

SB

104

A M E N D M E N T

OFFERED IN THE SENATE:

By: Senate Judiciary Committee

To: Amend SENATE BILL No. SB 104

HOUSE BILL No. _____

PAGE: 13

LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

*Sec 23. AS 39.50.200 (200) 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."

(2) Renumber subsequent sections accordingly.

The Anchorage Times

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Page A-8

Monday, March 17, 1960

The new state court

IF ALL PLANS provided as it now appears they will, a new three-member state Court of Appeals will be in operation in July.

There will be those who are upset by the soaring cost of government who will be unhappy by this expansion in the Alaska Court System. After all, \$800,000 or \$700,000 for initial annual operating costs is no small item — and that, sorry to say, is just the beginning. There soon will be need to construct a new courthouse. The staff will grow, support costs will increase, and almost as surely as night follows day, the three-member court eventually will grow to four or five.

But lay all of that aside. The establishment of the court has been approved by the House and Senate and Gov. Jay Hammond soon will sign the legislation. That will make the new court a fact. Already court system officials are busy with the behind-the-scenes details required to put the court in business. Within a matter of days the process of accepting applications for the new judgeships will be getting under way.

So for all practical purposes, the court is a reality. The time is past for any arguments about its merits or its initial costs.

For Alaskans to consider now is what the new court might do and what it might accomplish.

IT SHOULD BE kept in mind that the new court will hear only criminal appeals. All appeals from Superior Court decisions in civil cases will go directly to the Supreme Court, bypassing the

new court.

At the same time, however, those involved in criminal cases are not barred from final review by the Supreme Court if there is a strong issue of constitutionality involved.

For example, a person convicted of a crime after a trial in Superior Court would have an automatic right to an appeal to be heard by the new appellate court. If the Court of Appeals sustains the conviction, the defendant then would have the right to petition to the Supreme Court for a further review. The Supreme Court could then grant or reject the petition. In other words, the high court hereafter will have discretionary authority whether or not to hear a criminal appeal.

HOWEVER, THE COURT of Appeals generally will be the final court of review for criminal cases. By assuming this function, the new court will reduce by perhaps as much as 40 percent the caseload now before the five justices of the Supreme Court. The caseload has been heavy because in the past the Supreme Court had been required to consider every criminal case which was appealed, regardless of whether any constitutional issues were at stake.

It's true the cost of the new court will be high. But if the ends of justice are better served — in both criminal and civil matters — then the expense surely is justified for a state that apparently has more than enough money to spend on projects the goals of which are far less noble.

MAJOR CHANGES IN SENATE BILL 104 House and Senate Versions

1. House version allows a defendant to choose whether to appeal to the Superior court or Court of Appeals.
2. House version allows a magistrate to become a district court judge after serving as a magistrate for seven years.
3. House version allows justices and judges to file as delegates to constitutional conventions.
4. Changes residency requirements for justices and judges from three (3) to five (5) years.
5. Allows Supreme Court to review cases, on application, of the superior court.
6. Senate version allowed the supreme court to review in its discretion, a final decision of the court of appeals on its own motion or upon application of a party.
House version : The supreme court may review a final decision of the court of appeals on application of a party.

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 U.S. or under the state constitution or involves an issue of substantial public interest that should be determined by the supreme court.

SENATE VERSION

HOUSE VERSION

TITLE Establishing the Court of Appeals

adds: 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; changing Rule 21 Rules of Appellate Procedure and Rule 7, District Court Criminal Rules

22.07.010

22.07.010

Makes the court of appeals a court of record.

Left out: appeal to the superior court from a decision of an administrative agency.

22.07.020

22.07.020

(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 nova in whole or part.

(c) The court of appeals has jurisdiction to review (1) a final decision of the district court in an action or proceeding involving criminal prosecution, post conviction relief, extradition, probation and parole, habeas corpus or bail; and (2) the final decision of the district court on a sentence imposed by it. In this subsection "final decision" means a decision or order other than dismissal by consent of all parties, that closes a matter in the district court.

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

(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 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.

(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.

(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.

SENATE VERSION

HOUSE VERSION

22.07.030 REVIEW BY SUPREME COURT ,

22.07.030 REVIEW BY SUPREME COURT

Added: Review is in the discretion of the supreme court as set out in AS 22.05.010(c).

22.07.040 QUALIFICATIONS OF JUDGES

22.07.040 changed the residency requirements from three (3) to five (5) years.

22.07.050 OATH OF OFFICE

22.07.050 language change nothing substantial

22.07.060 APPROVAL OR REJECTION

22.07.060..House changed the time previous to the election the public must be informed of judicial council recommendations from 30 days to 60.

22.07.070 VACANCIES

NO CHANGES

22.07.080 RESTRICTIONS

22.07.080..Allows a judge to file for candidacy as a delegate to a constitutional convention.

22.07.090 COMPENSATION

22.07.090

(a) Each judge of the court of appeals is entitled to receive annual compensation prescribed in accordance with AS 39.23

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.

22.07.100 PROCESS

NO CHANGES

22.05.010 JURISDICTION

22.05.010 JURISDICTION

(a) The supreme court has final appellate jurisdiction in all actions and proceedings.

(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.

(b)adds to the senate language after AS 22.07.020: "or to the superior court under AS 22.10.020 or AS 22.15.240"

(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.

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

(d) Changes subsection (c) in the Senate version to read: "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 dismissal by consent of all parties, that closes a matter in the court of appeals.

SENATE

22.05.015 TRANSFER OF APPELLATE CASES

- (a)
- (b) (1) (2)
- (c)
- (d)

22.05.060 SEALS OF THE COURT

22.05.070 QUALIFICATIONS OF JUSTICES

The Senate does not address this

22.05.100 APPROVAL OR REJECTION

Senate version...." he shall not be appointed to fill any vacancy in the supreme court, court of appeals....."

