State of Ak.		Cross-Petiti
4344	Walsh, James W., Jr. v. Harvey D. Lee		Petition
4345	Sea-Land Services, Inc. v. Phina Bowers		Petition
4346	J.D. Mullins, et al v. State		Original
4347	Husted, Myron John v. State of Alaska	11/13/78	Sent. Appeal
4348	Johnson, Elliott P. v. State of Alaska	11/9/78	Cr. Appeal
4349	Wilcox Associates v. Fairbanks North Star Bor. et al.	11/13/78	Civil Appeal
4350	Rice, Michael v. State of Alaska	11/13/78	Cr. Appeal
4351	Davidson, Hugh A. v. State of Alaska	11/15/78	Cr. Appeal
4352	Shine, Joseph T. v. Anchorage	11/15/78	Civil Appeal
4353	Huffsmith, Jack, et al v. Phina Bowers, et al		Cross-Petit
4354	Schmidt, Robert L. v. Doris M. Schmidt		Petition
4355	Griffith, Jessie v. Reginald K. Curtiss		Petition
4356	Murphy, Patrick E. v. Terry McFadden, et al		Petition
4357	Rentz, Patricia, et al v. George Sullivan, etal		Petition
4358	Widdis, Craig E. v. Alaska, State of	11/20/78	Sent. Appeal
4359	National Soil Services, et al v. Ray E. Hurst	11/3/78	Civil Appea
4360	Alaska, State of v. Fredrick A. Shewey, Jr.		Petition
4361	Booker, Edward B. v. Alaska, State of	11/16/78	Cr. Appeal
4362	Mullins, Jimmy A. v. Alaska, State of	11/16/78	Cr. Appeal
4363	Brunn, Charles L. v. Alaska, State of	11/16/78	Cr. Appeal
4364	Howe, Billy Joe v. Alaska, State of	11/20/78	Cr. Appeal
4365	Kenai Elks Lodge #2425 v. Hotel & Rest. Union Local #878, et al	11/20/78	Civil Appeal
4366	Huega, Ronald Lee v. Alaska, State of	11/20/78	Cr. Appeal
4367	Williams, David G. v. Alaska, State of	11/20/78	Cr. Appeal
4368	Klippan, GmbH, v. Volkswagenwerk, A.G., et al	11/20/78	Cross Appeal
4369	Doisher, Bobby v. Alaska, State of	10/31/78	Cr. Appeal
4370	Alaska, State of v. Billy Joe Howe	11/17/78	Cr. S.A.
4371	Williams, Leslie Jerry v. Munic. of Anchorage		Petition

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4372	Alaska, State of v. Anna Liese Tallman		Petition