22.05.130 RESTRICTIONS

Senate does not address this

22.10.020 (a)

The Senate version repealed the language which stated that an appeal from a subordinate court is not allowed after a plea of guilty except in cases of excessive sentencing, and no appeal by the state except to test the sufficiency of an indictment or information. It also repealed the language which allowed an appeal to the superior court on the ground that a sentence of imprisonment of 180 days or more was excessive

HOUSE

22.05.015 TRANSFER OF APPELLATE CASES

- (a) NO CHANGES
- (b) (1) NO CHANGES
(2) House deleted "the transfer will further the efficient administration of justice".
- (c) House deleted "The supreme court may provide by rule that review of an appeal to the superior court from an administrative agency be by the supreme court rather than by the court of appeals under AS 22.07.020 (8).
- (d) NO CHANGE

22.05.060 SEALS OF THE COURT
NO CHANGES

22.05.070 QUALIFICATIONS OF JUSTICES

The House changed the residency requirements from "three" to "five " years.

22.05.100 APPROVAL OR REJECTION

House changed the time period for recommendations of the Judicial Council to be made public from 30 days prior to an election, to 60 days.

House changed this section as compared to the Senate version as follows.

"...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....."

22.05.130 RESTRICTIONS

The House inserted language which allows a justice to file for a delegate to a state or national Constitutional Convention.

22.10.020 (a)

The House version left most of the existing language in tact, inserted "the state has no right to appeal in criminal cases except to test the sufficiency of an indictment or information or to appeal a sentence on the ground it is too lenient." They also reduced the number of days an excessive appeal may be made from "180" days to "90", and gives the superior court under this jurisdiction the ability to reduce rather than [MODIFY] the sentence.

SENATE

22.10.020 (a) Continued from last page

22.10.090 QUALIFICATIONS OF JUDGES

The Senate does not address this question.

22.10.150 APPROVAL OR REJECTION

22.10.180 RESTRICTIONS

The Senate does not address this question

22.15.160 (a)

The Senate does not address this question

22.15.195 APPROVAL OR REJECTION

22.15.210

The Senate does not address this question

HOUSE

22.10.020 (a) Continued from previous page.

House inserted the following language: "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."

22.10.090 QUALIFICATIONS OF JUDGES

The House changed the residency requirements from three (3) to "five" (5) years, and inserts "The active practice of law shall be as defined for justices of the the supreme court in AS 22.05.070."

22.10.150 APPROVAL OR REJECTION

House version requires the judicial council recommendations to be made public 60 days prior to election rather than 30 days.

22.10.180 RESTRICTIONS

The House version allows judges to file for a delegate to a state or U.S. Constitutional Convention.

22.15.160 (a)

House version changes the residency requirements for district judge from "three" (3) to "five" (5) years and, inserts: (1) have been engaged in the active practice of law for not less than three years immediately preceding his appointment.....or (2) have served for at least seven years as a magistrate in the state.

22.15.195 APPROVAL OR REJECTION

House version requires the judicial council recommendations to be made public 60 days prior to election rather than 30 days.

22.15.210

House version allows a district judge to file as a delegate to a state or U.S. Constitutional Convention.

SENATE

HOUSE

22.15.240 APPEAL

- (a)
- (b) changes the amount of days a person may appeal an sentence on the basis of excessiveness from [180] to 45.
- (c) (d)

22.20.010 JUCICIAL OFFICER DEFINED.

22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS

22.25.010 (g) and 22.30.080 (2)
15.56.900 (2) ; 15.15.030 (10)

15.35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.

15.35.150, 15.35.160, 15.35.170, 15.57.025, 15.57.040 (2), 24.55.330 (2), 39.20.310 (1),

39.23.130 (2) Senate inserted: "Judiciary" means justice of the supreme court and judges of the court of appeals, the superior court and the district court, and deleted: [THE SUPERIOR AND DISTRICT COURTS]

39.35.680 (21) (c)(vi) and 39.50.200(2)

12.55.120(a) A sentence of imprisonment lawfully imposed by the superior 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]

(b)

22.15.240 APPEAL

- (a) House version gives either party the right to appeal a judgement of the district court in a civil case regardless of the sum involved.
- (b) changes the excessive sentence days from [180] to 90 and makes the same changes in the District Court appeal section as it did in the Superior Court section. (AS 22.10.020)
- (c) and (d) NO CHANGES

22.20.010 JUDICIAL OFFICER DEFINED

NO CHANGES

22.20.110 DUTY OF THE COMMISSIONER IN THE COURT OF APPEALS, THE SUPERIOR COURT AND DISTRICT COURTS.

NO CHANGES

22.25.010 (g) and 22.30.080 (2) , 15.56.900 (2), 15.15.030 (10)
NO CHANGES

15. 35.140 APPROVAL OR REJECTION OF A JUDGE OF THE COURT OF APPEALS.

NO CHANGES

NO CHANGES

39.23.130 (2) The House did not address this matter.

NO CHANGES

12.55.120(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]

(b)

NO CHANGES

SENATE

12.55.120 (d)

The Senate does not address this question

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.

The Senate does not address this question.

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.

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

HOUSE

12.55.120 (d)

The House added a new subsection (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.

The House does not address this question.

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.

NO CHANGES

Cases pending in the supreme court on the date on which operations of the court of appeals begin which have been heard by or submitted to the supreme court on briefs 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

SENATE

HOUSE

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.

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.

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.

Not addressed by the Senate

Not addressed by the Senate

Not addressed by the Senate

NO CHANGES

The amends 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.

Secs. 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.

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 WORKLOAD:
Analysis of Proposed Solutions

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.

1. 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:

Trial judges per 100,000 population	4.46
Appellate judges per 100,000 population	1.24
Appellate judges per 100 trial judges27.77

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

^{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 appellate 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:

<u>STATE</u>	<u>TOTAL OPINIONS</u>	<u>AVERAGE PER JUSTICE</u>
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 case-load 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

^{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 justice. 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 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 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

^{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 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 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

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

^{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

^{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. X

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. 22.05.010(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 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 disincentive 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 caseload 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 these 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

^{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

^{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-

^{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 table^{52/} 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

<u>States With Intermediate Appellate Courts</u>	<u>States Without Intermediate Appellate Courts</u>	<u>States Considering Establishing Intermediate Appellate Courts</u>
Oregon Washington California Arizona New Mexico Oklahoma Texas	North Dakota South Dakota Montana Wyoming Idaho Utah Hawaii Alaska Nebraska Nevada*	North Dakota Idaho Utah Hawaii 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 above^{54/} 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

^{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/

YEAR	FILED	DISPOSITIONS			TERM. W/O WRITTEN OPINIONS	CASES PENDING DEC. 31
		WRITTEN	OPINIONS MEMORANDUM	TOTAL		
1965	321	176	0	176	252	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 more of 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 quantifiable 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 operat. ; 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	28.0
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

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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
	<u>241</u>

Petitions for Review and Original Proceedings

Pending at Start	17
Filed	102
Terminated	94
**Opinions Filed	25
Review Denied	52
Other Dispositions	17
	<u>94</u>

***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 curiam 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-	50	
continued		
Dismissed on Motion	14	
Other	7	
		<u>155</u>

ORIGINAL PROCEEDINGS

Pending at start		3
Filed		12
Terminated		11
Opinion Filed	5	
Other	6	
		<u>11</u>

MOTIONS/PETITIONS FOR REHEARING

Pending at start		7
Filed		375
Terminated		354
Opinion Filed	6	
Other	348	
		<u>354</u>

*Source: Hawaii 1976 Annual Report

IDAHO SUPREME COURT
January 1, 1976-December 31, 1976*

APPEALS

Pending at start		312
Filed		295
Terminated		
Opinions filed	136	228
(Includes 29 P.C.'s)		
Other	92	
	<u>228</u>	

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	168	
(Includes 11 P.C. and 2 "advisory" opinions)		
Dismissed	68	
	<u>236</u>	

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	
	<u>803</u>	

*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	
	<u>128</u>	

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*

<u>APPEALS</u>		
Pending at start		286
Filed		351
Terminated		346
Opinion	141	
(Includes 21 P.C.)		
Withdrawn or Dis-	112	
continued		
Dismissed on motion	93	
Other	-	
	<u>346</u>	

<u>ORIGINAL PROCEEDINGS</u>		
Pending at start		1
Filed		15
Terminated		14
Opinion	3	
(Includes 2 P.C.)		
Withdrawn	1	
Dismissed by Court	10	
	<u>14</u>	

<u>MOTIONS/PETITIONS FOR REHEARING**</u>		
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

<u>JOB TITLE</u>	<u>SALARY</u>	<u>LOCATION</u>
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 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 threshold 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 proceeding;
- (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.

MEMORANDUM

January 3, 1979

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

FROM: Robert D. Bacon, Clerk

SUBJECT: December 1978 Statistics

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

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

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

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

BH for

RDB

ALASKA SUPREME COURT
December 31, 1978

	Civil Appeals	Criminal Appeals	Sentence Appeals	TOTAL APPEALS	Petitions for Review	Originals	TOTAL ALL CASES
PENDING DECEMBER 31, 1977	265	207	36	508	4	5	554
FILED OR REINSTATED THRU November 30, 1978	230	118	55	403	1	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							
By Court	69	18	8	95	4		99
On Motion	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
 <u>Dispositions on Merits to Dec. 31, 1978</u>	
By Opinion and Mandate	248 ¹
By Memorandum Opinion & Judgment	14
By Summary Order	<u>40</u>
Total Dispositions on Merits	302
 <u>Other Dispositions to Dec. 31, 1978</u>	
Dismissals	159
Petition or Application Denied	<u>99</u>
Total Other Dispositions	258
Cases Pending Dec. 31, 1978	624
 <u>Reasons for Cases Pending</u>	
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	<u>22</u>
Total Pending Dec. 31, 1978	624

225 total awaiting decision

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

TABLE I

ALASKA SUPREME COURT CASE FILINGS 1970-1977

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
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	<u>12</u>	<u>6</u>	<u>16</u>	<u>11</u>	<u>22</u>	<u>7</u>	<u>16</u>	<u>17</u>
Total Filings	217	215	249	255	290	337	466	613

INCREASES

		<u>NUMERICAL</u>	<u>PERCENTAGE</u>
Increase	1970-71	-2	--
	1971-72	+34	16%
all	1972-73	+6	2%
	1973-74	+35	14%
Categories	1974-75	+47	16%
	1975-76	+129	30%
	1976-77	+147	32%
Increase	1973-74	+13	7%
Appeals	1974-75	+41	20%
and	1975-76	+115	46%
Sentence	1976-77	+106	29%
Appeals			

TABLE II

ALASKA SUPREME COURT CASE FILINGS 1975-1977

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

*Case filings for 1977 include 22 reinstated cases.