4373	In the Matter of Duncan C. Webb		Original
4374	Brown, Charles E. v. Alaska, State of	11/24/78	Cross-Appeal
4375	In the Matter of Donald L. Craddick		Original
4376	Notaro, Nicholas v. State of Ak.		Petition
4377	Casey, Daniel v. Alaska, State of	11/27/78	Cr. Appeal
4378	Larva, Charles N. v. Ruth E. Larva		Appeal
4379	Alaska, State of v. Alyeska Pipeline		Petition
4380	Alaska, State of v. Judge Milton Souter	11/28/78	Original
4381	Wagner, Vern John v. Alaska, State of	11/30/7	Sen . Appeal
4382	Godfrey, Norma E., et al v. Hemenway et al	11/22/78	Civil Appeal
4383	Helmer, James W. v. Alaska, State of	11/22/78	Cr. Appeal
4384	Hill, John J. v. Ames, Joan Marie	11/22/78	Civil Appeal
4385	Alaska, State of v. Handy, James, et al	11/22/78	Civil Appeal
4386	Clary Insurance Agency, et al v. Doyle, James	11/22/78	Civil Appeal
4387	Hahn, Earl, et al v. Russ, Anthony, et al	11/24/78	Civil Appeal
4388	Rickard, James v. Rickard Jessica	11/29/78	Civil Appeal
4389	Moss, Prevace v. Alaska, State of	11/29/78	Cr. Appeal
4390	Arctic Constructors, et al v. Morch, Verda Rae	11/29/78	Civil Appeal
4391	Marsden, Donald v. Alaska, State of	11/29/78	Cr. Appeal
4392	In the Matter of Anthony M. Urie	11/30/78	Original
4393	Sisson, Robert J., II v. Alaska, State of	11/9/78	Cr. Appeal
4394	Renfroe, John v. Green, Robert C., et al	11/30/78	Civil Appeal
4395	Allen, Gregory E. v. State of Ak.	12/1/78	Petition
4396	Alaska, State of v. The Honorable Victor Carlson		Petition
4397	Alaska, State of v. Russell Sundberg		Petition
4398	Willis, T. v. Lowell Thomas, Jr.		~~Appeal~~ Or
4399	Lamoureaux, Jerome, et al v. Total Ocean Trailer Express, Inc., et al		Petition
4400	Alaska, State of v. Sund, Richard	12/11/78	Sent. Ap.
4401	In the Matter of L.C. v. Alaska, State of	12/4/78	Cr. Appeal
1402	Tugatuk, David H. v. Alaska, State of	12/7/78	Cr. Appeal
4403	Call, David H. et al v. Allen, Billie Bob et al	12/11/78	Civil Appe
4404	Mello, Mark J. v. Moses, Charles, et al	12/4/78	Civil Appe
4405	Associated Green Constructions Co. et al v. Beesley, Earle J., et al	12/11/78	Civil Appe

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4406	Alesna, Julieann K. v. Legrue, Henry, et al	12/11/78	Civil Appeal
4407	Perini Arctic Construction v. Stansel, Jerry	12/8/78	Cross-Appeal
4408 no	Keel, Roger E. v. Alaska, State of	11/29/78	Cr. Appeal
4409	Elling Halvorson, Inc. v. Tri-Alaska Construction	12/7/78	Civil Appeal
4410	Adkins, Prather M. v. Nabors Alaska Drilling	12/7/78	Civil Appeal
4411 ✓	In the Matter of L.C. v. Alaska, State of	12/4/78	Cr. Appeal
4412	In Re K. M. L. et at.	12/4/78	Civil Appeal
4413 no	Nix, Timothy v. Alaska, State of	11/16/78	Cr. Appeal
4414 ✓	Perry, Allan v. Alaska, State of	11/16/78	Cr. Appeal
4415	Wood, Ronald, et al v. Alaska Industrial Development authority, et al	12/1/78	Civil Appeal
4416 no et al	Colem , Elijah v. Alaska, State of	11/27/78	Cr. Appeal
4417	Green, Perry, v. Garrett, Billie, et al	12/12/78	Civ. Appeal
4418	Square "D" Co., et al v. James Jones		Petition
4419	Ross, Wayne Anthony v. Honorable Ralph Moody		Petition
4420	International Brotherhood of Teamsters, et al v. STate of Ak., et al		Appeal
4421 ✓	Afcan, Timothy v. Alaska, State of	12/14/78	Cr. Appeal
4422	Purinton, Royce D., III v. Yukon-Koyukuk School Dist.		Petition
4423	Compass Enterprises, Inc., et al v. S.B. Mitford		Petition
4424	Alaska, State of v. Hon. G.J. Van Hoomissen		Original
4425 ✓	La Pierre, Carl R. v. Alaska, State of	12/15/78	Cr. Appeal