TABLE III

ALASKA SUPREME COURT DISPOSITION OF CASES 1977

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

TABLE IV

ALASKA SUPREME COURT
 FILINGS, DISPOSITIONS AND PENDING CASELOAD 1977

<u>Civil Appeals and Cross Appeals</u>		<u>Sentence Appeals</u>	
Pending 12/31/76	218	Pending 12/31/76	16
Filed or Reinstated 1977	<u>251</u>	Filed or Reinstated 1977	<u>63</u>
Total	469	Total	79
<u>Disposition</u>		<u>Disposition</u>	
By Opinion and Mandate	120	By Opinion and Mandate	21
By Summary Order	5	Dismissed	<u>19</u>
Dismissed	<u>76</u>	Total	40
Total	201	Pending 12/31/77	39
Pending 12/31/77	268	<u>Petitions for Review</u>	
<u>Criminal and Juvenile Appeals</u>		Pending 12/31/76	20
Pending 12/31/76	132	Filed 1977	<u>126</u>
Filed or Reinstated 1977	<u>156</u>	Total	146
Total	288	<u>Disposition</u>	
<u>Disposition</u>		Opinion and Mandate	16
By Opinion and Mandate	54	By Summary Order	7
By Summary Order	1	Dismissed or Withdrawn	13
Dismissed	<u>33</u>	Review Denied	<u>67</u>
Total	88	Total	103
Pending 12/31/77	200	Pending 12/31/77	43

TABLE IV (Continued)

Original Applications

Pending 12/31/76	5
Filed or Reinstated 1977	<u>17</u>
Total	22

Disposition

Opinion and Mandate	3
By Summary Order	4
Dismissed	<u>11</u>
Total	18
Pending 12/31/77	4

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

TABLE V

ALASKA SUPREME COURT
REASON FOR CASES PENDING DECEMBER 31, 1977

	C A S E S A W A I T I N G					STAYED	TOTAL
	RECORDS	BRIEFS	HEARING	DECISION	MANDATE		
<u>Appeals</u>							
Civil Appeals	84	54	22	94	4	10	268
Criminal and Juvenile Appeals	47	62	14	70	1	6	200
Sentence Appeals	<u>6</u>	<u>9</u>	<u> </u>	<u>19</u>	<u>1</u>	<u>4</u>	<u>39</u>
Total Appeals	137	125	36	183	6	20	507
<u>Petitions for Review</u>		12	1	26	2	2	43
<u>Original Applications</u>	<u> </u>	<u> </u>	<u>1</u>	<u>3</u>	<u> </u>	<u> </u>	<u>4</u>
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
Percent of Increase
Percent of Increase

1961-1977
1968-1977
1976-1977

600%
354%
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]	<u>35</u>
TOTAL MOTIONS	1274

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

SUPREME COURT ACTIVITY, 1977

*Clerk's
file
1976 filings should
be 468
not 466*

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.)

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:

3

1. Number of Days From Notice of Appeal to Mandate

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	<u>90 days</u>
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	<u>120 days</u>
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	<u>4</u>
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	<u>3</u>
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	<u>1</u>
Total	21

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.

	<u>Pending 12/31/78</u>	<u>Filed 1978</u>
CIVIL	297	256
Extradition	3	8
Habeas other than extradition	2	2
Criminal Rule 35	3	3
Civil forfeiture of property used to commi 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	51	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

Ms. Susan Burke
January 30, 1979
Page 2

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 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!

3A

BH

TABLE I
1978 RECAPITULATION

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
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
<u>Total Dispositions by Opinion & Mandate</u>	105	94	31	230	13	5	248
P. 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

	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
A. FILINGS ^b				
Civil Appeals	151	214	251	256
Criminal Appeals	76	120	156	135
Sentence Appeals	<u>22</u>	<u>32</u>	<u>63</u>	<u>56</u>
Total Appeals	249	366	470	447
Petitions for Review	81	86	126	156
Originals	<u>7</u>	<u>16</u>	<u>17</u>	<u>27</u>
TOTAL	337	468	613	630
B. DISPOSITIONS				
Civil Appeals		141	201	225
Criminal Appeals	> 193	67	88	131
Sentence Appeals	<u>12</u>	<u>33</u>	<u>40</u>	<u>43</u>
Total Appeals	203	241	329	399
Petitions for Review	84	82	103	136
Originals	<u>10</u>	<u>12</u>	<u>18</u>	<u>25</u>
TOTAL	299	335	450	560
C. DISPOSITIONS				
On Merits	c	148	231	302
P/R and Orig. Denied	c	52	67	99
Dismissals	c	<u>135</u>	<u>152</u>	<u>159</u>
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 Appeal	<u>17</u>	<u>16</u>	<u>39</u>	<u>51</u>
Total Appeals	241	366	507	557
Petitions for Review	16	20	43	61
Originals	<u>1</u>	<u>5</u>	<u>4</u>	<u>6</u>
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

	<u>Civil Appeals</u>	<u>Criminal Appeals</u>	<u>Sentence Appeals</u>	<u>Total Appeals</u>	<u>Petitions for Review</u>	<u>Originals</u>	<u>TOTAL</u>
Awaiting Record	67	50	8	125			125
Awaiting Briefs	75	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	<u>11</u>	<u>8</u>	<u>—</u>	<u>19</u>	<u>3</u>	<u>—</u>	<u>22</u>
TOTAL	297	209	51	557	61	6	624



Alaska Court System

State of Alaska

SUSAN BURKE
Staff Counsel

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K STREET
ANCHORAGE, ALASKA 99501

March 12, 1979

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

Re: Senate Bill 104--Court of Appeals

Dear Senator Ziegler:

This is in response to your request for a brief memorandum on the question of whether an intermediate appellate court may be established by the Legislature without an amendment to the state constitution.

Obviously our Supreme Court has never had the opportunity to rule on this precise question, 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.

Letter to Honorable Robert H. Ziegler, Sr.
March 12, 1979
Page 2

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, 486 P.2d 925 (Alaska 1971), 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* and this limitation will be constitutional so long as the supreme court retains discretionary review authority in all cases. This is precisely the mechanism that is provided for in Senate Bill 104. Finally, although it is not an official statement by the supreme court, the Chief Justice did mention in his recent State of the Judiciary address that the court believed that the establishment of a court of appeals would be permissible under the Alaska Constitution.

I hope this brief review is satisfactory.

Very truly yours,



Susan Burke
Deputy Administrative Director

SB/nmr

*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.



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.

Letter to Honorable Robert H. Ziegler, Sr.
Page 2
February 2, 1979

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.

Letter to Honorable Robert H. Ziegler, Sr.

Page 3

February 2, 1979

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:

	<u>Expected</u>	<u>High</u>
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 472 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.

Letter to Honorable Robert H. Ziegler, Sr.
Page 4
February 2, 1979

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
Arthur H. Snowden, II *John*

AS/pmr

104

DUNN, BAILY AND MASON

LAWYERS

LOUSSAC-SOHN BUILDING

428 D STREET

ANCHORAGE ALASKA 99501

THEODORE RUSS DUNN
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CABOT CHRISTIANSON

TELEPHONE
AREA CODE 907
276-4331

March 27, 1979

Mr. Arthur Snowden
Administrative Director
303 "X" Street
Anchorage, Alaska 99501

Dear Art:

I appreciate your letter concerning the proposed intermediate court of appeals. Fortunately, there is no problem which must be resolved.

I wrote Senator Ziegler to express my opinion that administrative appeals (I was primarily concerned with appeals from the Public Utilities Commission, the Transportation Commission, and the Pipeline Commission) should not be subjected to an additional level of appeal as they will be under Senate Bill 104. It was and is my feeling that it would be best for administrative appeals to either skip the superior court and go directly to the new appellate court or continue to go to the superior court as they do now and then skip the appellate court. I sent copies of my letter to the Public Utilities Commission since I appear before the Commission regularly and thought that it would be courteous to make them aware of my feelings about the Bill. I did not realize that the Bill had actually been drafted in your office and therefore did not send you a copy of my letter.

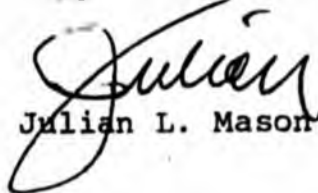
I talked last week with Susan Burke and she pointed out to me that the Bill contains a "transfer" provision which will allow the supreme court by rule to relieve the new appellate court of the burden of administrative appeals. She indicated that the court will, in fact, make such a rule if the Bill is passed. We both agreed that it would be nice for administrative appeals to skip the superior court and go directly to the appellate court and we also agreed that that is a problem for another day.

Mr. Arthur Snowden
March 27, 1979
Page Two

Again, I appreciate your letter and I appreciate your
interest in my comments concerning the Bill.

Sincerely,

D. BAILY & MASON



Julian L. Mason

JLM/lm

cc: Senator Robert Ziegler

ALASKA ACADEMY OF TRIAL LAWYERS
1015 West 7th Avenue, Anchorage, Alaska 99501
(907) 279 9571

OFFICERS

President
L. AMES LUCE

April 4, 1979

Vice - President, Civil
SANDRA SAVILLE

Vice - President, Criminal
PAUL DAVIS

Secretary
DOUGLAS J. SERDAHELY

Treasurer
WILLIAM M. ERWIN

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.

Representative Fred E. Brown
Page 2
April 4, 1979

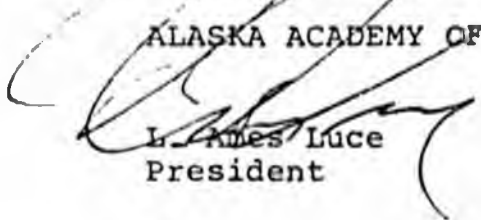
- 5) We have some problems with Sec. 22.05.015: While it is obvious that there will be cases that obviously are going to proceed to the Supreme Court, for example the recently contested primary election, we believe the better procedure would be for the new "appellate" court to certify such cases up to 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

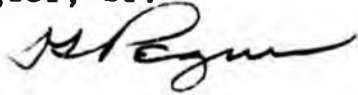
STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 15, 1979

SUBJECT: Senate Bill 104 (Court of Appeals)
TO: Senator Robert H. Ziegler, Sr.
FROM: Donna Spragg Pegues 
Revisor of Statutes

The need for an additional amendment has come to my attention. It should be inserted as a new Sec. 23 and the subsequent sections renumbered as follows.

AMENDMENT

TO: Senate Bill 104

(1) Page 13, line 3 insert new Sec. 23 to read:

*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."

(2) Renumber subsequent sections accordingly.

DSP:jdn

You asked me about an intermediate appellate court. My observations are:

1. We don't need it, and can save money if: (a) you withdraw the statutory authority for the S.Ct. to review all sentences; (b) Cut the public defender budget in half (which will eliminate frivolous appeals in the vast majority of cases) or (c) eliminate the P.D. Office and return the system to court appointed private counsel. Retain the PD office only for appeals to the Supreme Court.

Attached is new S.Ct. Order 339 which establishes a right of appeal for EVERYTHING INCLUDING PARKING TICKETS, the court has to inform him of the appeal right, and the Clerk of the Court is obliged to prepare and file the notice of appeal. The S.Ct. is apparently attempting to justify the requirement for an intermediate appellate court by generating more appeal business on every level of the court system.

THE SUPREME COURT OF THE STATE OF ALASKA

ORDER NO. 339

Amending Appellate
Rule 19(b).

IT IS ORDERED:

Rule 19(b) of the Rules of Appellate Procedure is amended to read as follows:

(b) Time for Taking Appeal. An appeal by a defendant may be taken within 30 days after entry of the judgment in accordance with Criminal Rule 32(b). If a motion for a new trial or an arrest of judgment or a motion for reduction, correction, or suspension of sentence pursuant to Criminal Rule 35 has been made within the 30-day period, an appeal from a judgment of conviction may be entered within 30 days after entry of the order deciding the motion. When after trial a court imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forthwith a notice of appeal on behalf of the defendant. An appeal by the state when authorized by law may be taken within 30 days after entry of the judgment or order appealed from.