4426	Shewey, Frederick A., Jr. v. State of Ak.		Cross Petiti
4427	Gillum, Janette v. The Memorial Hosp., et al		Petition
4428	Bechtel, Inc. v. Ak. International Air		Petition
4429	O Neill Investigations Inc. v. Illinois Employers Insurance of Wausau	12/15/78	Civil Appeal
4430 no	Harvey D. Lee v. State of Alaska	12/14/78	Cr. Appeal
4431	Tri-Alaska Construction, Inc., et al v. Elling Halvorson, Inc., and Larry Fordham	12/20/78	Cross-Appeal
4432	Rublee, Dr. Charles, D.C. v. Dr. Donovan Hampton	12/20/78	Petition
4433	Western Marine Electronics Co., Inc, et al, vs. Frank Gray vs.	12/15/78	Civil Appeal
4434	Priest, Ute, et al v. Edwin Lindig et at.		Petition
4435 no	Allen Mike Atchak v. State of Alaska	12/21/78	Cr. Appeal
4436 ✓	Gottardi, Rick C. v. Alaska, State of	12/22/78	Cr. Appeal
4437	Steve's Const. Co. v. Ralph Blanchard, et al		Petition
4438	Ella Lenore Campbell Gunderson, et al v. Leonard Campbell	12/20/78	Civil Appeal
4439	Becker Drills v. Clarence Moore, et al	1/5/79	Petition
4440 ✓	David Avery v. State of Alaska	12/18/78	Cr. Appeal

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4441	Phillips, John Lester v. Phillips, Mary May	12/5/78	Civil Appeal
4442	State of Alaska, Alaska Unorganized Borough School District, Arthur H. Hamilton v. George Wolansky	12/21/78	Civil Appeal
4443	Loesche, Donald Eugene v. State of Alaska		Cr. Appeal
4444 no	Dorman, John v. State of Alaska	12/26/78	Cr. Appeal
4445	S.B. v. State of Alaska	12/29/78	Cr. Appeal
4446	The Aleut Corp. v. Lillie McGarvey		Appeal
4447	Van Horn Lodge, Inc., et al v. Hugh White, et al	12/20/78	Civil Appeal
4448	Shirley Hemenway, et al v. Norma Godfrey, et al	12/21/78	cross-appeal (civil
4449	Keen, Chuck vs. R & M Consultants	12/29/78	Civil Appeal
4450	DOWD, ALBERT v. STATE OF ALASKA	12/29/78	Cr. Appeal
4451	Urethane Specialties v. City of Valdez & Bonser Co.	1/2/79	Civil Appeal
4452	Bowen, Gus, v. State of Alaska, Div. of Corr.	1/2/79	Civil Appeal
4453	Newell, Terry vs. State of Alaska	1/4/79	Cr. Appeal
4454	Rusnak, Stephen M. v. Husky Oil & ALPAC	12/19/78	Original
4455	Mine Safety Appliances v. Paul Wilson		Petition
4456	Alaska, State of v. Michael Palit		Petition
4457	Greer Tank & Welding, Inc. v. Louella Boettger Administratrix of the Estate of S.C. Boettger	12/18/78	Civil Appeal
4458	Frank, Andrew v. State of Alaska	12/18/79	Cr. Appeal
4459	Alaska, State of v. Agoney, Thomas Jr.	1/5/79	Original
4460 no	Sumdum, Rick Shane v. State of Alaska	1/5/79	Cr Appeal
4461	State of AK Worker's Compensation Board v. Patrick Delaney, et al	1/8/79	Civil Appeal
4462 no (stat.)	Charles Johnson, vs. State of Alaska	1/10/79	CR. Appeal
4463	Alaska, State of v. Robert Christiansen		Petition
4464	Ak. Commercial Fisheries Entry Comm. v. John E Apokedak		Civil Appeal
4465 no	HINKLE, IDA Vs. Anchorage	1/15/79	CR. Appeal
4466	In the Matter of the Applica. of Kathy Kolkhorst v. ABA		Original
4467	CARL MOSES, VS. LILLIE McGARVEY	1/15/79	Civil Appeal
4468	Alaska, State of v. Bernita Purdy		Petition
4469	Tucker, Edward W., et al v. Tracy S. McCracken		Petition
4470	Peterson, Joseph v. State of Alaska	1/11/79	Sent. Appeal
4471	Nichiro Gyogyo Kaisha, et al v. Isaac C. Norman		Petition
4472	Frontier Sand & Gravel Co., et al v. Michael Ken Alvey, et al		Petition
4473	Larson, Fred v. State of Alaska	1/11/79	Cr. Appeal
4474 no	Crutchfield, Herschel vs. State of Alaska	1/18/79	Cri. Appeal
4475	Edward Hoch, et al vs. Charles Ellis, et al	1/15/79	Civil Apr