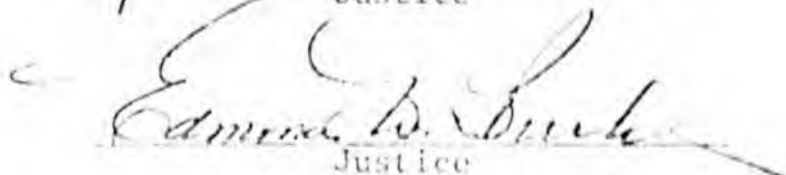
DATED: November 28, 1978

EFFECTIVE DATE: January 1, 1979


Chief Justice


Justice


Justice


Justice


Justice

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 22, 1979

SUBJECT: Court of Appeals:
(SB 104)

TO: Senator Robert H. Ziegler

FROM: Billy G. Berrier, Director *BGB*
Division of Legal Services

You have asked that if the legislature adopted the Court of Appeals bill (SB 104), whether this would preclude changing the court to a constitutional court at a later date. In my opinion establishing the court by law would have no legal effect on later constitutional establishment.

The relevant constitutional provision is Art. IV, Sec. 1, which 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. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law."

While this is clear authority for establishment of courts by the legislature if this authority were exercised by establishing the Court of Appeals' full power to give the court constitutional status by amendment to the institution would remain.

BGB:nem



SB 104

Alaska Court System

State of Alaska

305 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 274-8611

March 21, 1979

Mr. Julian L. Mason
429 D Street
Anchorage, Alaska 99501

Dear Julian:

I have received in the mail, copies of two pieces of correspondence sent to you by Senator Ziegler which alluded to some possible problem with the proposed Court of Appeals. Inasmuch as I don't have the original correspondence on this matter, I don't know what the nature of this problem is.

If you can contact me at your convenience I would be more than willing to try to resolve any problem you may have to your satisfaction.

Warmest personal regards,

Arthur H. Snowden, II
Administrative Director

AHS:cm

cc: Senator Robert H. Ziegler, Sr. ✓



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

March 16, 1979

Mr. Julian L. Mason
429 D Street
Anchorage, Alaska 99501

Dear Julian:

Since I wrote you on March 1st, I have not heard word one from anyone concerned.

As a suggestion if you still have problems with SB 104, you should get in touch with your contacts in the House; the bill, in the form in which you have read it, passed the Senate on March 14th on a fifteen to five vote.

I am sure that if you and the court system can iron out your differences, and I hope you can, Representative Charlie Parr, who chairs the House Judiciary committee, will do his best to accommodate you.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court
Commissioners, APUC
Mr. Arthur Snowden



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

March 1, 1979

Mr. Julian L. Mason
429 D Street
Anchorage, Alaska 99501

Re: SB 104

Dear Julian:

If you want to have a problem rectified, address your comments to me as a person in a position to do something about it, instead of copying half the people in the country.

The captioned bill was introduced at the request of the Supreme Court. I don't think that anybody in his right mind can argue about the fact that the intermediate, appellate or buffer court, call it what you will, is desperately needed at this time.

Presupposing I am correct in that assertion and presupposing there is something you don't like about the bill, why don't you go see Art Snowden and see if you can't resolve your differences and thereafter advise me as to the terms of your agreement. Then the bill can be easily amended in the Senate Finance committee or on the floor without causing or necessitating the legislature to have to be the ultimate arbitrator to the ultimate detriment of one warring faction or the other.

More simply put, why not iron out all your problems between or among the parties involved and thereafter advise us as to your consensus.

Regards,

Robert H. Ziegler, Sr.

RHZ/pkz

cc - Justices, Alaska Supreme Court
Commissioners, APUC
Mr. Arthur Snowden
Senators Bradley, Meland, Rodey, Sturgulewski and Stimson

DUNN, BAILY AND MASON

LAWYERS

LOUSSAC-SOIGN BUILDING

429 D STREET

ANCHORAGE, ALASKA 99501

THEODORE RUSS DUNN

DOUGLAS B. BAILY

JULIAN L. MASON III

ROBERT J. BUCKALEW

CABOT CHRISTIANSON

TELEPHONE
AREA CODE 907
276-4331

February 17, 1979

Senator Robert H. Ziegler
Pouca V
State Capitol
Juneau, Alaska 99811

Re: Senate Bill No. 104 (Court of Appeals)

Dear Senator Ziegler:

Section 22.07.020(a)(8) of Senate Bill No. 104 provides that the court of appeals established by the Bill will hear appeals from decisions of administrative agencies. I strongly oppose this provision for the following reasons:

1. Administrative law in Alaska is embryonic and there are literally only a handful of Supreme Court decisions interpreting the powers and duties of our administrative agencies. While the law is in this development state, administrative appeals should be determined by the Supreme Court rather than an intermediate appellate court.

2. The appellate court which would be created by Senate Bill 104 will, as a practical matter, deal primarily with criminal appeals. It will be highly inefficient to ask that court to deal also with the very specialized area of administrative law.

3. Most administrative appeals involve enormous amounts of money and need to be resolved quickly in order to protect both the consumers and the utilities. Senate Bill 104 adds an additional appeal step to what is already a lengthy and tedious appellate process. Although the Supreme Court will not be required to hear appeals from decisions of the intermediate appellate court, it will normally feel compelled to do so because of the large number of people and dollars involved. Consequently, the effect of Bill 104 will be to slow the administrative appeal process without reducing significantly the workload of the Supreme Court.

It is my belief that paragraph 8 should be deleted from Section 22.07.020 of the bill. Alternatively, I recommend

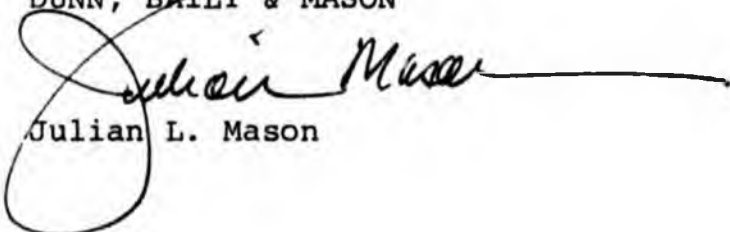
Senator Robert H. Ziegler
February 15, 1979
Page Two

that A.S. 44.62 et.seq. be amended to provide that administrative appeals bypass the Superior Court and go directly to the intermediate appellate court.

As you know, I have practiced extensively before the Alaska Public Utilities Commission and represent both utilities and customers of utilities. The opinions expressed in this letter are my own and I have not been compensated by any individual or business to express those views. I sincerely appreciate this opportunity to express my opinion and will be happy to respond to any questions which you or members of your committee may have.

Sincerely,

DUNN, BAILY & MASON



Julian L. Mason

JLM/ln

cc: Senator W.E. Bradley
Senator H. D. Meland
Senator Patrick Kodey
Senator Arliss Sturgulewski
Senator Terry Stimson
Commissioner Stuart Hall, APUC
Commissioner Marvin Weatherly, APUC
Commissioner Gordon Zerbetz, APUC
Commissioner Susan Knowles, APUC
Commissioner Carolyn Guess, APUC



Supreme Court
State of Alaska

January 29, 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
907-452-1550
907-456-5201

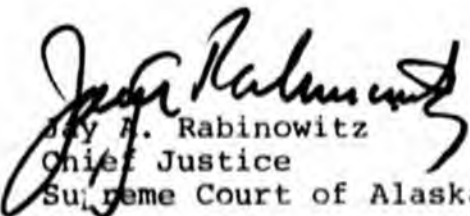
Honorable Robert H. Ziegler, Sr.
Senator, State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Senator Ziegler:

On behalf of my colleagues and myself, I want to thank you for taking the time to meet with us last week. We all are deeply appreciative of your understanding of the need for an intermediate appellate court and delighted that you have agreed to sponsor this legislation. In short, our profound thanks for your continued understanding and sensitivity to the problems of Alaska's Judicial System.

Best wishes.

Sincerely,


Jay A. Rabinowitz
Chief Justice
Supreme Court of Alaska

JAR:dw

P.S. I should also convey my thanks for sending copies of SJR's 3 and 4.

Committee copy

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	<u>20,047</u>
		<u>\$354,934</u>
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.	<u>5,000</u>
		114,400
Commodities:		10,000
Equipment:		<u>25,000</u>
		534,334

FY 80 EXPENSE

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

A M E N D M E N T # 1

OFFERED IN THE SENATE:

BY: Senate Judiciary Committee

To: Amend SENATE BILL No. SB 104

HOUSE BILL No. _____

PAGE: 13

LINE: 3

(1) Page 13, line 3, insert new Sec. 23 to read:

*Sec 23. AS 39.50.200 (200) 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."

(2) Renumber subsequent sections accordingly.

AMENDMENT #1

OFFERED IN THE SENATE:

By: Commerce Committee

To: _____ SENATE BILL No. 164

HOUSE BILL No. _____

PAGE: 1

LINE: 14

pg 1, line 14:

After the word "phone", delete the word "and" and insert the words "or electric"

After the word "transmission", insert the words "and distribution"

Page 2, Line 3:

After the word "transmission", insert the words "or distribution"

Q. What is waste heat?

A. Waste heat is the term commonly used for energy that is rejected from various industrial sources. It usually results from the burning or other consumption of fossil fuels; however, it may also result from nuclear power plants or represent the unused heat from geothermal sources. The waste heat rejected from a process using fossil fuel usually exceeds the amount of the energy that is put to useful work such as the production of electricity. For example, most electrical power generation facilities that operate with fossil fuels have only a 30 per cent efficiency and the remainder is rejected as hot water or hot air.

Q. What is the extent of unused heat in Alaska?

A. The quantity is enormous at the present time and it will increase greatly as the pipelines, refinery and other power plants are placed into operation. It is estimated that each pumping station along the Trans-Alaska Pipeline could heat 2000 homes. The estimate for the North Pole Petroleum refinery is that 10,000 homes could be heated. Canadian sources estimate that each pumping station associated with their Mackenzie Valley Pipeline will produce enough clean waste heat to meet the requirements for 15 to 20 acres of greenhouse vegetable production. However, there has not been an inventory made of the present and future status of the waste heat that will be rejected and that could be used in the state.

Q. What are some proposed uses?

A. Agriculture, fisheries and aquaculture, forestry, processing and district heating in commercial and domestic areas. High temperature waste heat also may be useful in some cases for the generation of electricity where uses can be found for the remaining lower temperature heat so that vapor and thermal pollution is not a problem. For example, it would be technically possible to generate electricity from the high temperature waste from the North Pole Petroleum refinery. However, if this is done the reject energy would be in a form that could not be injected into the upper atmosphere and would create a vapor or ice fog problem during winter months. Agriculture and district heating could provide a use for this remaining low temperature reject energy.

Agriculture

The high temperature reject heat could be useful for forage and grain drying and may provide the necessary component that would make potato processing feasible in the state and therefore, expand potato production.

Heat energy consisting of hot air, hot water or steam and at temperatures ranging from 80°F to 800°F would be useful for greenhouse

production and vegetable and plant production in areas that would support horticulture crop production resulting from soil warming. The use of the heat in greenhouses and then during the summer months in the soil for crop production is necessary to all wise proposals that suggest a near total use for the energy. This crop use is probably necessary because it can utilize the low temperature energy and would utilize the heat as less is needed for other uses. It appears to be an important part of every systems approach to utilizing this resource because the near total use of the resource will make the collection and distribution more economical for each use.

Aquaculture, Forestry Processing and District Heating

The use of heat to improve production of fisheries through hatchery rearing and in fish production ponds is suggested. The heat requirement for forestry, processing industries and in district heating of homes and businesses is obvious if the heat can be collected and distributed. The more complete use that would result by greenhouse and soil heat use would provide a better economic picture for the above uses.

Q. Is our environment suitable for the types of intensive crop production that is suggested?

A. During the four summer months it is superior to most other areas of the nation. The northern latitudes are recognized to have the highest photosynthetic production rate in the world during these four summer months. If the season can be lengthened and/or the soil warmed, the productive capacity can be further increased, and this photosynthetic advantage further exploited.

Q. Why hasn't the greenhouse industry developed without the waste heat use?

A. It is one of Alaska's major agricultural industries at the present time, but it has been developed through the use of fossil fuels which are even higher in cost than they are in the rest of the nation.

Q. There are indications that hundreds of acres of greenhouse and soil heated vegetable production is possible. Could all of these products be marketed in Alaska?

A. No. Besides providing Alaskans with vegetables and ornamental plants, it would be necessary to market cut flowers such as roses, carnations, chrysanthemums and etc. on national and world markets. It is proposed that this could be done competitively during 5-6 months of the year because of Alaska's superior environment for greenhouse production and through the use of waste energy.

Q. Why do you feel that it is important to examine national and world markets for cutflowers?

A. Because it appears to be necessary at the present time in order to make more complete use of our unused resource. It also would add to the stability of our economy to have a renewable resource such as this contributing to the state's economy. It would also decrease the nation's consumption of fossil fuels now used for this purpose in the present greenhouse growing areas.

Q. What will be the temperature of the Waste Heat?

A. The temperature of the reject heat energy will vary with the type of industry and will range from about 80°F to above 800°F. It will be exhausted as hot air, hot water or steam.

It is expected that not all reject energy could be utilized at this time because of accessibility problems, the lack of adjacent growing areas and the lack of technology. A systems approach with agriculture as a major user appears to give the best potential.

Q. What is the urgency in the legislation now in process?

A. We must promote the use or it will not happen. The potential for use must be designed into the system in the beginning in order to develop the most economical recovery system. For example the oil pipeline pumping stations were not designed with reject heat use in mind, and, therefore, it will cost more to recover the heat.

Although the technology appears to be available at the present time to make economical use of the energy, it is necessary to demonstrate this and to improve this technology.

FISCAL NOTE

I. REQUEST House CS for Senate Bill No. 104 (Judiciary) am H
 Bill/Resolution No. _____
 Title Intermediate Appellate Court
 Requested by Alaska Judicial Council Date March 14, 1980

II. FISCAL DETAIL Alaska Judicial Council
 Agency Affected _____
 Program Category Affected same
 BRU, Program, or Subprogram(s) Affected same
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES	----	----	-0-	----	----	----
200 TRAVEL	-----	\$15,190	-----	----	----	----
300 CONTRACTUAL	----	1,024	-----	----	----	----
400 COMMODITIES	----	----	-0-	----	----	----
500 EQUIPMENT	----	----	-0-	----	----	----
600 LAND & STRUCTURES	---	----	-0-	----	----	---
700 GRANTS, CLAIMS, ETC.	----	----	-0-	---	-----	----
TOTAL		\$16,214				

FUNDING (Thousands of Dollars)

GENERAL FUND	-----	\$16.2	-----	----	-----	----
FEDERAL FUNDS	----	----	----	----	-----	----
OTHER (Specify Fund Source)	---	----	----	-----	----	-----

POSITIONS Not Applicable

FULL TIME						
PART TIME						
TEMPORARY						

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

Judicial Selection Process, Appellate Court

This fiscal note is prepared for expenses expected to be incurred during May and June of FY'80. Should the timing of the judgeship application process be such that it moves into FY'81, it will be essential to have the balance of funds in this note available during that fiscal year.

A. Assumptions

The amount of funding requested is based upon the assumption that one additional Judicial Council meeting will be required to select the new candidates for positions created by this bill, and that 2 of the appointees to the new positions will come from existing judges thus creating the need for a second additional Council meeting to fill those vacancies.

(see continuation sheets)

IV. DATE March 14, 1980 PREPARED BY James G. White
 AGENCY Alaska Judicial Council
 PHONE Anchorage 279-2526
 Original: Legislative Finance
 cc: Budget and Management
Prime Sponsor (First Legislator Named)

Page 2

B. Program Summary

1. Positions: No positions.

2. Other Expenditures

a) Travel. Creation of the intermediate appellate court will require two additional Council meetings, one to select the nominees for the appellate court itself, and the other to replace any appointees who come from the existing judges (it is expected that at least one and perhaps two appointees may be trial court judges). The average costs per Council meeting are:

John Longworth (Petersburg)	\$500.00
Marcus R. Clapp (Fairbanks)	300.00
Robert Moss (Homer)	220.00
W. Carpeneti (Juneau)	<u>450.00</u>

Total, travel & per diem <u>per meeting</u>	\$1,470.00
--	------------

x 2 meetings	<u> x 2</u>
--------------	-----------------------

Total, meetings	\$2,940.00
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In addition to Council member expenses, it is expected that some applicants may travel to Anchorage to be interviewed. The Council also pays expenses for applicants. It is estimated that as many as 7 applicants per available position will travel, at an average cost of \$350/trip. Since it is possible that 5 vacancies are likely to exist, the total costs are:

\$350/applicant x 5 vacancies	
x 7 applicants/vacancy	= 35 x \$350 = \$12,250

Total travel expenses necessitated by creation of the new court:

Council meetings	\$2,940.00
Applicants	<u>\$12,250.00</u>
	<u>\$15,190.00</u>

b) Contractual.

Each vacancy will require a peer evaluation survey of applicants conducted among Bar Association members. The Judicial Council presently contracts with the Urban Observatory in Anchorage to perform this survey at a cost of \$512.00 per survey. Since several applicants can be included in each survey, it should only be necessary to perform two (one for each Council meeting).

Total cost for peer evaluation survey:

2 surveys at \$512.00/survey=	<u>\$1,024.00</u>
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3. Funding. Funds are requested from the state general fund for this purpose.

C. Computations.

See above.

D. Economic Impact. Not applicable.

E. Attachments. None.